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

2829

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the state administrative procedure act, in relation to detailing the benefits and costs of proposed rules in regulatory impact statements

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

Section 1. The legislature finds that many rules of state agencies have a substantial impact on the lives of the public, and therefore should be adopted through a process which provides for open and reasoned consideration of the potential costs and benefits of regulatory action. To this end, the statutes governing the rulemaking process should be improved to ensure that agency assessments of the costs and the benefits of proposed rules are reasonably accurate and comprehensive.

S 2. Paragraph (b) of subdivision 4-a of section 202 of the state administrative procedure act, as added by chapter 335 of the laws of 1992, is amended to read as follows:

(b) Each agency shall publish and make available to the public an assessment of public comment for a rule revised pursuant to this subdivision. Such assessment shall be based upon any written comments submitted to the agency and any comments presented at any public hearing held on the proposed rule by the agency. The assessment shall contain: (i) a summary and an analysis of the issues raised and significant alternatives suggested by any such comments; (ii) a statement of the reasons why any significant alternatives were not incorporated into the rule; and (iii) a description of any changes made in the rule as a result of such comments. IF ANY COMMENTS INCLUDED ESTIMATES OF PROJECTED COSTS OF THE PROPOSED RULE TO THE STATE, LOCAL GOVERNMENTS OR REGULATED PERSONS, WHICH DIFFERED SIGNIFICANTLY FROM THOSE PRESENTED BY THE AGENCY IN ITS REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, OR RURAL

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

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AREA FLEXIBILITY ANALYSIS, THE ASSESSMENT SHALL ALSO SUMMARIZE THE AGENCY'S ASSESSMENT OF SUCH ESTIMATES. COPIES OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED COSTS WHICH DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF THIS SECTION. If no comments have been received, the notice of revised rule making shall state that no comments were received by the agency. Any subsequent assessment published pursuant to this paragraph or paragraph (b) of subdivision five of this section need only include comments not addressed in any previously published assessment of public comment for the rule; provided, however, that the notice of revised rule making or adoption shall contain the date any previous notice of revised rule making containing an assessment of public comment was published in the state register.

S 3. Paragraph (b) of subdivision 5 of section 202 of the state administrative procedure act, as amended by chapter 171 of the laws of 1994, is amended to read as follows:

(b) Except with respect to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, each agency shall publish and make available to the public an assessment of public comment for a rule adopted pursuant to this subdivision or paragraph (e) of subdivision six of this section. Such assessment shall be based upon any written comments submitted to the agency and any comments presented at any public hearing held on the proposed rule by the agency. The assessment shall contain: (i) a summary and an analysis of the issues raised and significant alternatives suggested by any such comments, (ii) a statement of the reasons why any significant alternatives were not incorporated into the rule and (iii) a description of any changes made in the rule as a result of such comments. If any comments included estimates of projected costs of the proposed rule to the state, local governments or regulated persons, which differed significantly from those presented by the agency in its regulatory impact statement, regulatory flexibility analysis, or rural area flexibility analysis, the assessment shall also summarize the agency's assessment of such estimates. COPIES OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED COSTS WHICH DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF THIS SECTION. If no comments have been received, the notice of adoption shall state that no comments were received by the agency. Comments submitted or presented to the agency by a legislative committee or commission or by a member or members of the senate or assembly shall be considered public comment and shall be summarized and analyzed in the assessment.

S 4. Paragraphs (b), (c) and (d) of subdivision 3 of section 202-a of the state administrative procedure act, paragraph (b) as amended by chapter 229 of the laws of 2000 and paragraphs (c) and (d) as amended by chapter 520 of the laws of 1992, are amended to read as follows:

(b) Needs and benefits. A statement setting forth the purpose of, necessity for, and benefits derived from the rule, 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. THE STATEMENT SHALL IDENTIFY THE CLASSES OF PERSONS OR ENTITIES WHICH WOULD BENEFIT FROM ADOPTION OF THE RULE,

SHALL BRIEFLY DESCRIBE THE NATURE OF THE BENEFITS WHICH SUCH CLASSES OF PERSONS OR ENTITIES WOULD DERIVE THEREBY, AND SHALL INDICATE THE INFORMATION AND METHODOLOGY UPON WHICH ITS ANALYSIS OF THE BENEFITS IS BASED;

(c) Costs. A statement detailing the projected [costs] COST IMPACTS, INCLUDING OPPORTUNITY COSTS AND OTHER NON-MONETARY COSTS AS WELL AS MONETARY COST, of the rule, which shall indicate:

(i) [the] ANY POSITIVE OR ADVERSE IMPACTS ON costs for the implementation of, and continuing compliance with, the rule to regulated persons;

(ii) [the] ANY POSITIVE OR ADVERSE IMPACTS ON costs for the implementation of, and continued administration of, the rule to the agency and to the state and its local governments; and

(iii) ANY POSITIVE OR ADVERSE IMPACTS ON COSTS OF PERSONS OR ENTITIES WHO ARE NOT REGULATED PERSONS BUT ARE OTHERWISE AFFECTED BY THE RULE; AND 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;]

(d) Paperwork. A statement describing the need for any reporting requirements, including forms and other paperwork AND ANY REPORTING BY ELECTRONIC MEDIA, which would be required as a result of the rule;

S 5. This act shall take effect on the first of September next succeeding the date on which it shall have become a law, and shall apply to any rule for which a notice of revised rule making or a notice of adoption is first prepared on or after such date.