

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

9813--A

I N A S S E M B L Y

May 23, 2014

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state administrative procedure act, the executive law and the legislative law, in relation to the transmittal of certain records by electronic means

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

1 Section 1. Paragraph (c) of subdivision 1 of section 202 of the state
2 administrative procedure act, as added by chapter 17 of the laws of
3 1984, is amended to read as follows:
4 (c) When appropriate in the judgment of the agency, a notice may also
5 be published in newspapers of general circulation and in trade, industry
6 or professional publications as the agency may select, AND MAY BE POSTED
7 ON THE AGENCY'S INTERNET WEBSITE, AND MAY BE TRANSMITTED TO NEWSPAPERS
8 AND TRADE, INDUSTRY OR PROFESSIONAL PUBLICATIONS BY ELECTRONIC MEANS IN
9 ACCORDANCE WITH ARTICLE THREE OF THE STATE TECHNOLOGY LAW.
10 S 2. Subdivision 6-a of section 202 of the state administrative proce-
11 dure act, as added by chapter 850 of the laws of 1990, paragraphs (a)
12 and (b) as amended by chapter 171 of the laws of 1994, is amended to
13 read as follows:
14 6-a. Distribution of rule making information. (a) An agency shall
15 transmit a copy of any rule making notice prepared pursuant to this
16 article to the governor, the temporary president of the senate, the
17 speaker of the assembly, the administrative regulations review commis-
18 sion and the office of regulatory and management assistance at the time
19 such notice is submitted to the secretary of state for publication in
20 the state register. Such transmittal shall include the complete rule
21 text, regulatory impact statement, regulatory flexibility analysis,
22 rural area flexibility analysis, or revisions thereof, and any other
23 information submitted to the secretary of state pursuant to this arti-
24 cle. FURTHERMORE, SUCH TRANSMITTAL MAY BE COMPLETED BY ELECTRONIC MEANS
25 IN ACCORDANCE WITH ARTICLE THREE OF THE STATE TECHNOLOGY LAW.

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

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1 (b) An agency shall make a copy of the complete text of any proposed,
2 adopted or emergency rule, regulatory impact statement, regulatory flex-
3 ibility analysis, rural area flexibility analysis, or revisions thereof
4 available, IN WRITTEN AND ELECTRONIC FORMS, to the public at the time
5 such documents are submitted to the secretary of state for publication
6 in the state register and shall send to any person a copy of such text
7 upon written OR ELECTRONIC request.

8 (c) An agency shall notify every person who has submitted a written OR
9 ELECTRONIC request to be notified of all proposed, revised, emergency
10 and/or adopted rules which may affect such person. Such requests shall
11 expire annually on the thirty-first day of December with renewals for
12 the succeeding year to be accepted on or after December first. Notices
13 issued pursuant to such requests shall be sent in writing OR ELECTRONIC
14 FORM to the last address OR ELECTRONIC MAIL ADDRESS specified by the
15 person. An agency may charge any person requesting such notice a fee
16 consisting of the cost of preparation, handling and postage.

17 S 3. The opening paragraph of subdivision 3 of section 202-bb of the
18 state administrative procedure act, as added by chapter 171 of the laws
19 of 1994, is amended to read as follows:

20 In proposing a rule for adoption or in adopting a rule on an emergency
21 basis, the agency shall issue a rural area flexibility analysis regard-
22 ing the rule being proposed for adoption or the emergency rule being
23 adopted. A copy of such analysis and any finding, and reasons for such
24 finding, pursuant to this section, shall be submitted IN WRITING, AND
25 MAY BE TRANSMITTED ELECTRONICALLY IN ACCORDANCE WITH ARTICLE THREE OF
26 THE STATE TECHNOLOGY LAW, to the governor, the temporary president of
27 the senate, the speaker of the assembly, the office for regulatory and
28 management assistance and the administrative regulations review commis-
29 sion at the time such analysis is submitted OR ELECTRONICALLY TRANSMIT-
30 TED to the secretary of state for publication and, upon written OR ELEC-
31 TRONIC request, a copy shall be sent OR ELECTRONICALLY TRANSMITTED to
32 any other person. Each rural area flexibility analysis shall contain:

33 S 4. Paragraph (a) of subdivision 1 of section 202-d of the state
34 administrative procedure act, as amended by chapter 462 of the laws of
35 2012, is amended to read as follows:

36 (a) The departments of health, education, environmental conservation,
37 financial services, labor, agriculture and markets, motor vehicles and
38 state, the offices of children and family services and temporary and
39 disability assistance, the division of housing and community renewal and
40 the workers' compensation board, and any other department specified by
41 the governor or his or her designee shall, and any other agency may, in
42 its discretion, submit IN WRITING OR ELECTRONICALLY IN ACCORDANCE WITH
43 ARTICLE THREE OF THE STATE TECHNOLOGY LAW to the secretary of state, for
44 publication in the first regular issue of the state register published
45 during the month of January and the last regular issue of the state
46 register published in June, a regulatory agenda to solicit comments
47 concerning any rule which the agency is considering to propose, but for
48 which no notice of proposed rule making has been submitted pursuant to
49 subdivision one of section two hundred two of this article.

