

1648

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. KAVANAGH, AUBRY, CAHILL, CASTRO, COOK, GALEF, JAFFEE, LANCMAN, LUPARDO -- Multi-Sponsored by -- M. of A. BING, BRENNAN, GOTTFRIED, MAGEE, McDONOUGH, McKEVITT, MENG, MOLINARO, ORTIZ, PERRY, SALADINO, SWEENEY, THIELE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state administrative procedure act, in relation to public hearings on proposed rules; and providing for the repeal of such 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 102 of the state administrative
2 procedure act, as amended by chapter 635 of the laws of 1995, is amended
3 to read as follows:
4 1. "Agency" means any department, board, bureau, commission, division,
5 office, council, committee or officer of the state, or a public benefit
6 corporation or public authority at least one of whose members is
7 appointed by the governor, authorized by law to make rules or to make
8 final decisions in adjudicatory proceedings but shall not include the
9 governor, agencies in the legislative and judicial branches, agencies
10 created by interstate compact or international agreement, the division
11 of military and naval affairs to the extent it exercises its responsi-
12 bility for military and naval affairs, the division of state police, the
13 identification and intelligence unit of the division of criminal justice
14 services, the state insurance fund, the unemployment insurance appeal
15 board, and except for purposes of subdivision one of section two hundred
16 two-d AND SECTION TWO HUNDRED TWO-F of this chapter, the workers'
17 compensation board and except for purposes of article two of this chap-
18 ter, the state division of parole and the department of correctional
19 services.
20 S 2. The state administrative procedure act is amended by adding a new
21 section 202-f to read as follows:

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

LBD04122-01-1

1 S 202-F. PUBLIC HEARINGS. 1. WHENEVER A PUBLIC HEARING IS HELD ON A
2 PROPOSED RULE PURSUANT TO THIS CHAPTER, UNLESS OTHERWISE PROVIDED IN
3 LAW, AN AGENCY IS AUTHORIZED TO UTILIZE INNOVATIVE TECHNIQUES TO ENHANCE
4 PUBLIC PARTICIPATION IN RULE MAKING, INCLUDING BUT NOT LIMITED TO ALLOW-
5 ING THE PUBLIC TO ASK QUESTIONS OF AGENCY PERSONNEL FOR A PORTION OF
6 SUCH HEARING, ORGANIZING SUCH HEARING AS A ROUNDTABLE DISCUSSION, SCHED-
7 ULING AN EVENING OR WEEKEND HEARING, AND USING BROADCASTING AND TELECON-
8 FERENCING TECHNOLOGIES; PROVIDED, HOWEVER, THAT NO SUCH INNOVATIVE TECH-
9 NIQUES SHALL BE USED IN A MANNER WHICH DIMINISHES THE ABILITY WHICH
10 MEMBERS OF THE PUBLIC WOULD OTHERWISE HAVE TO COMMENT ON THE PROPOSED
11 RULE AT A PUBLIC HEARING. EACH AGENCY LISTED IN SUBDIVISION FOUR OF THIS
12 SECTION SHALL, AND ANY OTHER AGENCY MAY, INCLUDE IN ITS ANNUAL REPORT A
13 DESCRIPTION AND ANALYSIS OF ITS USE OF INNOVATIVE TECHNIQUES PURSUANT TO
14 THIS SUBDIVISION.

15 2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, ANY AGENCY
16 LISTED IN SUBDIVISION FOUR OF THIS SECTION WHICH RECEIVES A PETITION
17 SUBSCRIBED BY NOT FEWER THAN ONE HUNDRED TWENTY-FIVE PERSONS RESIDING IN
18 THIS STATE REQUESTING A PUBLIC HEARING ON ANY RULE OR RULES WHICH HAVE
19 BEEN PROPOSED BY THE AGENCY, OR HAVE BEEN DESCRIBED IN THE REGULATORY
20 AGENDA SUBMITTED BY THE AGENCY PURSUANT TO SECTION TWO HUNDRED TWO-D OF
21 THIS ARTICLE, SHALL HOLD AT LEAST ONE PUBLIC HEARING ON THE RULE OR
22 RULES; PROVIDED, HOWEVER, THAT ANY SUCH PETITION ON A RULE WHICH HAS
23 BEEN PROPOSED MUST BE RECEIVED BY THE AGENCY NOT LATER THAN THE TWENTI-
24 ETH DAY BEFORE THE LAST DATE FOR SUBMISSION OF COMMENTS. ANY AGENCY THAT
25 RECEIVES A PETITION AFTER THE TWENTIETH DAY BEFORE THE LAST DATE FOR
26 SUBMISSION OF COMMENTS AND ANY AGENCY NOT LISTED IN SUBDIVISION FOUR OF
27 THIS SECTION MAY ELECT TO HOLD A HEARING UPON RECEIPT OF A PETITION. DUE
28 CONSIDERATION SHALL BE GIVEN TO ANY REQUEST IN A PETITION THAT A HEARING
29 BE CONDUCTED IN A PARTICULAR REGION.

30 3. AN AGENCY SHALL NOT BE REQUIRED TO HOLD A PUBLIC HEARING PURSUANT
31 TO SUBDIVISION TWO OF THIS SECTION (A) ON A RULE FOR WHICH A HEARING IS
32 REQUIRED BY LAW AND HAS BEEN SCHEDULED OR HELD; (B) ON A CONSENSUS RULE;
33 OR (C) ON A RULE DEFINED IN SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDI-
34 VISION TWO OF SECTION ONE HUNDRED TWO OF THIS CHAPTER. WHEN A PUBLIC
35 HEARING HAS BEEN REQUESTED FOR ANY RULE DESCRIBED IN A REGULATORY AGEN-
36 DA, THE AGENCY SHALL NOT BE REQUIRED TO SCHEDULE A PUBLIC HEARING UNTIL
37 SUCH TIME AS THE RULE IS PROPOSED.

38 4. THE FOLLOWING AGENCIES SHALL ENGAGE IN THE REPORTING PROVIDED FOR
39 IN SUBDIVISION ONE OF THIS SECTION AND HOLD HEARINGS AS PROVIDED FOR IN
40 SUBDIVISIONS TWO AND THREE OF THIS SECTION: THE WORKERS' COMPENSATION
41 BOARD AND THE DEPARTMENTS OF EDUCATION, ENVIRONMENTAL CONSERVATION,
42 HEALTH, INSURANCE, LABOR AND FAMILY ASSISTANCE.

43 S 3. This act shall take effect on the first of January next succeed-
44 ing the date on which it shall have become a law, and shall expire and
45 be deemed repealed on the thirty-first day of December of the second
46 calendar year following such effective date, and shall apply to all
47 rules for which a notice of proposed rule making or a description in a
48 regulatory agenda is published during such time period.