

2160--A

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sens. VALESKY, BALL, GALLIVAN, GRISANTI, MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- recommitted to the Committee on Commerce, Economic Development and Small Business in accordance with Senate Rule 6, sec. 8 -- 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 providing for public comment during the initial development, preparation and promulgation of rules

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

1 Section 1. Paragraph (b) of subdivision 4-a of section 202 of the
2 state administrative procedure act, as added by chapter 335 of the laws
3 of 1992, is amended to read as follows:
4 (b) Each agency shall publish and make available to the public an
5 assessment of public comment for a rule revised pursuant to this subdivi-
6 sion. Such assessment shall be based upon any written comments submit-
7 ted to the agency DURING THE INITIAL DEVELOPMENT, PREPARATION AND
8 PROMULGATION OF SUCH PROPOSED RULE and any comments presented at any
9 public hearing held on the proposed rule by the agency. The assessment
10 shall contain: (i) a summary and an analysis of the issues raised and
11 significant alternatives suggested by any such comments; (ii) a state-
12 ment of the reasons why any significant alternatives were not incorpo-
13 rated into the rule; and (iii) a description of any changes made in the
14 rule as a result of such comments. If no comments have been received,
15 the notice of revised rule making shall state that no comments were
16 received by the agency. Any subsequent assessment published pursuant to
17 this paragraph or paragraph (b) of subdivision five of this section need
18 only include comments not addressed in any previously published assess-
19 ment of public comment for the rule; provided, however, that the notice

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

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1 of revised rule making or adoption shall contain the date any previous
2 notice of revised rule making containing an assessment of public comment
3 was published in the state register.

4 S 2. Paragraph (b) of subdivision 5 of section 202 of the state admin-
5 istrative procedure act, as amended by chapter 171 of the laws of 1994,
6 is amended to read as follows:

7 (b) Except with respect to any rule defined in subparagraph (ii) of
8 paragraph (a) of subdivision two of section one hundred two of this
9 chapter, each agency shall publish and make available to the public an
10 assessment of public comment for a rule adopted pursuant to this subdi-
11 vision or paragraph (e) of subdivision six of this section. Such assess-
12 ment shall be based upon any written comments submitted to the agency
13 DURING THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION OF SUCH
14 PROPOSED RULE and any comments presented at any public hearing held on
15 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 and
19 (iii) a description of any changes made in the rule as a result of such
20 comments. If any comments included estimates of projected costs of the
21 proposed rule to the state, local governments or regulated persons,
22 which differed significantly from those presented by the agency in its
23 regulatory impact statement, regulatory flexibility analysis, or rural
24 area flexibility analysis, the assessment shall also summarize the agen-
25 cy's assessment of such estimates. If no comments have been received,
26 the notice of adoption shall state that no comments were received by the
27 agency. Comments submitted or presented to the agency by a legislative
28 committee or commission or by a member or members of the senate or
29 assembly shall be considered public comment and shall be summarized and
30 analyzed in the assessment.

31 S 3. Subdivision 1 of section 202-a of the state administrative proce-
32 dure act, as amended by chapter 171 of the laws of 1994, is amended to
33 read as follows:

34 1. In [developing] THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGA-
35 TION OF a rule, an agency shall, to the extent consistent with the
36 objectives of applicable statutes, consider utilizing approaches which
37 are designed to avoid undue deleterious economic effects or overly
38 burdensome impacts of the rule upon persons, including persons residing
39 in New York state's rural areas, directly or indirectly affected by it
40 or upon the economy or administration of state or local governmental
41 agencies. Such approaches shall include, but not be limited to, the
42 specification of performance standards rather than design standards.
43 PRIOR TO PROMULGATING SUCH RULE, THE AGENCY SHALL, BY SUCH PROMULGATION,
44 HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO REGULATED PERSONS WHO MAY BE
45 ADVERSELY AFFECTED AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS AND COST
46 ESTIMATES THAT MAY BE IMPOSED UPON SUCH PERSONS.

47 S 4. Paragraphs (c), (d) and (g) of subdivision 3 of section 202-a of
48 the state administrative procedure act, as amended by chapter 520 of the
49 laws of 1992, are amended to read as follows:

50 (c) Costs. A statement detailing the projected costs of the rule,
51 which shall indicate:

52 (i) (A) the costs for the implementation of, and continuing compliance
53 with, the rule to regulated persons;

54 [(ii)] (B) the costs for the implementation of, and continued adminis-
55 tration of, the rule to the agency and to the state and its local
56 governments; and

1 [(iii)] (C) the information, including the source or sources of such
2 information, and methodology upon which the cost analysis is based; or
3 [(iv)] (II) where an agency finds that, AFTER A REASONABLE GOOD FAITH
4 EFFORT HAS BEEN MADE, it cannot fully provide a statement of such costs,
5 a statement setting forth its best GOOD FAITH estimate, which shall
6 indicate the information and methodology upon which such best estimate
7 is based and the reason or reasons why a complete cost statement cannot
8 be provided; AND

9 (III) (A) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED
10 PERSONS WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF
11 PROPOSED RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH
12 EFFORTS SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE
13 EFFECTS THAT MAY BE CAUSED BY ADOPTING SUCH RULE; AND

14 (B) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY FROM REGULATED
15 PERSONS, WHO MAY BE ADVERSELY AFFECTED BY SUCH PROPOSED RULE MAKING,
16 PURSUANT TO CLAUSE (A) OF THIS SUBPARAGRAPH.

