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

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Introduced by Sens. CARLUCCI, AVELLA, KLEIN, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the state administrative procedure act, in relation to establishing the office of administrative rulemaking compliance, and providing for its powers and duties; and to repeal article 39 of the executive law relating to the office of business permits

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

Section 1. Section 146 of the executive law is amended by adding a new subdivision 3-a to read as follows:

3-A. WITH REGARD TO RULE MAKING NOTICES REQUIRED TO BE PUBLISHED IN THE STATE REGISTER PURSUANT TO ARTICLE TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, THE SECRETARY OF STATE, SHALL ACCEPT AND FOLLOW THE RECOMMENDATIONS OF THE OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE TO WITHHOLD PUBLICATION OF ANY AND ALL NOTICES OF RULE MAKINGS FILED WITH THE SECRETARY AND WHICH ARE REQUIRED TO BE PUBLISHED IN THE STATE REGISTER TO PROMULGATE A RULE PURSUANT TO ARTICLE TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. THE OFFICE SHALL FILE SUCH NOTICE OF NON-COMPLIANCE WITH THE DIVISION OF ADMINISTRATIVE RULES IF SUCH OFFICE DETERMINES THAT THE STATE AGENCY PROMULGATING SUCH PROPOSED RULE HAS NOT SUBSTANTIALLY COMPLIED WITH EITHER THE PROCEDURAL OR SUBSTANTIVE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, OR IS ACTING WITHOUT ADEQUATE STATUTORY AUTHORITY TO PROMULGATE SUCH RULE. SUCH NON-COMPLIANCE NOTICE MAY BE FILED BY THE OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE WITH THE DIVISION OF ADMINISTRATIVE RULES AT ANY TIME PRIOR TO THE ACTUAL PUBLICATION OF SUCH RULE MAKING NOTICE THAT HAS BEEN FILED BY ANY STATE AGENCY. SUCH NON-COMPLIANCE NOTICE SHALL BE FILED WITH THE STATE AGENCY PROMULGATING SUCH PROPOSED RULE SO THAT THE AGENCY IS ON NOTICE OF THE ISSUANCE OF SUCH NON-COMPLIANCE NOTICE. SUCH NON-COMPLIANCE NOTICE SHALL

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

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BE PUBLISHED IN THE STATE REGISTER AND REMAIN IN EFFECT UNTIL SUCH TIME AS THE OFFICE FILES A NEW NOTICE THAT REMOVES SUCH OBJECTION TO THE PUBLICATION OF AGENCY NOTICES RELATED TO THE PROMULGATION OF A RULE.

S 2. Article 39 of the executive law is REPEALED and a new article 39 is added to read as follows:

ARTICLE 39
OFFICE OF ADMINISTRATIVE
RULEMAKING COMPLIANCE

SECTION 875. LEGISLATIVE FINDINGS.
876. DEFINITIONS.
877. OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE.
878. GENERAL FUNCTIONS, POWERS AND DUTIES.
879. ASSISTANCE OF OTHER AGENCIES.
880. ADVISORY COUNCIL.

S 875. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY FINDS AND DETERMINES AS FOLLOWS:

1. TO FOSTER A MORE ATTRACTIVE BUSINESS CLIMATE AND TO PROMOTE ECONOMIC GROWTH AND JOB CREATION IN THIS STATE, THE OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT OF STATE;

2. IN PROMULGATING NEW RULES OR CONDUCTING THE PERIODIC REVIEW OF EXISTING RULES, THE STATE SHOULD STRIVE TO SATISFY THE LEGISLATIVE OBJECTIVES OF THE APPLICABLE STATUTES, BUT IT SHOULD BE DONE IN A MANNER THAT MINIMIZES ANY UNNECESSARY ADVERSE ECONOMIC IMPACTS ON BUSINESSES NOR SHOULD SUCH RULES IMPOSE NEEDLESS, OVERLY STRICT OR BURDENSOME RULES, MANDATES OR ADMINISTRATIVE REQUIREMENTS ON EXISTING BUSINESSES THAT OPERATE IN THIS STATE OR ON POTENTIAL FUTURE BUSINESSES THAT MAY LOCATE IN THIS STATE; AND

