

9274--A

I N A S S E M B L Y

February 13, 2012

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Governmental Operations -- reported and referred to the Committee on Ways and Means -- 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 continuing improvements to agency regulatory agendas and providing more effective review of existing rules; and 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 extending the expiration of certain provisions of such chapter

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

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 202-d of
2 the state administrative procedure act, as amended by chapter 193 of the
3 laws of 2008, are amended to read as follows:
4 (a) The departments of health, education, [insurance,] environmental
5 conservation, FINANCIAL SERVICES, labor, [banking,] agriculture and
6 markets, motor vehicles and state, the offices of children and family
7 services and temporary and disability assistance, and the division of
8 housing and community renewal and the workers' compensation board and
9 any other department specified by the governor or his OR HER designee
10 shall, and any other agency may, in its discretion, submit to the secre-
11 tary of state, for publication in the first regular issue of the state
12 register published during the month of January and the last regular
13 issue of the state register published in June, a regulatory agenda to
14 afford the agency an opportunity to solicit comments concerning any rule
15 which the agency is considering proposing, but for which no notice of
16 proposed rule making has been submitted pursuant to subdivision one of
17 section two hundred two of this article.
18 (b) A regulatory agenda shall be comprised of a list and brief
19 description of subject matter being considered for rule making and the
20 name, public office, address, E-MAIL ADDRESS and telephone number of the
21 agency representative, knowledgeable on such regulatory agenda, from

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

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1 whom any information may be obtained and to whom written comments may be
2 submitted concerning such regulatory agenda. [An e-mail address for
3 requests for information and submission of comments may also be
4 included.]

5 S 2. Subdivision 1 of section 207 of the state administrative proce-
6 dure act, as added by chapter 262 of the laws of 1996, is amended to
7 read as follows:

8 1. Unless the contrary is specifically provided by another law, any
9 rule which is adopted on or after the effective date of this section
10 shall be reviewed IN THE CALENDAR YEAR SPECIFIED IN THE NOTICE OF
11 ADOPTION FOR THE RULE, PROVIDED THAT AT A MINIMUM EVERY RULE SHALL BE
12 INITIALLY REVIEWED after five years, and, thereafter, EVERY RULE SHALL
13 BE RE-REVIEWED at five-year intervals. FOR ANY RULE FOR WHICH A REGULA-
14 TORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS OR JOB IMPACT
15 STATEMENT IS PREPARED, THE INITIAL REVIEW SHALL OCCUR AFTER TWO YEARS;
16 PROVIDED, HOWEVER, THAT THE AGENCY MAY PROPOSE A DIFFERENT REVIEW PERIOD
17 OF NOT MORE THAN FIVE YEARS IN SUCH ANALYSIS OR STATEMENT, ALONG WITH
18 ITS JUSTIFICATION FOR DOING SO, AND SHALL INVITE PUBLIC COMMENT THEREON.
19 THE REVIEW PERIOD SPECIFIED FOR THE RULE AND AN ASSESSMENT OF ANY
20 COMMENTS ON THIS ISSUE SHALL ACCOMPANY THE NOTICE OF ADOPTION.

21 S 3. Subdivision 2 of section 207 of the state administrative proce-
22 dure act, as amended by chapter 327 of the laws of 2003, is amended to
23 read as follows:

24 2. An agency shall submit for publication in the regulatory agenda
25 published in January pursuant to section two hundred two-d of this arti-
26 cle a list of the rules which must be reviewed pursuant to subdivision
27 one of this section in the ensuing calendar year. In addition to the
28 information required by such section two hundred two-d, for each rule so
29 listed the agency shall provide an analysis of the need for and legal
30 basis of such rule, shall invite public comment on the continuation or
31 modification of the rule and shall indicate the last date for submission
32 of comments which shall be not less than forty-five days from the date
33 of publication. AN AGENCY THAT PUBLISHES ITS REGULATORY AGENDA ON ITS
34 WEBSITE PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION TWO
35 HUNDRED TWO-D OF THIS ARTICLE SHALL ALSO PUBLISH THE LIST OF RULES THAT
36 MUST BE REVIEWED PURSUANT TO THIS SECTION ON ITS WEBSITE. IF THE
37 ORIGINAL NOTICE OF PROPOSED RULE MAKING FOR A LISTED RULE REQUIRED THE
38 PREPARATION OF A REGULATORY FLEXIBILITY ANALYSIS AND/OR A RURAL AREA
39 FLEXIBILITY ANALYSIS, THE AGENCY SHALL SO INDICATE AND SHALL PROVIDE
40 OUTREACH AS APPROPRIATE TO POTENTIALLY AFFECTED SMALL BUSINESSES, LOCAL
41 GOVERNMENTS AND PUBLIC AND PRIVATE INTERESTS IN RURAL AREAS THAT THE
42 RULE IS BEING REVIEWED. SUCH OUTREACH MAY INCLUDE SOLICITATION OF INPUT
43 THROUGH ELECTRONIC MEANS OR THROUGH ANY OF THE ACTIVITIES LISTED IN
44 SUBDIVISION SIX OF SECTION TWO HUNDRED TWO-B AND SUBDIVISION SEVEN OF
45 SECTION TWO HUNDRED TWO-BB OF THIS ARTICLE.

46 S 4. Section 207 of the state administrative procedure act is amended
47 by adding a new subdivision 6 to read as follows:

48 6. BEGINNING WITH THE FIRST ISSUE IN SEPTEMBER OF EACH YEAR, THE
49 SECRETARY OF STATE SHALL PUBLISH IN THE STATE REGISTER ON A WEEKLY BASIS
50 A DELINQUENT LIST COMPRISED OF AGENCIES THAT HAVE NOT SUBMITTED A LIST
51 OF RULES WHICH MUST BE REVIEWED AS REQUIRED BY THIS SECTION. AN AGENCY
52 SHALL CONTINUE TO BE LISTED ON THE DELINQUENT LIST UNTIL IT HAS
53 PUBLISHED THE NOTICE REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

54 S 5. Section 2 of chapter 402 of the laws of 1994, amending the state
55 administrative procedure act relating to requiring certain agencies to
56 submit regulatory agendas for publication in the state register, as

1 amended by chapter 193 of the laws of 2008, is amended to read as
2 follows:

3 S 2. This act shall take effect on the first day of November next
4 succeeding the date on which it shall have become a law and shall expire
5 and be deemed repealed on December 31, [2012] 2016, and upon such date
6 the provisions of subdivisions 1 and 2 of section 202-d of the state
7 administrative procedure act as amended by section one of this act shall
8 revert to and be read as set out in law on the date immediately preced-
9 ing such effective date.

10 S 6. This act shall take effect on the first of January next succeed-
11 ing the date on which it shall have become a law, provided, however,
12 that the amendments to subdivision 1 of section 202-d of the state
13 administrative procedure act made by section one of this act shall not
14 affect the expiration of such subdivision and shall be deemed to expire
15 therewith.