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

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I N S E N A T E

January 29, 2014

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:

Section 1. The legislature finds that many rules of state agencies have a substantial impact on the lives of the public, and therefore should be adopted through a process which provides for open and reasoned consideration of the potential costs and benefits of regulatory action. To this end, the statutes governing the rulemaking process should be improved to ensure that agency assessments of the costs and the benefits of proposed rules are reasonably accurate and comprehensive.

S 2. Paragraph (b) of subdivision 4-a of section 202 of the state administrative procedure act, as added by chapter 335 of the laws of 1992, is amended to read as follows:

(b) Each agency shall publish and make available to the public an assessment of public comment for a rule revised pursuant to this subdivision. Such assessment shall be based upon any written comments submitted to the agency and any comments presented at any public hearing held on the proposed rule by the agency. The assessment shall contain: (i) a summary and an analysis of the issues raised and significant alternatives suggested by any such comments; (ii) a statement of the reasons why any significant alternatives were not incorporated into the rule; and (iii) a description of any changes made in the rule as a result of such comments. IF ANY COMMENTS INCLUDED ESTIMATES OF PROJECTED COSTS OR BENEFITS OF THE PROPOSED RULE TO THE STATE, LOCAL GOVERNMENTS OR REGULATED OR OTHERWISE AFFECTED PERSONS OR ENTITIES, WHICH DIFFERED SIGNIFICANTLY FROM THOSE PRESENTED BY THE AGENCY IN ITS REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, OR RURAL AREA FLEXIBILITY 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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SUCH ESTIMATES. COPIES OF COMMENTS WHICH INCLUDE ESTIMATES OF PROJECTED COSTS OR BENEFITS WHICH DIFFER SIGNIFICANTLY FROM THE AGENCY'S ESTIMATES SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIBUTED WITH THE RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SIX-A OF THIS SECTION. If no comments have been received, the notice of revised rule making shall state that no comments were received by the agency. Any subsequent assessment published pursuant to this paragraph or paragraph (b) of subdivision five of this section need only include comments not addressed in any previously published assessment of public comment for the rule; provided, however, that the notice of revised rule making or adoption shall contain the date any previous notice of revised rule making containing an assessment of public comment was published in the state register.

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

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

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

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

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

(II) AN ASSESSMENT, INCLUDING THE UNDERLYING ANALYSIS, OF BENEFITS ANTICIPATED FROM THE RULE; INCLUDING, BUT NOT LIMITED TO, ANY DIRECT OR INDIRECT BENEFITS FOR THE ECONOMY AND PRIVATE MARKETS, HEALTH AND SAFETY, THE NATURAL ENVIRONMENT, AND THE ELIMINATION OR REDUCTION OF DISCRIMINATION OR BIAS, AND ANY OTHER SIGNIFICANT BENEFITS. TO THE EXTENT FEASIBLE, THE ASSESSMENT SHALL INCLUDE A QUANTIFICATION OF THOSE BENEFITS AND DESCRIBE THE SOURCES OF INFORMATION AND METHODOLOGY UNDERLYING SUCH QUANTIFICATION. WHERE IT IS DIFFICULT OR IMPOSSIBLE TO QUANTIFY BENEFITS, THE ASSESSMENT SHALL INCLUDE A QUALITATIVE ANALYSIS OF SUCH BENEFITS; AND

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

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

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

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

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

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

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

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