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2013-2014 Regular Sessions

I N   A S S E M B L Y

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

AN ACT to amend the state administrative procedure act, in relation to  
improving evaluations of the potential impact of rules on jobs and  
employment opportunities

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

1     Section 1. Section 201-a of the state administrative procedure act, as  
2     added by chapter 189 of the laws of 1996, is amended to read as follows:  
3     S 201-a. Job impact. 1. In developing a rule, an agency shall strive  
4     to accomplish the objectives of applicable statutes in a manner which  
5     minimizes any unnecessary adverse impacts on existing jobs and promotes  
6     the development of new employment opportunities, including opportunities  
7     for self-employment, for the residents of the state.  
8     2. Before proposing a rule for adoption or adopting a rule on an emer-  
9     gency basis, an agency shall evaluate the potential impact of the rule  
10    on jobs and employment opportunities.  
11    (a) When it is apparent from the nature and purpose of the rule that  
12    it will not have a substantial adverse impact on jobs and employment  
13    opportunities, the agency shall include in the notice of proposed rule  
14    making or the notice of emergency adoption a statement that the agency  
15    has determined that the rule will not have a substantial adverse impact  
16    on jobs and employment opportunities; provided, however, that, where  
17    appropriate, such statement shall indicate that the agency has deter-  
18    mined the rule will have a positive impact on jobs and employment oppor-  
19    tunities, or will have no impact on jobs and employment opportunities.  
20    Except where it is evident from the subject matter of the rule that the  
21    rule could only have a positive impact or no impact on jobs and employ-  
22    ment opportunities, the agency shall include in the statement prepared  
23    pursuant to this paragraph a summary of the information and methodology  
24    underlying its determination.

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

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(b) When it is apparent from the nature and purpose of the rule that it may have a substantial adverse impact on jobs or employment opportunities, the agency shall issue a job impact statement which contains information on:

(i) the nature of the impact the rule will have on jobs and employment opportunities;

(ii) the categories of jobs or employment opportunities affected by the rule;

(iii) the approximate number of jobs or employment opportunities affected in each category;

(iv) any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities; and

(v) any measures which the agency [has taken] OR OTHER STATE AGENCIES HAVE TAKEN OR COULD TAKE to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities.

(c) When the information available to an agency is insufficient to enable it to determine whether a rule will have a substantial adverse impact on jobs or employment opportunities, or to prepare a job impact statement pursuant to paragraph (b) of this subdivision, the agency shall issue a statement indicating the information which it needs to complete a job impact statement and requesting the assistance of other state agencies and the public in obtaining such information.

(d) An agency shall issue a revised job impact statement when:

(i) [the] IT IS NECESSARY TO CORRECT OR SUPPLEMENT information presented in the PREVIOUS statement [is] THAT WAS inadequate or incomplete;

(ii) the proposed rule contains any substantial revisions which necessitate that such statement be modified; or

(iii) the agency has issued a statement pursuant to paragraph (c) of this subdivision, and has received information from other state agencies or the public which enable it to provide a more complete evaluation of the potential impact of the rule on jobs and employment opportunities.

(e) If, after requesting the assistance of other state agencies and the public pursuant to paragraph (c) of this subdivision, an agency is still unable to determine whether the rule will have a substantial adverse impact on jobs and employment opportunities, it may adopt the rule. When adopting a rule pursuant to this paragraph, the agency shall issue a revised job impact statement which includes information on the measures the agency took to evaluate the potential impact of the rule on jobs and employment opportunities. NO RULE MAY BE ADOPTED PURSUANT TO THIS PARAGRAPH IF IT IS THE SUBJECT OF A STATEMENT OF CONCURRENCE PURSUANT TO SUBDIVISION THREE OF THIS SECTION UNTIL THE REQUIREMENTS OF SUBDIVISION THREE HAVE BEEN MET.

(f) When adopting a rule on an emergency basis, an agency may defer the issuance of any statement pursuant to this section, provided that the statement is published in the state register within thirty days of the effective date of the emergency rule.

(g) When any statement issued pursuant to this section exceeds two thousand words, the agency shall prepare a summary of such statement in less than two thousand words.

