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I N   S E N A T E

February 9, 2012

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Introduced by Sens. CARLUCCI, KLEIN, SAVINO, 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 the publishing of state agency regulatory agenda and eliminating the exemption granted to the department of environmental conservation relating to the requirement to publish its guidance documents; to amend chapter 402 of the laws of 1994, amending the state administrative procedure act relating to requiring certain agencies to submit regulatory agendas for publication in the state register, in relation to eliminating the expiration and repeal of such provisions; to repeal subdivision 3 of section 202-e of the state administrative procedure act relating to exemption from the requirement to publish guidance documents; and providing for the repeal of certain provisions upon expiration thereof

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

1     Section 1. Subdivision 1 of section 202-d of the state administrative  
2     procedure act, as amended by chapter 193 of the laws of 2008, paragraph  
3     (d) as amended by section 6 of part O of chapter 60 of the laws of 2011,  
4     is amended to read as follows:  
5     1. (a) The departments of health, education, [insurance] FINANCIAL  
6     SERVICES, environmental conservation, labor, [banking,] agriculture and  
7     markets, motor vehicles and state, the offices of children and family  
8     services and temporary and disability assistance, [and] the division of  
9     housing and community renewal, and the workers' compensation board and  
10    any other department specified by the governor or his OR HER designee  
11    shall, and any other agency may, in its discretion, submit to the secre-  
12    tary of state, for publication in the first regular issue of the state  
13    register published during the month of January and the last regular  
14    issue of the state register published in June, a regulatory agenda to  
15    [afford the agency an opportunity to] solicit comments FROM REGULATED  
16    PERSONS AND THE GENERAL PUBLIC concerning any rule which the agency is  
17    considering [proposing] TO PROPOSE, but for which no notice of proposed

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

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1 rule making has been submitted pursuant to subdivision one of section  
2 two hundred two of this article.

3 (b) A regulatory agenda shall be comprised of: (I) a [list and] brief  
4 description of THE subject matter THAT IS being considered for A rule  
5 making; (II) A SCHEDULE OF THE DATES FOR PUBLIC HEARINGS, MEETINGS OR  
6 OTHER OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE DEVELOPMENT OF SUCH  
7 RULE; (III) A PROBABLE DATE OR TIME FRAME IN WHICH SUCH RULE MAY BE  
8 FILED AS A PROPOSED RULE; and (IV) the name, public office, address  
9 [and], telephone number AND E-MAIL ADDRESS of the agency representative,  
10 knowledgeable on such regulatory agenda, from whom any information may  
11 be obtained and to whom written comments may be submitted concerning  
12 such regulatory agenda. [An e-mail address for requests for information  
13 and submission of comments may also be included.]

14 (c) Agencies shall publish the regulatory agendas AND INFORMATION  
15 RELATED TO SUCH AGENDAS on their respective websites [whenever feasi-  
16 ble]. An agency that publishes its regulatory agenda on its website  
17 [shall have the option of maintaining a] MAY continuously MAINTAIN AN  
18 updated regulatory agenda ON SUCH WEBSITE, wherein a description of a  
19 rule is added when the agency begins to consider proposing [it] SUCH A  
20 RULE and is removed when the agency is no longer considering [proposing  
21 it] TO PROPOSE SUCH A RULE. Such description shall identify the date on  
22 which the description is first listed in the regulatory agenda and shall  
23 conspicuously indicate that the description has been newly listed for a  
24 period of not less than thirty days after such date. In any year that an  
25 agency maintains a continuously updated regulatory agenda, it shall not  
26 be required to publish a regulatory agenda in the last regular issue of  
27 the state register in June. The agency shall inform the public that it  
28 maintains an updated regulatory agenda on its website and shall list the  
29 address of its website in a notice published with the regulatory agenda  
30 such agency submits for publication in January. The secretary of state  
31 shall republish this notice in the last regular issue in June.

32 (d) An agency [shall identify each rule described] in PREPARING its  
33 regulatory agenda [for which a regulatory flexibility analysis or a  
34 rural area flexibility analysis may be required, and] shall provide  
35 outreach INFORMATION as IS appropriate to INFORM potentially affected  
36 small businesses, local governments and public and [private interests]  
37 ALL OTHER REGULATED PERSONS, INCLUDING THOSE LOCATED in rural areas.  
38 Such outreach EFFORTS may include solicitation of input from potentially  
39 affected parties through electronic means or through any of the activ-  
40 ities listed in subdivision six of section two hundred two-b and subdi-  
41 vision seven of section two hundred two-bb of this article.

42 S 2. Subdivision 1 of section 202-e of the state administrative proce-  
43 dure act, as amended by chapter 253 of the laws of 2005, is amended to  
44 read as follows:

45 1. Not less than once each year, every agency shall submit to the  
46 secretary of state for publication in the state register a list of all  
47 guidance documents on which the agency currently relies, and provide  
48 information on where and how regulated parties and members of the public  
49 may inspect and obtain copies of any such document[; provided, however,  
50 that the department of environmental conservation shall be exempt from  
51 the requirements of this subdivision]. Unless otherwise provided for by  
52 law, an agency may make such documents available as provided in the  
53 freedom of information law, and may charge fees pursuant to such law for  
54 copies of any such document.

55 S 3. Subdivision 3 of section 202-e of the state administrative proce-  
56 dure act is REPEALED.

1 S 4. Section 2 of chapter 402 of the laws of 1994, amending the state  
2 administrative procedure act relating to requiring certain agencies to  
3 submit regulatory agendas for publication in the state register, as  
4 amended by chapter 193 of the laws of 2008, is amended to read as  
5 follows:

6 S 2. This act shall take effect on the first day of November next  
7 succeeding the date on which it shall have become a law [and shall  
8 expire and be deemed repealed on December 31, 2012, and upon such date  
9 the provisions of subdivisions 1 and 2 of section 202-d of the state  
10 administrative procedure act as amended by section one of this act shall  
11 revert to and be read as set out in law on the date immediately preced-  
12 ing such effective date].

13 S 5. This act shall take effect immediately and the amendments to  
14 subdivision 1 of section 202-d of the state administrative procedure  
15 act, made by section one of this act, shall expire and be deemed  
16 repealed 4 years after such effective date, and upon such date such  
17 subdivision shall revert to and be read as set out in law on the date  
18 immediately preceding such effective date.