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I N A S S E M B L Y

February 4, 2014

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

AN ACT to amend the state administrative procedure act, in relation to
detailing the benefits and costs of proposed rules in regulatory
impact statements

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

1 Section 1. The legislature finds that many rules of state agencies
2 have a substantial impact on the lives of the public, and therefore
3 should be adopted through a process which provides for open and reasoned
4 consideration of the potential costs and benefits of regulatory action.
5 To this end, the statutes governing the rulemaking process should be
6 improved to ensure that agency assessments of the costs and the benefits
7 of proposed rules are reasonably accurate and comprehensive.
8 S 2. Paragraph (b) of subdivision 4-a of section 202 of the state
9 administrative procedure act, as added by chapter 335 of the laws of
10 1992, is amended to read as follows:
11 (b) Each agency shall publish and make available to the public an
12 assessment of public comment for a rule revised pursuant to this subdi-
13 vision. Such assessment shall be based upon any written comments submit-
14 ted to the agency and any comments presented at any public hearing held
15 on the proposed rule by the agency. The assessment shall contain: (i) a
16 summary and an analysis of the issues raised and significant alterna-
17 tives suggested by any such comments; (ii) a statement of the reasons
18 why any significant alternatives were not incorporated into the rule;
19 and (iii) a description of any changes made in the rule as a result of
20 such comments. IF ANY COMMENTS INCLUDED ESTIMATES OF PROJECTED COSTS OR
21 BENEFITS OF THE PROPOSED RULE TO THE STATE, LOCAL GOVERNMENTS OR REGU-
22 LATED OR OTHERWISE AFFECTED PERSONS OR ENTITIES, WHICH DIFFERED SIGNIF-
23 ICANTLY FROM THOSE PRESENTED BY THE AGENCY IN ITS REGULATORY IMPACT
24 STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, OR RURAL AREA FLEXIBILITY
25 ANALYSIS, THE ASSESSMENT SHALL ALSO SUMMARIZE THE AGENCY'S ASSESSMENT OF
26 SUCH ESTIMATES. COPIES OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED
27 COSTS OR BENEFITS WHICH DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES

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

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1 SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE
2 RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF
3 THIS SECTION. If no comments have been received, the notice of revised
4 rule making shall state that no comments were received by the agency.
5 Any subsequent assessment published pursuant to this paragraph or para-
6 graph (b) of subdivision five of this section need only include comments
7 not addressed in any previously published assessment of public comment
8 for the rule; provided, however, that the notice of revised rule making
9 or adoption shall contain the date any previous notice of revised rule
10 making containing an assessment of public comment was published in the
11 state register.

12 S 3. Paragraph (b) of subdivision 5 of section 202 of the state admin-
13 istrative procedure act, as amended by chapter 171 of the laws of 1994,
14 is amended to read as follows:

15 (b) Except with respect to any rule defined in subparagraph (ii) of
16 paragraph (a) of subdivision two of section one hundred two of this
17 chapter, each agency shall publish and make available to the public an
18 assessment of public comment for a rule adopted pursuant to this subdi-
19 vision or paragraph (e) of subdivision six of this section. Such assess-
20 ment shall be based upon any written comments submitted to the agency
21 and any comments presented at any public hearing held on the proposed
22 rule by the agency. The assessment shall contain: (i) a summary and an
23 analysis of the issues raised and significant alternatives suggested by
24 any such comments, (ii) a statement of the reasons why any significant
25 alternatives were not incorporated into the rule and (iii) a description
26 of any changes made in the rule as a result of such comments. If any
27 comments included estimates of projected costs OR BENEFITS of the
28 proposed rule to the state, local governments or regulated OR OTHERWISE
29 AFFECTED persons OR ENTITIES, which differed significantly from those
30 presented by the agency in its regulatory impact statement, regulatory
31 flexibility analysis, or rural area flexibility analysis, the assessment
32 shall also summarize the agency's assessment of such estimates. COPIES
33 OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED COSTS OR BENEFITS WHICH
34 DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES SHALL ACCOMPANY THE
35 ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE RULE MAKING NOTICE
36 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF THIS SECTION. If no
37 comments have been received, the notice of adoption shall state that no
38 comments were received by the agency. Comments submitted or presented to
39 the agency by a legislative committee or commission or by a member or
40 members of the senate or assembly shall be considered public comment and
41 shall be summarized and analyzed in the assessment.

