

5161

2013-2014 Regular Sessions

I N   S E N A T E

May 13, 2013

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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:

1     Section 1. Section 87 of the legislative law, as added by chapter 689  
2     of the laws of 1978, is amended to read as follows:  
3     S 87. Powers and duties. 1. The commission shall exercise continuous  
4     oversight of the process of rule making and examine rules, as defined in  
5     subdivision two of section one hundred two of the state administrative  
6     procedure act, adopted or proposed by each agency with respect to (i)  
7     statutory authority, (ii) compliance with legislative intent, (iii)  
8     impact on the economy and on the government operations of the state and  
9     its local governments, and (iv) impact on affected parties; and, in  
10    furtherance of such duties, may examine other issues it deems appropri-  
11    ate. For purpose of this article, the term agency shall mean any depart-  
12    ment, board, bureau, commission, division, office, council, committee or  
13    officer of the state or a public benefit corporation or public authority  
14    at least one of whose members is appointed by the governor.  
15    2. The commission may employ such staff and retain such consultants  
16    and expert services as may be necessary and fix their compensation and  
17    expenses within the amounts appropriated therefor. Employment by the  
18    commission shall be deemed to be employment by the legislature for all  
19    purposes.  
20    3. PROPOSED RULES AND ACCOMPANYING DOCUMENTATION ESTABLISHING THE  
21    STATUTORY AUTHORITY FOR AGENCY PROMULGATION, SHALL BE PROVIDED TO THE  
22    COMMISSION AT THE BEGINNING OF THE PUBLIC COMMENT PERIOD REQUIRED BY  
23    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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1 PROCEDURE ACT. THE COMMISSION OR MEMBERS OF THE COMMISSION MAY REVIEW  
2 SUCH INFORMATION AND DETERMINE WHETHER SUCH RULES ARE CONSISTENT WITH  
3 CONSTITUTIONAL AND STATUTORY AUTHORITY. ANY DETERMINATIONS MADE BY THE  
4 COMMISSION OR A CHAIRPERSON OF THE COMMISSION SHALL BE MADE AVAILABLE ON  
5 THE COMMISSION'S WEBSITE AND PROVIDED TO THE RESPECTIVE STATE AGENCY.

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

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

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

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

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

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

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

48 S 4. This act shall take effect immediately.