

1648--A

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 11, 2011

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Introduced by M. of A. KAVANAGH, AUBRY, CAHILL, CASTRO, COOK, GALEF, JAFFEE, LANCMAN, LUPARDO -- Multi-Sponsored by -- M. of A. BRENNAN, GOTTFRIED, MAGEE, McDONOUGH, McKEVITT, MENG, ORTIZ, PERRY, SALADINO, SWEENEY, THIELE -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 section 155 of subpart B of part C of chap-  
3 ter 62 of the laws of 2011, is amended 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 department of corrections and community supervision.

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

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1 S 2. The state administrative procedure act is amended by adding a new  
2 section 202-f to read as follows:

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

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

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

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

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