3. RETAINING THE CURRENT BASE OF BUSINESS ENTERPRISES AND ATTRACTING NEW FIRMS TO THIS STATE CAN HELP TO PROMOTE THE HEALTH, SAFETY AND GENERAL WELFARE OF ITS CITIZENS BY PROVIDING BETTER EMPLOYMENT OPPORTUNITIES TO ENHANCE OUR CITIZENS' ECONOMIC AND SOCIAL WELLBEING, AND ADD NEW TAX REVENUES TO SUPPORT PRIVATE AND GOVERNMENTAL PROGRAMS RELATED TO PROVIDING QUALITY HEALTH CARE, SUPPORTING QUALITY EDUCATIONAL FACILITIES AND OTHER VITAL PUBLIC PROGRAMS.

S 876. DEFINITIONS. WHEN USED IN THIS ARTICLE:

1. "AGENCY" MEANS AN AGENCY AS DEFINED IN SUBDIVISION ONE OF SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

2. "COUNCIL" MEANS THE ADVISORY COUNCIL OF THE OFFICE, ESTABLISHED PURSUANT TO SECTION EIGHT HUNDRED EIGHTY OF THIS ARTICLE.

3. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

4. "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE.

5. "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE ESTABLISHED PURSUANT TO SECTION EIGHT HUNDRED SEVENTY-SEVEN OF THIS ARTICLE.

6. "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, OR PUBLIC OR PRIVATE ORGANIZATION OF ANY CHARACTER OTHER THAN AN AGENCY ENGAGED IN THE PARTICULAR RULE MAKING, DECLARATORY RULING OR ADJUDICATION.

7. "RULE" MEANS A RULE AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

8. "SECRETARY" MEANS THE SECRETARY OF STATE.

S 877. OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE. 1. THERE IS HEREBY CREATED WITHIN THE DEPARTMENT AN OFFICE OF ADMINISTRATIVE RULEMAKING COMPLIANCE. THE HEAD OF THE OFFICE SHALL BE THE DIRECTOR WHO

SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, AND WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

2. THE DIRECTOR SHALL BE THE CHIEF EXECUTIVE OFFICER OF THE OFFICE AND ADMINISTER ITS OPERATIONS. THE DIRECTOR MAY APPOINT SUCH OFFICERS AND EMPLOYEES AS HE OR SHE MAY DEEM NECESSARY, PRESCRIBE THEIR DUTIES, FIX THEIR COMPENSATION AND PROVIDE FOR THE REIMBURSEMENT OF THEIR EXPENSES, UPON APPROVAL OF THE SECRETARY, ALL WITHIN AMOUNTS MADE AVAILABLE THEREFOR BY APPROPRIATION.

3. THE DIRECTOR SHALL DIRECTLY REPORT TO THE SECRETARY AND INFORM THE SECRETARY OF ALL OF THE ACTIVITIES OF THE OFFICE. FURTHERMORE, THE DIRECTOR SHALL COMMUNICATE WITH AND KEEP THE ADVISORY COUNCIL INFORMED ON THE ACTIVITIES OF THE OFFICE AND ACCEPT RECOMMENDATIONS FROM THE ADVISORY COUNCIL ON ACTIVITIES AND ACTIONS THAT SHOULD BE UNDERTAKEN BY THE OFFICE.

S 878. GENERAL FUNCTIONS, POWERS AND DUTIES. THE OFFICE SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES, TO:

1. MONITOR AGENCY ACTIONS AND ACTIVITIES AS THEY RELATE TO COMPLIANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT AND ENSURE THAT SUCH AGENCIES COMPLY WITH THE PROVISIONS OF SUCH ACT;

2. ENGAGE IN A DIALOGUE WITH AGENCIES TO ENSURE THAT SUCH AGENCIES COMPLY WITH ALL OF THE PROCEDURAL AND SUBSTANTIVE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT AND TO ASSIST SUCH AGENCIES WITH SUCH COMPLIANCE EFFORTS;

