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

4484

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

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

AN ACT to amend the state administrative procedure act, in relation to enacting the "public participation in rulemaking act"; 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:

Section 1. Short title. This act shall be known and may be cited as the "public participation in rulemaking act".

S 2. Subdivision 1 of section 102 of the state administrative procedure act, as amended by chapter 635 of the laws of 1995, is amended to read as follows:

1. "Agency" means any department, board, bureau, commission, division, office, council, committee or officer of the state, or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interstate compact or international agreement, the division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the state insurance fund, the unemployment insurance appeal board, and except for purposes of subdivision one of section two hundred two-d AND SECTION TWO HUNDRED TWO-F of this chapter, the workers' compensation board and except for purposes of article two of this chapter, the state division of parole and the department of correctional services.

S 3. The state administrative procedure act is amended by adding a new section 202-f to read as follows:

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

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S 202-F. PUBLIC HEARINGS. 1. WHENEVER A PUBLIC HEARING IS HELD ON A PROPOSED RULE PURSUANT TO THIS CHAPTER, UNLESS OTHERWISE PROVIDED IN LAW, AN AGENCY IS AUTHORIZED TO UTILIZE INNOVATIVE TECHNIQUES TO ENHANCE PUBLIC PARTICIPATION IN RULE MAKING, INCLUDING BUT NOT LIMITED TO ALLOWING THE PUBLIC TO ASK QUESTIONS OF AGENCY PERSONNEL FOR A PORTION OF SUCH HEARING, ORGANIZING SUCH HEARING AS A ROUNDTABLE DISCUSSION, SCHEDULING AN EVENING OR WEEKEND HEARING, AND USING BROADCASTING AND TELECONFERENCING TECHNOLOGIES; PROVIDED, HOWEVER, THAT NO SUCH INNOVATIVE TECHNIQUES SHALL BE USED IN A MANNER WHICH DIMINISHES THE ABILITY WHICH MEMBERS OF THE PUBLIC WOULD OTHERWISE HAVE TO COMMENT ON THE PROPOSED RULE AT A PUBLIC HEARING. EACH AGENCY LISTED IN SUBDIVISION FOUR OF THIS SECTION SHALL, AND ANY OTHER AGENCY MAY, INCLUDE IN ITS ANNUAL REPORT A DESCRIPTION AND ANALYSIS OF ITS USE OF INNOVATIVE TECHNIQUES PURSUANT TO THIS SUBDIVISION.

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

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

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

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall expire and be deemed repealed on the thirty-first day of December of the second calendar year following such effective date, and shall apply to all rules for which a notice of proposed rule making or a description in a regulatory agenda is published during such time period.