17 (d) Paperwork. A statement describing the need for any reporting
18 requirements, including forms and other paperwork OR OTHER ADMINISTRA-
19 TIVE BURDENS, which would be required as a result of the rule;

20 (g) Alternative approaches. A statement indicating whether any signif-
21 icant alternatives to the PROPOSED rule OR PROVISIONS OF THE PROPOSED
22 RULE were considered by the agency, including a discussion of such
23 alternatives and the reasons why they were not incorporated into the
24 rule. IN ADDITION, SUCH STATEMENT SHALL DISCLOSE SIGNIFICANT ALTERNATIVE
25 APPROACHES SUGGESTED BY REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED
26 BY SUCH PROPOSED RULE MAKING PRIOR TO FILING A PROPOSED RULE MAKING WITH
27 THE SECRETARY OF STATE OBTAINED FROM OUTREACH EFFORTS CONDUCTED PURSUANT
28 TO SUBPARAGRAPH (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

29 S 5. Paragraph (i) of subdivision 6 of section 202-a of the state
30 administrative procedure act, as amended by chapter 850 of the laws of
31 1990, is amended to read as follows:

32 (i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES
33 presented in the statement is inadequate, MISLEADING or incomplete, AS
34 DETERMINED BY SUCH AGENCY OR BROUGHT TO THE ATTENTION OF SUCH AGENCY BY
35 REGULATED PERSONS BEFORE, DURING AND AFTER SUCH PROPOSED RULE WAS FILED
36 WITH THE SECRETARY OF STATE, provided, however, such revised statement
37 shall be submitted as soon as practicable to the secretary of state for
38 publication in the state register, provided, further, if such statement
39 exceeds two thousand words, the notice shall include only a summary of
40 such statement in less than two thousand words;

41 S 6. Subdivision 1 of section 202-b of the state administrative proce-
42 dure act, as amended by chapter 611 of the laws of 1996, is amended to
43 read as follows:

44 1. In [developing] INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION
45 OF a rule, the agency shall consider utilizing approaches that will
46 accomplish the objectives of applicable statutes while minimizing any
47 adverse economic impact of the rule on small businesses and local
48 governments. THE AGENCY SHALL HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO
49 REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED BY THE PROMULGATION OF A
50 PROPOSED RULE MAKING AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS AND
51 COST ESTIMATES OF ALL COSTS THAT MAY BE IMPOSED UPON SUCH PERSONS.
52 Consistent with the objectives of applicable statutes, the agency shall
53 consider such approaches as:

54 (a) the establishment of differing compliance or reporting require-
55 ments or timetables that take into account the resources available to
56 small businesses and local governments;

(b) the use of performance rather than design standards; [and]
(c) an exemption from coverage by the rule, or by any part thereof, for small businesses and local governments so long as the public health, safety or general welfare is not endangered[.]; AND

(D) WERE OBTAINED FROM COMMENTS AND ALTERNATIVE APPROACHES THAT COME FROM REGULATED PERSONS PRIOR TO FILING A PROPOSED RULE MAKING DERIVED FROM AGENCY OUTREACH EFFORTS CONDUCTED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWO-A OF THIS ARTICLE.

S 7. Paragraph (e) of subdivision 2 of section 202-b of the state administrative procedure act, as amended by chapter 611 of the laws of 1996, is amended and two new paragraphs (e-1) and (e-2) are added to read as follows:

(e) an indication of how the rule is designed to minimize any adverse economic impact of such rule on small businesses and local governments, including information regarding whether the approaches suggested in subdivision one of this section or other similar approaches were considered; [and]

(E-1) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF PROPOSED RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH EFFORTS SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE EFFECTS THAT MAY BE CAUSED BY ADOPTING SUCH RULE;

(E-2) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY, PURSUANT TO PARAGRAPH (E-ONE) OF THIS SUBDIVISION, FROM REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED BY SUCH PROPOSED RULEMAKING; AND

S 8. Subdivision 6 of section 202-b of the state administrative procedure act, as amended by chapter 611 of the laws of 1996, is amended to read as follows:

6. When any rule is proposed for which a regulatory flexibility analysis is required, the agency shall assure that small businesses and local governments have been given an ADVANCED opportunity to participate in [the] DEVELOPMENT, PREPARATION AND DRAFTING OF A PROPOSED rule making through such activities as:

(a) the publication of a general notice for the proposed rule making PRIOR TO BEING FILED WITH THE SECRETARY OF STATE in publications likely to be obtained by small businesses and local governments of the types affected by the proposed rule;

(b) the PRIOR direct notification of interested small businesses and local governments THAT MAY BE affected by the proposed rule;

(c) the conduct of special open conferences concerning the proposed rule PRIOR TO FILING WITH THE SECRETARY OF STATE for small businesses and local governments THAT MAY BE ADVERSELY affected by the rule; and

(d) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rule making PROCESS by small businesses and local governments.

S 9. Paragraph (i) of subdivision 7 of section 202-b of the state administrative procedure act, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

(i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES presented in the analysis submitted pursuant to this section is inadequate, MISLEADING or incomplete, AS DETERMINED BY SUCH AGENCY OR BROUGHT TO THE ATTENTION OF SUCH AGENCY BY REGULATED PERSONS BEFORE, DURING AND AFTER SUCH PROPOSED RULE WAS FILED WITH THE SECRETARY OF STATE, provided, however, such revised analysis shall be submitted as soon as practicable to the secretary of state for publication in the state

1 register, provided, further, if such statement exceeds two thousand
2 words, the notice shall include only a summary of such statement in less
3 than two thousand words;
4 S 10. This act shall take effect on the first of January next succeed-
5 ing the date on which it shall have become a law.