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

5694

2011-2012 Regular Sessions

I N A S S E M B L Y

February 25, 2011

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

AN ACT to amend the state administrative procedure act, in relation to regulatory relief for health care providers, small businesses and other regulated parties and to repeal paragraph (c) of subdivision 3 of section 202-a of such act relating thereto

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

Section 1. Subdivision 9 of section 102 of the state administrative procedure act, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

9. "Substantial revision" means any addition, deletion or other change in the text of a rule proposed for adoption, which THE OFFICE OR THE AGENCY DETERMINES materially alters its purpose, meaning or effect, [but shall not include any change which merely defines or clarifies such text and does not materially alter its purpose, meaning or effect. To determine] OR WHICH WOULD CAUSE A REGULATED PERSON TO INCUR COSTS, INCLUDING BUT NOT LIMITED TO FINANCIAL, PERSONNEL, CAPITAL, OPERATIONAL, AND MAINTENANCE COSTS, OR OTHERWISE ACT IN A MANNER MATERIALLY DIFFERENT THAN REQUIRED BY THE MOST RECENT PUBLISHED VERSION OF THE PROPOSED RULE. IN DETERMINING if the revised text of a proposed rule contains a substantial revision, the revised text shall be compared to the text of the rule for which a notice of proposed rule making was published in the state register; provided, however, if a notice of revised rule making was previously published in the state register, the revised text shall be compared to the revised text for which the most recent notice of revised rule making was published.

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

12. "OFFICE" MEANS THE OFFICE FOR REGULATORY REFORM.

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

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S 3. Paragraph (a) of subdivision 5 of section 202 of the state administrative procedure act, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

(a) When an agency files a rule with the secretary of state, such agency shall also submit a notice of adoption to the secretary of state for publication in the state register. Except as provided in subdivision six of this section, an agency may not file a rule with, or submit a notice of adoption to, the secretary of state unless:

(I) the agency has previously submitted a notice of proposed rule making and complied with the provisions of this section, AND

(II) THE AGENCY SUBMITS A REGULATORY IMPACT STATEMENT OR A REVISED REGULATORY IMPACT STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED TWO-A OF THIS ARTICLE THAT CONTAINS A COMPLETE COST ESTIMATE FOR SUCH RULE AS REQUIRED BY PARAGRAPH (C) OF SUBDIVISION THREE OF SUCH SECTION; PROVIDED, HOWEVER, THAT A BEST ESTIMATE OF COSTS PREPARED PURSUANT TO SUCH PARAGRAPH (C) SHALL NOT BE DEEMED COMPLETE COST FOR THE PURPOSES OF THIS PARAGRAPH.

S 4. Paragraph (c) of subdivision 3 of section 202-a of the state administrative procedure act is REPEALED and a new paragraph (c) is added to read as follows:

(C) COSTS. A STATEMENT DETAILING THE ESTIMATED COSTS OF THE RULE, INCLUDING BUT NOT LIMITED TO ITS FINANCIAL, PERSONNEL, CAPITAL, OPERATIONAL AND MAINTENANCE COSTS, AND PURSUANT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH ANY CHANGE IN REVENUE CAUSED BY THE RULE. SUCH STATEMENT SHALL CONTAIN:

(I) THE ESTIMATED COSTS FOR THE IMPLEMENTATION OF, AND CONTINUING COMPLIANCE WITH, THE RULE TO REGULATED PERSONS;

(II) THE ESTIMATED COSTS FOR THE IMPLEMENTATION OF, AND CONTINUED ADMINISTRATION OF, THE RULE TO THE AGENCY AND TO THE STATE AND ITS LOCAL GOVERNMENTS;

(III) THE SOURCE OF SUCH COST ESTIMATES, PROVIDED, HOWEVER, WHERE COST ESTIMATES FOR THE RULE HAVE BEEN SUBMITTED TO THE AGENCY BY REGULATED PERSONS, SUCH STATEMENT SHALL IDENTIFY THE MANNER AND EXTENT TO WHICH EACH SUCH SUBMITTED ESTIMATE WAS INCORPORATED INTO OR EXCLUDED FROM THE COST ESTIMATE PREPARED BY THE AGENCY;

(IV) AN IDENTIFICATION, AS SPECIFICALLY AS POSSIBLE, OF THE PORTION OF THE ESTIMATED COSTS THAT WOULD BE PAID FOR BY THE STATE AND BY A REGULATED PERSON OR PERSONS;