50 S 5. The opening paragraph of subdivision 1 of section 202-d of the
51 state administrative procedure act, as added by chapter 698 of the laws
52 of 1984, is amended to read as follows:

53 An agency may, in its discretion, submit IN WRITING OR ELECTRONICALLY
54 IN ACCORDANCE WITH ARTICLE THREE OF THE STATE TECHNOLOGY LAW to the
55 secretary of state, for publication in the first regular issue of the
56 state register published during the months of January, May and Septem-

ber, a regulatory agenda to afford the agency an opportunity to solicit comments concerning any rule which the agency is considering proposing, but for which no notice of proposed rule making has been submitted pursuant to subdivision one of section two hundred two of this [chapter] ARTICLE. A regulatory agenda shall be comprised of summaries of such rules. Each summary shall, in less than two thousand words, contain, in so far as practicable:

S 6. Subdivisions 2 and 3 of section 101-a of the executive law, subdivision 2 as amended by chapter 610 of the laws of 1987 and subdivision 3 as amended by chapter 483 of the laws of 1988, are amended to read as follows:

2. Except as provided in subdivision three of this section, at least forty-five days prior to either the adoption of any rule, or, if a public hearing is required by statute, at least forty-five days prior to the first public hearing on a proposed rule, the agency proposing to take such action shall send IN WRITING OR MAY TRANSMIT ELECTRONICALLY IN ACCORDANCE WITH ARTICLE THREE OF THE STATE TECHNOLOGY LAW a notification of such proposed action to the temporary president of the senate and the speaker of the assembly. This notification shall: (a) refer to the statutory authority under which the action is proposed, (b) give the time and place of any public hearing that may be scheduled concerning the proposed action, or state the manner in which data, views or arguments may be submitted to the agency concerning the proposed action, (c) contain a copy of the complete text of the proposed rule, and (d) contain a fiscal statement setting forth the fiscal consequences of the proposed action on the state and its local governments.

3. If the agency finds that it is necessary for the preservation of the public health, safety or general welfare to dispense with the requirements of subdivision two OF THIS SECTION, the agency may dispense with such requirements and adopt the rule, as an emergency measure. Within five days of the filing of such emergency measure in the office of the department of state, the agency taking such action shall send OR TRANSMIT, AS THE CASE MAY BE, the temporary president of the senate and the speaker of the assembly a notification containing the information required by subdivision two of this section; provided, however, such notification shall also: (a) include a brief statement setting forth the reasons why the agency finds that it is necessary for the preservation of the public health, safety or general welfare to dispense with the requirements of subdivision two of this section and adopt the rule as an emergency measure, and (b) provide the date the emergency measure will terminate if the agency does not intend to adopt such measure as a permanent rule, or indicate that the agency intends to adopt such measure as a permanent rule, in which case compliance with the notification requirements of this section shall be deemed satisfied. The effectiveness of any such emergency measure, unless adopted as a permanent rule in the manner prescribed by law, shall not exceed ninety days after the filing of such measure in the office of the department of state, provided, however, if such emergency measure is readopted prior to the expiration of such ninety day period such readoption and any subsequent readoptions shall remain in effect for no longer than sixty days.

S 7. Section 146 of the executive law, as amended by chapter 17 of the laws of 1984, paragraph (d) of subdivision 1 as amended by chapter 189 of the laws of 1996, subdivision 4-a as amended by chapter 41 of the laws of 1994, is amended to read as follows:

S 146. Publication of certain public notices. 1. The department of state shall publish, pursuant to the schedule in section one hundred

forty-seven of this article, AND POST ON ITS INTERNET WEBSITE a publication to be known as the state register, in which shall be published AND POSTED from time to time as received by such department:

(a) rules, orders, designations, and notices submitted by the chief administrator of the courts;

(b) notices and advertisements required by state statute or federal law, rule or regulation to be published by an agency in a newspaper;

(c) notices required by statute to be published in newspapers in actions against foreign corporations;

(d) notices and job impact statements required by the state administrative procedure act to be published in the state register; and

(e) any other matter required by statute to be published in the state register.

2. The secretary of state may, at his OR HER discretion, publish AND POST in the state register any notice or information which is not otherwise required by statute to be submitted to him OR HER by an agency or public corporation for publication in the state register, in instances where such publication AND POSTING will serve the public interest.

