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I N   S E N A T E

January 29, 2014

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Introduced by Sens. VALESKY, BALL, CARLUCCI, GALLIVAN, GRISANTI, LARKIN, RITCHIE -- 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 detailing the benefits and costs of proposed rules in regulatory impact statements

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

1     Section 1. The legislature finds that many rules of state agencies  
2     have a substantial impact on the lives of the public, and therefore  
3     should be adopted through a process which provides for open and reasoned  
4     consideration of the potential costs and benefits of regulatory action.  
5     To this end, the statutes governing the rulemaking process should be  
6     improved to ensure that agency assessments of the costs and the benefits  
7     of proposed rules are reasonably accurate and comprehensive.  
8     S 2. Paragraph (b) of subdivision 4-a of section 202 of the state  
9     administrative procedure act, as added by chapter 335 of the laws of  
10    1992, is amended to read as follows:  
11    (b) Each agency shall publish and make available to the public an  
12    assessment of public comment for a rule revised pursuant to this subdi-  
13    vision. Such assessment shall be based upon any written comments submit-  
14    ted to the agency and any comments presented at any public hearing held  
15    on 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;  
19    and (iii) a description of any changes made in the rule as a result of  
20    such comments. IF ANY COMMENTS INCLUDED ESTIMATES OF PROJECTED COSTS OR  
21    BENEFITS OF THE PROPOSED RULE TO THE STATE, LOCAL GOVERNMENTS OR REGU-  
22    LATED OR OTHERWISE AFFECTED PERSONS OR ENTITIES, WHICH DIFFERED SIGNIF-  
23    ICANTLY FROM THOSE PRESENTED BY THE AGENCY IN ITS REGULATORY IMPACT  
24    STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, OR RURAL AREA FLEXIBILITY  
25    ANALYSIS, THE ASSESSMENT SHALL ALSO SUMMARIZE THE AGENCY'S ASSESSMENT OF

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

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1 SUCH ESTIMATES. COPIES OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED  
2 COSTS OR BENEFITS WHICH DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES  
3 SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE  
4 RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF  
5 THIS SECTION. If no comments have been received, the notice of revised  
6 rule making shall state that no comments were received by the agency.  
7 Any subsequent assessment published pursuant to this paragraph or para-  
8 graph (b) of subdivision five of this section need only include comments  
9 not addressed in any previously published assessment of public comment  
10 for the rule; provided, however, that the notice of revised rule making  
11 or adoption shall contain the date any previous notice of revised rule  
12 making containing an assessment of public comment was published in the  
13 state register.

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

17 (b) Except with respect to any rule defined in subparagraph (ii) of  
18 paragraph (a) of subdivision two of section one hundred two of this  
19 chapter, each agency shall publish and make available to the public an  
20 assessment of public comment for a rule adopted pursuant to this subdi-  
21 vision or paragraph (e) of subdivision six of this section. Such assess-  
22 ment shall be based upon any written comments submitted to the agency  
23 and any comments presented at any public hearing held on the proposed  
24 rule by the agency. The assessment shall contain: (i) a summary and an  
25 analysis of the issues raised and significant alternatives suggested by  
26 any such comments, (ii) a statement of the reasons why any significant  
27 alternatives were not incorporated into the rule and (iii) a description  
28 of any changes made in the rule as a result of such comments. If any  
29 comments included estimates of projected costs OR BENEFITS of the  
30 proposed rule to the state, local governments or regulated OR OTHERWISE  
31 AFFECTED persons OR ENTITIES, which differed significantly from those  
32 presented by the agency in its regulatory impact statement, regulatory  
33 flexibility analysis, or rural area flexibility analysis, the assessment  
34 shall also summarize the agency's assessment of such estimates. COPIES  
35 OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED COSTS OR BENEFITS WHICH  
36 DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES SHALL ACCOMPANY THE  
37 ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE RULE MAKING NOTICE  
38 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF THIS SECTION. If no  
39 comments have been received, the notice of adoption shall state that no  
40 comments were received by the agency. Comments submitted or presented to  
41 the agency by a legislative committee or commission or by a member or  
42 members of the senate or assembly shall be considered public comment and  
43 shall be summarized and analyzed in the assessment.

44 S 4. Paragraphs (b), (c) and (d) of subdivision 3 of section 202-a of  
45 the state administrative procedure act, paragraph (b) as amended by  
46 chapter 229 of the laws of 2000 and paragraphs (c) and (d) as amended by  
47 chapter 520 of the laws of 1992, are amended to read as follows:

48 (b) Needs and benefits. A statement setting forth the purpose of,  
49 necessity for, and benefits derived from the rule[, a citation for and  
50 summary, not to exceed five hundred words, of each scientific or statis-  
51 tical study, report or analysis that served as the basis for the rule,  
52 an explanation of how it was used to determine the necessity for and  
53 benefits derived from the rule, and the name of the person that produced  
54 each study, report or analysis] WHICH SHALL INCLUDE:

