

2160

2013-2014 Regular Sessions

I N   S E N A T E

January 14, 2013

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

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

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

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

4 (b) Except with respect to any rule defined in subparagraph (ii) of  
5 paragraph (a) of subdivision two of section one hundred two of this  
6 chapter, each agency shall publish and make available to the public an  
7 assessment of public comment for a rule adopted pursuant to this subdivi-  
8 sion or paragraph (e) of subdivision six of this section. Such assess-  
9 ment shall be based upon any written comments submitted to the agency  
10 DURING THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION OF SUCH  
11 PROPOSED RULE and any comments presented at any public hearing held on  
12 the proposed rule by the agency. The assessment shall contain: (i) a  
13 summary and an analysis of the issues raised and significant alterna-  
14 tives suggested by any such comments, (ii) a statement of the reasons  
15 why any significant alternatives were not incorporated into the rule and  
16 (iii) a description of any changes made in the rule as a result of such  
17 comments. If any comments included estimates of projected costs of the  
18 proposed rule to the state, local governments or regulated persons,  
19 which differed significantly from those presented by the agency in its  
20 regulatory impact statement, regulatory flexibility analysis, or rural  
21 area flexibility analysis, the assessment shall also summarize the agen-  
22 cy's assessment of such estimates. If no comments have been received,  
23 the notice of adoption shall state that no comments were received by the  
24 agency. Comments submitted or presented to the agency by a legislative  
25 committee or commission or by a member or members of the senate or  
26 assembly shall be considered public comment and shall be summarized and  
27 analyzed in the assessment.

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

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

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

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

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

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

54 [(iii)] (C) the information, including the source or sources of such  
55 information, and methodology upon which the cost analysis is based; or

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

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

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

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

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

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

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

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

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

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

55 (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 register, provided, further, if such statement exceeds two thousand

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