3. With regard to rule making notices required to be published AND POSTED in the state register pursuant to article two of the state administrative procedure act, the secretary of state may, at his OR HER discretion, publish AND POST the complete text of a proposed or adopted rule, which is not otherwise required to be published AND POSTED in the state register, in instances where such publication AND POSTING will serve the public interest. THE SECRETARY OF STATE SHALL ACCEPT FROM A STATE AGENCY ALL RULEMAKING NOTICES, STATEMENTS AND ANALYSES AS REQUIRED BY THE STATE ADMINISTRATIVE PROCEDURE ACT, DATA, RULES, AND REGULATIONS AS PROVIDED FOR BY ARTICLE THREE OF THE STATE TECHNOLOGY LAW.

4. With regard to a notice of adoption published in the state register pursuant to article two of the state administrative procedure act, for which the corresponding notice of proposed rule making published AND POSTED in the state register included the complete text of the rule, the secretary of state may, at his OR HER discretion, include only the changes in such text in the notice of adoption.

4-a. Notice of the availability of any state or federal funding which is to be distributed by any agency upon application by any municipality, school board, school district, not-for-profit organization or any other individual or organization entitled to apply for such funding pursuant to any law, rule or regulation governing the distribution of such funds shall be published AND POSTED in the state register. Such notice shall appear in the register no later than forty-five days prior to the last day for receipt of applications for such funding. Such notice shall not be required: (i) whenever a notice has been published in the procurement opportunities newsletter pursuant to article four-C of the economic development law; (ii) for state or federal transportation funding; and (iii) in those instances where an entity has been specifically designated by law or legislative resolution to receive funding. Failure to publish the notice in a timely manner shall not be a basis for setting aside an award or challenging a contract or other legal claim.

5. The publication AND POSTING of notices and advertisements in the state register shall be additional to their publication in newspapers, whenever publication in newspapers is required by statute.

6. The secretary of state shall promulgate rules establishing procedure, forms, font and style for submission of material by any person, agency or public corporation for publication AND POSTING in the state register.

1 S 8. Subdivision 3 of section 148 of the executive law, as amended by
2 chapter 636 of the laws of 1981, is amended to read as follows:

3 3. Subscriptions to the state register shall be made available to the
4 public by either first or second class mail, OR IN ELECTRONIC FORM at
5 the election of the subscriber. A reasonable rate for a subscription to
6 PRINTED COPIES OF the regular issue and quarterly index required by
7 subdivision three of section one hundred forty-seven of this article, to
8 be not more than eighty dollars per year for first class mail delivery
9 and not more than forty dollars per year for second class mail delivery,
10 shall be set by the secretary of state. The secretary of state may
11 charge no more than one dollar and fifty cents per single copy of a
12 PRINTED regular issue or quarterly index of the state register. Rates
13 shall not be set at such a level that the anticipated total subscription
14 revenues exceed the total cost of producing, printing and distributing
15 the state register.

16 S 9. Subdivision 1 of section 149 of the executive law, as amended by
17 chapter 17 of the laws of 1984, is amended and a new subdivision 4 is
18 added to read as follows:

19 1. The PRINTED VERSION OF THE state register shall be an eight and
20 one-half by eleven inch booklet with three holes punched in the left
21 hand margin to make such register suitable for storage in an eight and
22 one-half by eleven inch loose-leaf binder.

23 4. TO THE EXTENT PRACTICABLE, EVERY VERSION OF THE STATE REGISTER
24 TRANSMITTED BY ELECTRONIC MEANS SHALL SUBSTANTIALLY COMPLY WITH THE
25 PROVISIONS OF THIS SECTION.

26 S 10. Section 87 of the legislative law is amended by adding a new
27 subdivision 4 to read as follows:

28 4. THE COMMISSION SHALL BE AUTHORIZED TO REQUEST AND RECEIVE, FROM A
29 STATE AGENCY, ALL RULEMAKING NOTICES, STATEMENTS AND ANALYSES AS
30 PROVIDED FOR PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT, DATA,
31 RULES, REGULATIONS AND OTHER INFORMATION BY ELECTRONIC MEANS AS PROVIDED
32 FOR BY ARTICLE THREE OF THE STATE TECHNOLOGY LAW.

33 S 11. This act shall take effect on the one hundred twentieth day
34 after it shall have become a law, provided that the amendments to para-
35 graph (a) of subdivision 1 of section 202-d of the state administrative
36 procedure act, made by section four of this act, shall be subject to the
37 expiration and reversion of such subdivision pursuant to section 2 of
38 chapter 402 of the laws of 1994, as amended, when upon such date the
39 provisions of section five of this act shall take effect; and provided,
40 further, that effective immediately, the addition, amendment and/or
41 repeal of any rule or regulation necessary for the implementation of
42 this act on its effective date are authorized and directed to be made
43 and completed on or before such effective date.