(h) An agency may consider a series of closely related and simultaneously proposed rules as one rule for the purpose of submitting a consolidated job impact statement.

1 (i) Where a rule would have a measurable impact on opportunities for  
2 self-employment, the agency shall include a discussion of such impact in  
3 any statement prepared pursuant to this section.

4 (J) AN AGENCY SHALL MAKE AVAILABLE THE METHODOLOGY AND DATA OR DATA  
5 SOURCES USED TO PREPARE ANY STATEMENT ISSUED PURSUANT TO THIS SECTION.

6 3. (a) The commissioner of labor and the commissioner of economic  
7 development may review any statement issued pursuant to this section,  
8 and may consult informally with any agency preparing such a statement  
9 and advise it on the potential impact of a rule on jobs and employment  
10 opportunities. THE COMMISSIONER OF LABOR AND THE COMMISSIONER OF  
11 ECONOMIC DEVELOPMENT SHALL REVIEW ANY STATEMENT ISSUED PURSUANT TO THIS  
12 SECTION THAT INDICATES THAT THE RULE MAY HAVE A SUBSTANTIAL ADVERSE  
13 IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES AND CONSIDER WHETHER ADDI-  
14 TIONAL EVALUATION IS NEEDED PURSUANT TO THIS SUBDIVISION.

15 (b) When the commissioner of labor and the commissioner of economic  
16 development concur in a determination that additional evaluation of the  
17 potential impact of a proposed rule on jobs and employment opportunities  
18 is needed to assist in the minimization of any unnecessary adverse  
19 impacts of the rule on jobs or employment opportunities, they shall  
20 issue a statement of concurrence and transmit a copy of such statement  
21 to the agency and to the secretary of state for publication in the state  
22 register. The statement of concurrence shall:

23 (i) identify each proposed rule which is the subject of the statement  
24 of concurrence;

25 (ii) set forth the basis for the determination that additional evalu-  
26 ation of the potential impact of the rule is needed to assist in the  
27 minimization of any unnecessary adverse impacts on jobs or employment  
28 opportunities, and, where relevant, identify each aspect of the job  
29 impact statement which is incomplete or deficient;

30 (iii) include appropriate recommendations for additional evaluation of  
31 the impact of the rule or of any measures which the agency should  
32 consider to minimize any adverse impacts of the rule on jobs or employ-  
33 ment opportunities; and

34 (iv) specify a time period of not more than ninety days for the agency  
35 to perform such additional evaluation or consider such recommendations.

36 (c) An agency shall strive to perform such additional evaluation or  
37 consider such measures as are recommended in a statement of concurrence  
38 within the time period set forth therein. No agency shall adopt the rule  
39 which is the subject of the statement of concurrence until:

40 (i) the agency has performed the additional evaluation or considered  
41 the measures recommended in the statement of concurrence, and has issued  
42 a revised job impact statement, which is acceptable to the commissioners  
43 of economic development and labor, setting forth any changes which it  
44 will make to the rule to minimize any adverse impacts on jobs or employ-  
45 ment opportunities; or

46 (ii) after the expiration of the time period set forth in the state-  
47 ment of concurrence.

48 (d) The statement of concurrence shall be considered public comment  
49 for the purpose of this article and shall be summarized and analyzed in  
50 any assessment of public comment.

51 4. Nothing in this section shall be construed as preventing an agency  
52 from adopting a rule on an emergency basis at any time.

53 5. Copies of any statement prepared pursuant to this section, includ-  
54 ing any statement of concurrence, shall be distributed as provided in  
55 subdivision six-a of section two hundred two of this article.

56 6. For the purposes of this section:

1 (a) "rule" shall mean any rule proposed or any rule adopted on an  
2 emergency basis pursuant to this article, except for:

3 (i) any rule defined in subparagraph (ii) of paragraph (a) of subdivi-  
4 sion two of section one hundred two of this [article] CHAPTER;

5 (ii) any rule defined in [subdivisions ten,] SUBDIVISION eleven [or  
6 twelve] of section one hundred two of this [article] CHAPTER; or

7 (iii) any rule proposed or adopted by the state comptroller or the  
8 attorney general.