42 S 4. Paragraphs (b), (c) and (d) of subdivision 3 of section 202-a of
43 the state administrative procedure act, paragraph (b) as amended by
44 chapter 229 of the laws of 2000 and paragraphs (c) and (d) as amended by
45 chapter 520 of the laws of 1992, are amended to read as follows:

46 (b) Needs and benefits. A statement setting forth the purpose of,
47 necessity for, and benefits derived from the rule[, a citation for and
48 summary, not to exceed five hundred words, of each scientific or statis-
49 tical study, report or analysis that served as the basis for the rule,
50 an explanation of how it was used to determine the necessity for and
51 benefits derived from the rule, and the name of the person that produced
52 each study, report or analysis] WHICH SHALL INCLUDE:

53 (I) INFORMATION IDENTIFYING THE CLASSES OF PERSONS OR ENTITIES WHICH
54 WOULD BENEFIT FROM THE RULE;

55 (II) AN ASSESSMENT, INCLUDING THE UNDERLYING ANALYSIS, OF BENEFITS
56 ANTICIPATED FROM THE RULE; INCLUDING, BUT NOT LIMITED TO, ANY DIRECT OR

1 INDIRECT BENEFITS FOR THE ECONOMY AND PRIVATE MARKETS, HEALTH AND SAFE-
2 TY, THE NATURAL ENVIRONMENT, AND THE ELIMINATION OR REDUCTION OF
3 DISCRIMINATION OR BIAS, AND ANY OTHER SIGNIFICANT BENEFITS. TO THE
4 EXTENT FEASIBLE, THE ASSESSMENT SHALL INCLUDE A QUANTIFICATION OF THOSE
5 BENEFITS AND DESCRIBE THE SOURCES OF INFORMATION AND METHODOLOGY UNDER-
6 LYING SUCH QUANTIFICATION. WHERE IT IS DIFFICULT OR IMPOSSIBLE TO QUAN-
7 TIFY BENEFITS, THE ASSESSMENT SHALL INCLUDE A QUALITATIVE ANALYSIS OF
8 SUCH BENEFITS; AND

9 (III) A CITATION FOR AND SUMMARY, NOT TO EXCEED FIVE HUNDRED WORDS, OF
10 EACH SCIENTIFIC OR STATISTICAL STUDY, REPORT OR ANALYSIS THAT SERVED AS
11 THE BASIS FOR THE RULE, AN EXPLANATION OF HOW IT WAS USED TO DETERMINE
12 THE NECESSITY FOR AND BENEFITS DERIVED FROM THE RULE, AND THE NAME OF
13 THE PERSON THAT PRODUCED EACH STUDY, REPORT OR ANALYSIS;

14 (c) Costs. A statement detailing the projected [costs] COST IMPACTS of
15 the rule[, which shall indicate:

16 (i) the costs for the implementation of, and continuing compliance
17 with, the rule to regulated persons;

18 (ii) the costs for the implementation of, and continued administration
19 of, the rule to the agency and to the state and its local governments;
20 and

21 (iii) the information, including the source or sources of such infor-
22 mation, and methodology upon which the cost analysis is based; or

23 (iv) where an agency finds that it cannot fully provide a statement of
24 such costs, a statement setting forth its best estimate, which shall
25 indicate the information and methodology upon which such best estimate
26 is based and the reason or reasons why a complete cost statement cannot
27 be provided;] ON PERSONS OR ENTITIES WHO WOULD BE DIRECTLY REGULATED
28 UNDER THE RULE, PERSONS OR ENTITIES WHO WOULD NOT BE REGULATED BUT WOULD
29 OTHERWISE BE SIGNIFICANTLY AFFECTED BY THE RULE, AND ON THE AGENCY
30 PROPOSING THE RULE, OTHER STATE ENTITIES AND LOCAL GOVERNMENTS. SUCH
31 STATEMENT SHALL INCLUDE AN ASSESSMENT, INCLUDING THE UNDERLYING ANALY-
32 SIS, OF INITIAL AND CONTINUING COSTS ANTICIPATED TO RESULT FROM THE
33 RULE, INCLUDING, BUT NOT LIMITED TO, THE DIRECT COSTS TO GOVERNMENT IN
34 ADMINISTERING THE RULE AND TO BUSINESSES AND OTHERS IN COMPLYING WITH
35 THE RULE, AND ANY ADVERSE EFFECTS ON THE EFFICIENT FUNCTIONING OF THE
36 ECONOMY, PRIVATE MARKETS (INCLUDING PRODUCTIVITY, EMPLOYMENT, AND
37 COMPETITIVENESS), HEALTH, SAFETY, AND THE NATURAL ENVIRONMENT, AND OTHER
38 SIGNIFICANT COSTS. TO THE EXTENT FEASIBLE, THE ASSESSMENT SHALL INCLUDE
39 A QUANTIFICATION OF THOSE COSTS AND DESCRIBE THE SOURCES OF INFORMATION
40 AND METHODOLOGY UNDERLYING SUCH QUANTIFICATION. WHERE IT IS DIFFICULT OR
41 IMPOSSIBLE TO QUANTIFY COSTS, THE ASSESSMENT SHALL INCLUDE A QUALITATIVE
42 ANALYSIS OF SUCH COSTS;

43 (d) Paperwork. A statement describing the need for any reporting
44 requirements, including forms and other paperwork AND ANY REPORTING BY
45 ELECTRONIC MEDIA, which would be required as a result of the rule;

46 S 5. This act shall take effect on the first of September next
47 succeeding the date on which it shall have become a law, and shall apply
48 to any rule for which a notice of proposed rule making or a notice of
49 emergency adoption is first prepared on or after such effective date.