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I N   S E N A T E

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Introduced by Sens. VALESKY, CARLUCCI, KLEIN, SAVINO -- 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 providing for public comment during the initial development, preparation and promulgation of rules

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

1     Section 1. Paragraph (b) of subdivision 4-a of section 202 of the  
2     state administrative procedure act, as added by chapter 335 of the laws  
3     of 1992, is amended to read as follows:  
4     (b) Each agency shall publish and make available to the public an  
5     assessment of public comment for a rule revised pursuant to this subdivi-  
6     sion. Such assessment shall be based upon any written comments submit-  
7     ted to the agency DURING THE INITIAL DEVELOPMENT, PREPARATION AND  
8     PROMULGATION OF SUCH PROPOSED RULE and any comments presented at any  
9     public hearing held on the proposed rule by the agency. The assessment  
10    shall contain: (i) a summary and an analysis of the issues raised and  
11    significant alternatives suggested by any such comments; (ii) a state-  
12    ment of the reasons why any significant alternatives were not incorpo-  
13    rated into the rule; and (iii) a description of any changes made in the  
14    rule as a result of such comments. If no comments have been received,  
15    the notice of revised rule making shall state that no comments were  
16    received by the agency. Any subsequent assessment published pursuant to  
17    this paragraph or paragraph (b) of subdivision five of this section need  
18    only include comments not addressed in any previously published assess-  
19    ment of public comment for the rule; provided, however, that the notice  
20    of revised rule making or adoption shall contain the date any previous  
21    notice of revised rule making containing an assessment of public comment  
22    was published in the state register.  
23    S 2. Paragraph (b) of subdivision 5 of section 202 of the state admin-  
24    istrative procedure act, as amended by chapter 171 of the laws of 1994,  
25    is amended to read as follows:

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

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1 (b) Except with respect to any rule defined in subparagraph (ii) of  
2 paragraph (a) of subdivision two of section one hundred two of this  
3 chapter, each agency shall publish and make available to the public an  
4 assessment of public comment for a rule adopted pursuant to this subdivi-  
5 sion or paragraph (e) of subdivision six of this section. Such assess-  
6 ment shall be based upon any written comments submitted to the agency  
7 DURING THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION OF SUCH  
8 PROPOSED RULE and any comments presented at any public hearing held on  
9 the proposed rule by the agency. The assessment shall contain: (i) a  
10 summary and an analysis of the issues raised and significant alterna-  
11 tives suggested by any such comments, (ii) a statement of the reasons  
12 why any significant alternatives were not incorporated into the rule and  
13 (iii) a description of any changes made in the rule as a result of such  
14 comments. If any comments included estimates of projected costs of the  
15 proposed rule to the state, local governments or regulated persons,  
16 which differed significantly from those presented by the agency in its  
17 regulatory impact statement, regulatory flexibility analysis, or rural  
18 area flexibility analysis, the assessment shall also summarize the agen-  
19 cy's assessment of such estimates. If no comments have been received,  
20 the notice of adoption shall state that no comments were received by the  
21 agency. Comments submitted or presented to the agency by a legislative  
22 committee or commission or by a member or members of the senate or  
23 assembly shall be considered public comment and shall be summarized and  
24 analyzed in the assessment.

25 S 3. Subdivision 1 of section 202-a of the state administrative proce-  
26 dure act, as amended by chapter 171 of the laws of 1994, is amended to  
27 read as follows:

28 1. In [developing] THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGA-  
29 TION OF a rule, an agency shall, to the extent consistent with the  
30 objectives of applicable statutes, consider utilizing approaches which  
31 are designed to avoid undue deleterious economic effects or overly  
32 burdensome impacts of the rule upon persons, including persons residing  
33 in New York state's rural areas, directly or indirectly affected by it  
34 or upon the economy or administration of state or local governmental  
35 agencies. Such approaches shall include, but not be limited to, the  
36 specification of performance standards rather than design standards.  
37 PRIOR TO PROMULGATING SUCH RULE, THE AGENCY SHALL, BY SUCH PROMULGATION,  
38 HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO ALL REGULATED PERSONS WHO MAY  
39 BE ADVERSELY AFFECTED AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS AND  
40 COST ESTIMATES THAT MAY BE IMPOSED UPON SUCH PERSONS.