9 (b) "impact on jobs or employment opportunities" shall mean a change  
10 in the number of jobs and employment opportunities, including opportu-  
11 nities for self-employment, primarily attributable to the adoption of a  
12 rule, which would otherwise be available to the residents of the state  
13 in the two-year period commencing on the date the rule takes effect.  
14 "IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES" SHALL ALSO MEAN A SIGNIF-  
15 ICANT CHANGE IN EMPLOYMENT STATUS, INCLUDING WHETHER JOBS AND EMPLOYMENT  
16 OPPORTUNITIES ARE FULL-TIME OR PART-TIME AND SHORT-TERM OR LONG-TERM.

17 (c) "substantial adverse impact on jobs or employment opportunities"  
18 shall mean a decrease of more than one hundred full-time annual jobs and  
19 employment opportunities, including opportunities for self-employment,  
20 in the state, or the equivalent in part-time or seasonal employment,  
21 which would otherwise be available to the residents of the state in the  
22 two-year period commencing on the date the rule takes effect. "SUBSTAN-  
23 TIAL ADVERSE IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES" SHALL ALSO MEAN  
24 ANY CHANGES IN THE STATUS OF SUCH JOBS AND EMPLOYMENT OPPORTUNITIES,  
25 INCLUDING BUT NOT LIMITED TO ANY CHANGES FROM FULL-TIME TO PART-TIME OR  
26 LONG-TERM TO SHORT-TERM EMPLOYMENT, THAT WOULD HAVE A SUBSTANTIAL  
27 ADVERSE IMPACT ON INCOME OR ECONOMIC SECURITY.

28 S 2. Subparagraphs (vi) and (viii) of paragraph (f) of subdivision 1  
29 of section 202 of the state administrative procedure act, subparagraph  
30 (vi) as amended by chapter 610 of the laws of 1987 and subparagraph  
31 (viii) as amended by chapter 229 of the laws of 2000, are amended to  
32 read as follows:

33 (vi) include a regulatory impact statement prepared pursuant to  
34 section two hundred two-a of this [chapter] ARTICLE AND ANY JOB IMPACT  
35 STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED ONE-A OF THIS  
36 ARTICLE, provided, however, if EITHER such statement exceeds two thou-  
37 sand words, the notice shall include only a summary of such statement in  
38 less than two thousand words;

39 (viii) give the name, public office address and telephone number of an  
40 agency representative, who is knowledgeable on the proposed rule, from  
41 whom the complete text of such rule and any scientific or statistical  
42 study, report and analysis that served as the basis for the rule and any  
43 supporting data, the regulatory impact statement, THE JOB IMPACT STATE-  
44 MENT, the regulatory flexibility analysis, and the rural area flexibili-  
45 ty analysis may be obtained; from whom information about any public  
46 hearing may be obtained; and to whom written data, views and arguments  
47 may be submitted; and

48 S 3. Subparagraphs (v) and (vii) of paragraph (c) of subdivision 4-a  
49 of section 202 of the state administrative procedure act, subparagraph  
50 (v) as added by chapter 336 of the laws of 1989 and such paragraph as  
51 relettered by chapter 335 of the laws of 1992 and subparagraph (vii) as  
52 amended by chapter 171 of the laws of 1994, are amended to read as  
53 follows:

54 (v) include a revised regulatory impact statement, when required by  
55 the provisions of [subparagraph (ii) of paragraph (a) of] subdivision  
56 six of section two hundred two-a of this [chapter] ARTICLE AND ANY

1 REVISED JOB IMPACT STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED  
2 ONE-A OF THIS ARTICLE, provided, however, if EITHER such statement  
3 exceeds two thousand words, the notice shall include only a summary of  
4 such statement in less than two thousand words;

5 (vii) give the name, address and telephone number of an agency repre-  
6 sentative knowledgeable on the rule, from whom the complete revised text  
7 of such rule, any revised regulatory impact statement, ANY REVISED JOB  
8 IMPACT STATEMENT, any revised regulatory flexibility analysis and any  
9 revised rural area flexibility analysis may be obtained; from whom  
10 information about any additional public hearing may be obtained; and to  
11 whom written data, views and arguments may be submitted;