(V) FOR RULES AFFECTING HEALTH CARE PROVIDERS REGULATED BY THE DEPARTMENT OF HEALTH, INFORMATION ON WHETHER SUFFICIENT STATE FUNDS HAVE BEEN APPROPRIATED AND ARE AVAILABLE TO IMPLEMENT THE RULE OR TO REIMBURSE REGULATED PERSONS FOR THE COSTS INCURRED IN COMPLYING WITH THE RULE, PROVIDED, HOWEVER, THAT A DECLARATION TO THIS EFFECT BY THE AGENCY, WHICH IS APPROVED BY THE DIVISION OF THE BUDGET, SHALL BE SUFFICIENT TO MEET THIS REQUIREMENT;

(VI) AN EVALUATION OF ANY REVENUE CHANGE THAT WILL BE INCURRED BY REGULATED PERSONS AS A RESULT OF THE IMPLEMENTATION OF ANY RULE AFFECTING HEALTH CARE PROVIDERS REGULATED BY THE DEPARTMENT OF HEALTH;

(VII) THE INFORMATION AND METHODOLOGY UPON WHICH THE COST ESTIMATE IS BASED; AND

(VIII) A STATEMENT SETTING FORTH ITS BEST ESTIMATE OF SUCH COSTS WHEN THE AGENCY FINDS THAT THE COST INFORMATION REQUIRED BY THIS PARAGRAPH CANNOT BE FULLY PROVIDED. SUCH BEST ESTIMATE SHALL INDICATE THE INFORMATION AND METHODOLOGY UPON WHICH SUCH BEST ESTIMATE IS BASED AND THE REASON OR REASONS WHY A COMPLETE ESTIMATE CANNOT BE PROVIDED;

S 5. Paragraph (h) of subdivision 3 of section 202-a of the state administrative procedure act, as amended by chapter 520 of the laws of 1992, is amended to read as follows:

(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] COMPARING THE REQUIREMENTS OF THE RULE WITH ANY RELATED FEDERAL REQUIREMENTS AND:

(I) IDENTIFYING WHETHER SUCH RULE EXCEEDS ANY MINIMUM STANDARDS OF THE FEDERAL GOVERNMENT, AND, IF SO, EXPLAIN THE MANNER IN WHICH SUCH RULE EXCEEDS THOSE STANDARDS, AND

(II) COMPARING THE REQUIREMENTS OF SUCH RULE WITH ANY RELATED FEDERAL REQUIREMENTS AND ASCERTAIN THE COMPATIBILITY OF SUCH RULE WITH THOSE REQUIREMENTS. SUCH STATEMENT SHALL ALSO DESCRIBE THE MANNER IN WHICH REGULATED PERSONS MAY ACHIEVE COMPLIANCE DURING THE PENDENCY OF ANY CONFLICT BETWEEN SUCH RULE AND ANY OTHER RELATED FEDERAL REQUIREMENT; and

S 6. Section 202-a of the state administrative procedure act is amended by adding a new subdivision 7 to read as follows:

7. THE OFFICE SHALL PROMULGATE RULES THAT ESTABLISH GUIDELINES FOR THE PREPARATION OF ANY STATEMENT REQUIRED PURSUANT TO THIS SECTION. SUCH GUIDELINES SHALL SPECIFY MINIMUM STANDARDS FOR COMPLYING WITH THIS SECTION WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FORM, CONTENT, AND MANNER OF SUBMISSION OF ANY COST ESTIMATES SUBMITTED TO AN AGENCY BY A REGULATED PERSON, AND THE MINIMUM CONTENT OF ANY BEST ESTIMATE AND OF THE COMPLETE COST ESTIMATE.

S 7. Section 202-b of the state administrative procedure act is amended by adding a new subdivision 9 to read as follows:

9. THE OFFICE SHALL PROMULGATE RULES THAT ESTABLISH GUIDELINES FOR PREPARING AN ANALYSIS AS REQUIRED PURSUANT TO THIS SECTION. SUCH GUIDELINES SHALL SPECIFY MINIMUM STANDARDS FOR COMPLYING WITH THIS SECTION.

S 8. 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 rule making notices submitted to the secretary of state pursuant to section 202 of the state administrative procedure act on and after such effective date; provided, however, that any rule or regulation necessary for the timely implementation of this act on its effective date shall be promulgated on or before such effective date.