41 S 4. Paragraphs (c), (d) and (g) of subdivision 3 of section 202-a of  
42 the state administrative procedure act, as amended by chapter 520 of the  
43 laws of 1992, are amended to read as follows:

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

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

48 [(ii)] (B) the costs for the implementation of, and continued adminis-  
49 tration of, the rule to the agency and to the state and its local  
50 governments; and

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

53 [(iv)] (II) where an agency finds that, AFTER A REASONABLE GOOD FAITH  
54 EFFORT HAS BEEN MADE, it cannot fully provide a statement of such costs,  
55 a statement setting forth its best GOOD FAITH estimate, which shall  
56 indicate the information and methodology upon which such best estimate

1 is based and the reason or reasons why a complete cost statement cannot  
2 be provided; AND

3 (III) (A) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED  
4 PERSONS WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF  
5 PROPOSED RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH  
6 EFFORTS SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE  
7 EFFECTS THAT MAY BE CAUSED BY ADOPTING SUCH RULE; AND

8 (B) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY FROM REGULATED  
9 PERSONS, WHO MAY BE ADVERSELY AFFECTED BY SUCH PROPOSED RULE MAKING,  
10 PURSUANT TO CLAUSE (A) OF THIS SUBPARAGRAPH.

11 (d) Paperwork. A statement describing the need for any reporting  
12 requirements, including forms and other paperwork OR OTHER ADMINISTRA-  
13 TIVE BURDENS, which would be required as a result of the rule;

14 (g) Alternative approaches. A statement indicating whether any signif-  
15 icant alternatives to the PROPOSED rule OR PROVISIONS OF THE PROPOSED  
16 RULE were considered by the agency, including a discussion of such  
17 alternatives and the reasons why they were not incorporated into the  
18 rule. IN ADDITION, SUCH STATEMENT SHALL DISCLOSE SIGNIFICANT ALTERNATIVE  
19 APPROACHES SUGGESTED BY REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED  
20 BY SUCH PROPOSED RULE MAKING PRIOR TO FILING A PROPOSED RULE MAKING WITH  
21 THE SECRETARY OF STATE OBTAINED FROM OUTREACH EFFORTS CONDUCTED PURSUANT  
22 TO SUBPARAGRAPH (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

23 S 5. Paragraph (i) of subdivision 6 of section 202-a of the state  
24 administrative procedure act, as amended by chapter 850 of the laws of  
25 1990, is amended to read as follows:

26 (i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES  
27 presented in the statement is inadequate, MISLEADING or incomplete, AS  
28 DETERMINED BY SUCH AGENCY OR BROUGHT TO THE ATTENTION OF SUCH AGENCY BY  
29 REGULATED PERSONS BEFORE, DURING AND AFTER SUCH PROPOSED RULE WAS FILED  
30 WITH THE SECRETARY OF STATE, provided, however, such revised statement  
31 shall be submitted as soon as practicable to the secretary of state for  
32 publication in the state register, provided, further, if such statement  
33 exceeds two thousand words, the notice shall include only a summary of  
34 such statement in less than two thousand words;

35 S 6. Subdivision 1 of section 202-b of the state administrative proce-  
36 dure act, as amended by chapter 611 of the laws of 1996, is amended to  
37 read as follows:

38 1. In [developing] INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION  
39 OF a rule, the agency shall consider utilizing approaches that will  
40 accomplish the objectives of applicable statutes while minimizing any  
41 adverse economic impact of the rule on small businesses and local  
42 governments. THE AGENCY SHALL HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO  
43 ALL REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED BY THE PROMULGATION  
44 OF A PROPOSED RULE MAKING AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS  
45 AND COST ESTIMATES OF ALL COSTS THAT MAY BE IMPOSED UPON SUCH PERSONS.  
46 Consistent with the objectives of applicable statutes, the agency shall  
47 consider such approaches as:

48 (a) the establishment of differing compliance or reporting require-  
49 ments or timetables that take into account the resources available to  
50 small businesses and local governments;

51 (b) the use of performance rather than design standards; [and]

52 (c) an exemption from coverage by the rule, or by any part thereof,  
53 for small businesses and local governments so long as the public health,  
54 safety or general welfare is not endangered[.]; AND

55 (D) WERE OBTAINED FROM COMMENTS AND ALTERNATIVE APPROACHES THAT COME  
56 FROM REGULATED PERSONS PRIOR TO FILING A PROPOSED RULE MAKING DERIVED

1 FROM AGENCY OUTREACH EFFORTS CONDUCTED PURSUANT TO SUBPARAGRAPH (III) OF  
2 PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWO-A OF THIS  
3 ARTICLE.

4 S 7. Paragraph (e) of subdivision 2 of section 202-b of the state  
5 administrative procedure act, as amended by chapter 611 of the laws of  
6 1996, is amended and two new paragraphs (e-1) and (e-2) are added to  
7 read as follows:

8 (e) an indication of how the rule is designed to minimize any adverse  
9 economic impact of such rule on small businesses and local governments,  
10 including information regarding whether the approaches suggested in  
11 subdivision one of this section or other similar approaches were consid-  
12 ered; [and]

13 (E-1) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED PERSONS  
14 WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF PROPOSED  
15 RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH EFFORTS  
16 SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE EFFECTS  
17 THAT MAY BE CAUSED BY ADOPTING SUCH RULE;

18 (E-2) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY, PURSUANT TO PARA-  
19 GRAPH (E-ONE) OF THIS SUBDIVISION, FROM REGULATED PERSONS WHO MAY BE  
20 ADVERSELY AFFECTED BY SUCH PROPOSED RULEMAKING; AND

21 S 8. Subdivision 6 of section 202-b of the state administrative proce-  
22 dure act, as amended by chapter 611 of the laws of 1996, is amended to  
23 read as follows:

24 6. When any rule is proposed for which a regulatory flexibility analy-  
25 sis is required, the agency shall assure that small businesses and local  
26 governments have been given an ADVANCED opportunity to participate in  
27 [the] DEVELOPMENT, PREPARATION AND DRAFTING OF A PROPOSED rule making  
28 through such activities as:

29 (a) the publication of a general notice for the proposed rule making  
30 PRIOR TO BEING FILED WITH THE SECRETARY OF STATE in publications likely  
31 to be obtained by small businesses and local governments of the types  
32 affected by the proposed rule;

33 (b) the PRIOR direct notification of interested small businesses and  
34 local governments THAT MAY BE affected by the proposed rule;

35 (c) the conduct of special open conferences concerning the proposed  
36 rule PRIOR TO FILING WITH THE SECRETARY OF STATE for small businesses  
37 and local governments THAT MAY BE ADVERSELY affected by the rule; and

38 (d) the adoption or modification of agency procedural rules to reduce  
39 the cost or complexity of participation in the rule making PROCESS by  
40 small businesses and local governments.

41 S 9. Paragraph (i) of subdivision 7 of section 202-b of the state  
42 administrative procedure act, as amended by chapter 850 of the laws of  
43 1990, is amended to read as follows:

44 (i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES  
45 presented in the analysis submitted pursuant to this section is inade-  
46 quate, MISLEADING or incomplete, AS DETERMINED BY SUCH AGENCY OR BROUGHT  
47 TO THE ATTENTION OF SUCH AGENCY BY REGULATED PERSONS BEFORE, DURING AND  
48 AFTER SUCH PROPOSED RULE WAS FILED WITH THE SECRETARY OF STATE,  
49 provided, however, such revised analysis shall be submitted as soon as  
50 practicable to the secretary of state for publication in the state  
51 register, provided, further, if such statement exceeds two thousand  
52 words, the notice shall include only a summary of such statement in less  
53 than two thousand words;

54 S 10. This act shall take effect on the first of January next succeed-  
55 ing the date on which it shall have become a law.