55 (I) INFORMATION IDENTIFYING THE CLASSES OF PERSONS OR ENTITIES WHICH  
56 WOULD BENEFIT FROM THE RULE;

1 (II) AN ASSESSMENT, INCLUDING THE UNDERLYING ANALYSIS, OF BENEFITS  
2 ANTICIPATED FROM THE RULE; INCLUDING, BUT NOT LIMITED TO, ANY DIRECT OR  
3 INDIRECT BENEFITS FOR THE ECONOMY AND PRIVATE MARKETS, HEALTH AND SAFE-  
4 TY, THE NATURAL ENVIRONMENT, AND THE ELIMINATION OR REDUCTION OF  
5 DISCRIMINATION OR BIAS, AND ANY OTHER SIGNIFICANT BENEFITS. TO THE  
6 EXTENT FEASIBLE, THE ASSESSMENT SHALL INCLUDE A QUANTIFICATION OF THOSE  
7 BENEFITS AND DESCRIBE THE SOURCES OF INFORMATION AND METHODOLOGY UNDER-  
8 LYING SUCH QUANTIFICATION. WHERE IT IS DIFFICULT OR IMPOSSIBLE TO QUAN-  
9 TIFY BENEFITS, THE ASSESSMENT SHALL INCLUDE A QUALITATIVE ANALYSIS OF  
10 SUCH BENEFITS; AND

11 (III) A CITATION FOR AND SUMMARY, NOT TO EXCEED FIVE HUNDRED WORDS, OF  
12 EACH SCIENTIFIC OR STATISTICAL STUDY, REPORT OR ANALYSIS THAT SERVED AS  
13 THE BASIS FOR THE RULE, AN EXPLANATION OF HOW IT WAS USED TO DETERMINE  
14 THE NECESSITY FOR AND BENEFITS DERIVED FROM THE RULE, AND THE NAME OF  
15 THE PERSON THAT PRODUCED EACH STUDY, REPORT OR ANALYSIS;

16 (c) Costs. A statement detailing the projected [costs] COST IMPACTS of  
17 the rule[, which shall indicate:

18 (i) the costs for the implementation of, and continuing compliance  
19 with, the rule to regulated persons;

20 (ii) the costs for the implementation of, and continued administration  
21 of, the rule to the agency and to the state and its local governments;  
22 and

23 (iii) the information, including the source or sources of such infor-  
24 mation, and methodology upon which the cost analysis is based; or

25 (iv) where an agency finds that it cannot fully provide a statement of  
26 such costs, a statement setting forth its best estimate, which shall  
27 indicate the information and methodology upon which such best estimate  
28 is based and the reason or reasons why a complete cost statement cannot  
29 be provided;] ON PERSONS OR ENTITIES WHO WOULD BE DIRECTLY REGULATED  
30 UNDER THE RULE, PERSONS OR ENTITIES WHO WOULD NOT BE REGULATED BUT WOULD  
31 OTHERWISE BE SIGNIFICANTLY AFFECTED BY THE RULE, AND ON THE AGENCY  
32 PROPOSING THE RULE, OTHER STATE ENTITIES AND LOCAL GOVERNMENTS. SUCH  
33 STATEMENT SHALL INCLUDE AN ASSESSMENT, INCLUDING THE UNDERLYING ANALY-  
34 SIS, OF INITIAL AND CONTINUING COSTS ANTICIPATED TO RESULT FROM THE  
35 RULE, INCLUDING, BUT NOT LIMITED TO, THE DIRECT COSTS TO GOVERNMENT IN  
36 ADMINISTERING THE RULE AND TO BUSINESSES AND OTHERS IN COMPLYING WITH  
37 THE RULE, AND ANY ADVERSE EFFECTS ON THE EFFICIENT FUNCTIONING OF THE  
38 ECONOMY, PRIVATE MARKETS (INCLUDING PRODUCTIVITY, EMPLOYMENT, AND  
39 COMPETITIVENESS), HEALTH, SAFETY, AND THE NATURAL ENVIRONMENT, AND OTHER  
40 SIGNIFICANT COSTS. TO THE EXTENT FEASIBLE, THE ASSESSMENT SHALL INCLUDE  
41 A QUANTIFICATION OF THOSE COSTS AND DESCRIBE THE SOURCES OF INFORMATION  
42 AND METHODOLOGY UNDERLYING SUCH QUANTIFICATION. WHERE IT IS DIFFICULT OR  
43 IMPOSSIBLE TO QUANTIFY COSTS, THE ASSESSMENT SHALL INCLUDE A QUALITATIVE  
44 ANALYSIS OF SUCH COSTS;

45 (d) Paperwork. A statement describing the need for any reporting  
46 requirements, including forms and other paperwork AND ANY REPORTING BY  
47 ELECTRONIC MEDIA, which would be required as a result of the rule;

48 S 5. This act shall take effect on the first of September next  
49 succeeding the date on which it shall have become a law, and shall apply  
50 to any rule for which a notice of proposed rule making or a notice of  
51 emergency adoption is first prepared on or after such effective date.