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

5161

2013-2014 Regular Sessions

I N S E N A T E

May 13, 2013

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law and the state administrative procedure act, in relation to requiring documentation establishing statutory authority prior to the adoption of a rule

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

Section 1. Section 87 of the legislative law, as added by chapter 689 of the laws of 1978, is amended to read as follows:

S 87. Powers and duties. 1. The commission shall exercise continuous oversight of the process of rule making and examine rules, as defined in subdivision two of section one hundred two of the state administrative procedure act, adopted or proposed by each agency with respect to (i) statutory authority, (ii) compliance with legislative intent, (iii) impact on the economy and on the government operations of the state and its local governments, and (iv) impact on affected parties; and, in furtherance of such duties, may examine other issues it deems appropriate. For purpose of this article, the term agency shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor.

2. The commission may employ such staff and retain such consultants and expert services as may be necessary and fix their compensation and expenses within the amounts appropriated therefor. Employment by the commission shall be deemed to be employment by the legislature for all purposes.

3. PROPOSED RULES AND ACCOMPANYING DOCUMENTATION ESTABLISHING THE STATUTORY AUTHORITY FOR AGENCY PROMULGATION, SHALL BE PROVIDED TO THE COMMISSION AT THE BEGINNING OF THE PUBLIC COMMENT PERIOD REQUIRED BY SUBDIVISION ONE OF SECTION TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE

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

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PROCEDURE ACT. THE COMMISSION OR MEMBERS OF THE COMMISSION MAY REVIEW SUCH INFORMATION AND DETERMINE WHETHER SUCH RULES ARE CONSISTENT WITH CONSTITUTIONAL AND STATUTORY AUTHORITY. ANY DETERMINATIONS MADE BY THE COMMISSION OR A CHAIRPERSON OF THE COMMISSION SHALL BE MADE AVAILABLE ON THE COMMISSION'S WEBSITE AND PROVIDED TO THE RESPECTIVE STATE AGENCY.

4. The commission shall have the power, subject to the provisions of section seventy-three of the civil rights law, to hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in furtherance of its duties; provided, however, that no subpoena shall issue except upon the affirmative vote of a majority of the whole membership of the commission. The commission may request and shall receive from all agencies such assistance and data as will enable it properly to consummate any such examination, and review.

5. THE COMMISSION SHALL HAVE STANDING TO PURSUE AN ACTION PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES AGAINST AN EXECUTIVE AGENCY IF THE COMMISSION DETERMINES THAT A RULE EXCEEDS AUTHORITY PROVIDED UNDER STATE LAW OR THE STATE CONSTITUTION. ACTIONS SHALL BE COMMENCED IN THIS WAY UPON AFFIRMATIVE VOTE OF A MAJORITY OF THE WHOLE MEMBERSHIP OF THE COMMISSION. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, THE COMMENCEMENT OF AN ACTION WOULD REQUIRE AN AFFIRMATIVE VOTE OF MORE THAN TWO-THIRDS OF THE WHOLE MEMBERSHIP OF THE COMMISSION.

S 2. Section 88 of the legislative law, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

S 88. Reports. 1. The commission shall, from time to time, report its findings and recommendations to the governor, the temporary president of the senate and the speaker of the assembly, and to the members of the legislature, and may at any time make recommendations to an agency based upon its review of that agency's rule making process, or any of the agency's proposed, revised or adopted rules.

2. THE COMMISSION MAY PUBLISH ITS FINDINGS AND RECOMMENDATIONS WITH REGARD TO A REGULATION OR RULE ON ITS WEBSITE, OR ANY OTHER FORM IT DEEMS APPROPRIATE.

S 3. The opening paragraph of paragraph (a) of subdivision 1 of section 202 of the state administrative procedure act, as amended by chapter 429 of the laws of 2003, is amended to read as follows:

Prior to the adoption of a rule, an agency shall submit a notice of proposed rule making to the secretary of state for publication in the state register, SHALL PROVIDE THE PROPOSED RULES AND ACCOMPANYING DOCUMENTATION ESTABLISHING THE STATUTORY AUTHORITY FOR PROMULGATION TO THE ADMINISTRATIVE REGULATIONS REVIEW COMMISSION, and shall afford the public an opportunity to submit comments on the proposed rule. Unless a different time is specified by statute or this paragraph, the notice of proposed rule making must appear in the state register at least forty-five days prior to either:

S 4. This act shall take effect immediately.