12 S 4. Subparagraphs (v) and (viii) of paragraph (c) of subdivision 5 of  
13 section 202 of the state administrative procedure act, subparagraph (v)  
14 as amended by chapter 610 of the laws of 1987 and subparagraph (viii) as  
15 amended by chapter 171 of the laws of 1994, are amended to read as  
16 follows:

17 (v) include a revised regulatory impact statement, when required by  
18 the provisions of [subparagraph (ii) of paragraph (a) of] subdivision  
19 six of section two hundred two-a of this [chapter] ARTICLE AND ANY  
20 REVISED JOB IMPACT STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED  
21 ONE-A OF THIS ARTICLE, provided, however, if EITHER such statement  
22 exceeds two thousand words, the notice shall include only a summary of  
23 such statement in less than two thousand words;

24 (viii) give the name, public office address and telephone number of an  
25 agency representative from whom the complete text of the rule and any  
26 revised regulatory impact statement, REVISED JOB IMPACT STATEMENT,  
27 revised regulatory flexibility analysis, REVISED rural area flexibility  
28 analysis or assessment of comments may be obtained; and

29 S 5. Subparagraphs (viii) and (x) of paragraph (d) of subdivision 6 of  
30 section 202 of the state administrative procedure act, subparagraph  
31 (viii) as added by chapter 17 of the laws of 1984 and renumbered by  
32 chapter 850 of the laws of 1990 and subparagraph (x) as amended by chap-  
33 ter 171 of the laws of 1994, are amended to read as follows:

34 (viii) include a regulatory impact statement prepared pursuant to  
35 section two hundred two-a of this [chapter] ARTICLE AND ANY JOB IMPACT  
36 STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED ONE-A OF THIS ARTI-  
37 CLE, or a statement setting forth that the regulatory impact statement  
38 AND/OR JOB IMPACT STATEMENT will appear in the state register within  
39 thirty days of the effective date of the emergency rule, provided,  
40 however, if [either] ANY SUCH statement exceeds two thousand words, the  
41 notice shall include only a summary of such statement in less than two  
42 thousand words;

43 (x) give the name, public office address and telephone number of an  
44 agency representative, knowledgeable on the rule, from whom a complete  
45 text of such rule, the regulatory impact statement, THE JOB IMPACT  
46 STATEMENT, regulatory flexibility analysis, and the rural area flexibil-  
47 ity analysis may be obtained; from whom information about any public  
48 hearing may be obtained; and to whom written data, views and arguments  
49 may be submitted; and

50 S 6. Paragraphs (a) and (b) of subdivision 6-a of section 202 of the  
51 state administrative procedure act, as amended by chapter 171 of the  
52 laws of 1994, are amended to read as follows:

53 (a) An agency shall transmit a copy of any rule making notice prepared  
54 pursuant to this article to the governor, the temporary president of the  
55 senate, the speaker of the assembly[, ] AND the administrative regu-  
56 lations review commission [and the office of regulatory and management

1 assistance] at the time such notice is submitted to the secretary of  
2 state for publication in the state register. Such transmittal shall  
3 include the complete rule text, regulatory impact statement, JOB IMPACT  
4 STATEMENT, regulatory flexibility analysis, rural area flexibility anal-  
5 ysis, or revisions thereof, and any other information submitted to the  
6 secretary of state pursuant to this article.

7 (b) An agency shall make a copy of the complete text of any proposed,  
8 adopted or emergency rule, regulatory impact statement, JOB IMPACT  
9 STATEMENT, regulatory flexibility analysis, rural area flexibility anal-  
10 ysis, or revisions thereof available to the public at the time such  
11 documents are submitted to the secretary of state for publication in the  
12 state register and shall send to any person a copy of such text upon  
13 written request.

14 S 7. This act shall take effect on the first of January next succeed-  
15 ing the date on which it shall have become a law, and shall apply to any  
16 rule first proposed or adopted on an emergency basis on or after such  
17 date.