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

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I N A S S E M B L Y

February 13, 2012

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

AN ACT to amend the state administrative procedure act and the economic development law, in relation to streamlined adjudicatory proceedings for small businesses

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

Section 1. The state administrative procedure act is amended by adding a new section 308 to read as follows:

S 308. STREAMLINED OPTIONAL ADJUDICATORY PROCEEDINGS FOR SMALL BUSINESSES. UNLESS OTHERWISE PROHIBITED BY LAW, AN AGENCY MAY ADOPT REGULATIONS PROVIDING FOR USE AT THE OPTION OF A SMALL BUSINESS OF STREAMLINED ADJUDICATORY PROCEEDINGS CONDUCTED BY MAIL, ELECTRONIC MAIL, TELEPHONE CONFERENCE OR VIDEOCONFERENCE. IN ADOPTING SUCH REGULATIONS, THE AGENCY SHALL:

1. CONSIDER THE TYPES OF PROGRAMS AND ISSUES FOR WHICH SUCH STREAMLINED PROCEEDINGS MAY REASONABLY BE CONDUCTED, TAKING INTO ACCOUNT (A) THE COMPLEXITY OF THE MATTERS TO BE RESOLVED IN THE PROCEEDING, (B) THE SEVERITY OF POTENTIAL SANCTIONS, (C) ANY NECESSITY FOR PERSONAL APPEARANCES, INCLUDING BUT NOT LIMITED TO REQUIREMENTS FOR SWORN TESTIMONY OR CROSS-EXAMINATION, AND (D) ANY POTENTIAL REDUCTION IN THE COSTS AND BURDENS OF PARTICIPATING IN THE PROCEEDING FOR THE AGENCY AND FOR OTHER PARTIES, AND SHALL APPROPRIATELY LIMIT THE AVAILABILITY OF STREAMLINED PROCEEDINGS TO PROGRAMS AND ISSUES IN WHICH THE PUBLIC INTEREST IN FAIR OUTCOMES CAN CONTINUE TO BE ASSURED;

2. ENSURE THAT A STREAMLINED PROCEEDING MAY ONLY BE USED AT THE OPTION OF THE RESPONDENT SMALL BUSINESS WITH THE CONSENT OF THE AGENCY AND ANY OTHER NECESSARY PARTY TO THE PROCEEDING, AND THAT THE RIGHTS OF RESPONDENTS AND OTHER PARTIES WILL NOT BE DIMINISHED IN ANY RESPECT BY VIRTUE OF PARTICIPATION IN A STREAMLINED PROCEEDING;

3. SPECIFY THE FORMAT OR FORMATS FOR REMOTE CONDUCT OF STREAMLINED PROCEEDINGS;

4. ESTABLISH PROCEDURES FOR REQUESTING AND SCHEDULING SUCH PROCEEDINGS, FOR THE CONDUCT OF SUCH PROCEEDINGS, AND FOR THE DEVELOP-

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

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MENT OF A COMPLETE RECORD AS PROVIDED IN SECTION THREE HUNDRED TWO OF THIS ARTICLE; AND

5. PROVIDE THAT, IN THE EVENT THAT IT BECOMES IMPRACTICAL OR INAPPROPRIATE TO CONTINUE A PROCEEDING COMMENCED PURSUANT TO THIS SECTION AS A STREAMLINED PROCEEDING, SUCH PROCEEDING MAY BE RESCHEDULED AS AN ADJUDICATORY PROCEEDING PURSUANT TO SECTION THREE HUNDRED ONE OF THIS ARTICLE WITHOUT PREJUDICE TO ANY PARTY.

S 2. Paragraphs (g) and (h) of subdivision 6 of section 133 of the economic development law, paragraph (g) as amended and paragraph (h) as added by section 5 of part BB of chapter 59 of the laws of 2006, are amended and a new paragraph (i) is added to read as follows:

(g) establish procedures for making annual awards to be known as "New York State Small Business Awards". These non-monetary awards shall be given in recognition of unusual performance by persons, firms and organizations which are engaged in the operation of New York state small businesses or which are engaged in activities to assist small businesses in the state. The board may nominate up to five award winners annually and forward such names to the governor for his consideration. The governor may designate award winners from these nominees at his discretion. Current members of the advisory board are not eligible as nominees; [and]

(h) advise the commissioner on recommendations for the selection of a minority and women-owned business enterprise statewide advocate as set forth by section three hundred eleven-a of the executive law[.]; AND

(I) REPORT TO THE COMMISSIONER, THE GOVERNOR AND THE LEGISLATURE ON AGENCY USE OF STREAMLINED OPTIONAL ADJUDICATORY PROCEEDINGS FOR SMALL BUSINESSES.

S 3. Within one hundred eighty days of the effective date of this act, the departments of environmental conservation, health and labor shall institute pilot projects to offer optional streamlined adjudicatory proceedings for small businesses for at least one regulatory program of the agency under which small businesses currently appear as respondents in adjudicatory proceedings; provided, however, that the governor may direct that another agency shall institute a pilot project instead of a listed agency. Such pilot projects shall be designed by the agency in conjunction with the division for small business and in consideration of input solicited from small businesses and other stakeholders. Notwithstanding the provisions of section one of this act, the agency shall not be required to adopt regulations governing such proceedings, but shall ensure that such proceedings are governed by guidelines consistent with the provisions of such section one and voluntarily accepted by all participants. One year after initiating a pilot project, the agency shall prepare a comparative review of the cost, timeliness and outcome of streamlined proceedings and ordinary adjudicatory proceedings and shall provide such review to the small business advisory board, along with any other information which the board shall request.

S 4. Nothing in this act shall be construed to limit any existing authority of any agency to provide for the conduct of adjudicatory proceedings by mail, telephone or electronic means.

S 5. This act shall take effect immediately.