3. ACCEPT COMMENTS AND INFORMATION FROM REGULATED PARTIES AS IT RELATES TO THE PROPER COMPLIANCE BY AGENCIES OF THE RULE MAKING PROCESS AND THE SUBSTANTIVE AND PROCEDURAL PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT;

4. SERVE AS AN OMBUDSMAN FOR THE BUSINESS COMMUNITY WITH REGARD TO CURTAILING THE PROMULGATION OF NEW RULES THAT ARE UNNECESSARY, OVER BURDENSOME, OVERLY STRINGENT OR PROMULGATED WITHOUT ADEQUATE STATUTORY AUTHORITY, OR WHICH HINDER ECONOMIC DEVELOPMENT AND JOB CREATION ACTIVITIES IN THIS STATE;

5. ISSUE NON-COMPLIANCE NOTICES FOR PROPOSED RULES WHICH:

(A) DO NOT COMPLY WITH THE SUBSTANTIVE OR PROCEDURAL PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, OR

(B) DO NOT HAVE ADEQUATE STATUTORY AUTHORITY TO PROMULGATE SUCH RULES;

6. IDENTIFY ANTIQUATED, OBSOLETE, REDUNDANT, USELESS OR DUPLICATIVE RULES THAT COULD BE ALTERED, REVISED OR ELIMINATED TO BETTER STREAMLINE THE OPERATION OF THE STATE AND LOCAL GOVERNMENTS, REDUCE BUSINESS OPERATION COSTS, OR MAKE LIFE GENERALLY EASIER FOR THE GENERAL PUBLIC; AND

7. ADOPT SUCH RULES, REGULATIONS, PROCEDURES, INSTRUCTIONS AND FORMS AS ARE REQUIRED TO CARRY OUT THE FUNCTIONS, POWERS AND DUTIES OF THE OFFICE.

S 879. ASSISTANCE OF OTHER AGENCIES. TO EFFECTUATE THE PURPOSES OF THIS ARTICLE, THE OFFICE MAY REQUEST AND SHALL BE ENTITLED TO RECEIVE FROM ANY AGENCY, AND EACH AGENCY IS AUTHORIZED TO PROVIDE SUCH ASSISTANCE, SERVICES AND INFORMATION AS SHALL BE NECESSARY TO ENABLE THE OFFICE TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES.

S 880. ADVISORY COUNCIL. 1. THERE SHALL BE ESTABLISHED, WITHIN THE OFFICE, AN ADVISORY COUNCIL COMPOSED OF SEVEN MEMBERS. THE MEMBERS OF THE COUNCIL ARE:

(A) THE SECRETARY, WHO SHALL BE THE CHAIR OF THE COUNCIL;

(B) A REPRESENTATIVE OF THE DIVISION OF BUDGET, APPOINTED BY THE DIRECTOR OF SUCH DIVISION;

(C) THE SECRETARY TO THE GOVERNOR;

(D) TWO REPRESENTATIVES OF THE STATE'S BUSINESS COMMUNITY, APPOINTED BY THE GOVERNOR;

(E) A MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; AND

(F) A MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY.

2. THE MEMBERS APPOINTED BY THE GOVERNOR AND THE LEGISLATIVE LEADERS SHALL BE APPOINTED TO TERMS OF FOUR YEARS; PROVIDED, HOWEVER, THAT OF THE INITIAL APPOINTMENTS: ONE MEMBER APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF ONE YEAR; THE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE SHALL SERVE A TERM OF THREE YEARS; THE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY SHALL SERVE A TERM OF TWO YEARS; AND THE OTHER MEMBER APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF FOUR YEARS. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT FOR THE UNEXPIRED TERM OF THE VACANT OFFICE. THE MEMBERS OF THE COUNCIL SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE REIMBURSED FOR THEIR REASONABLE EXPENSES ACTUALLY AND NECESSARILY INCURRED BY THEM IN THE PERFORMANCE OF THEIR DUTIES. THE COUNCIL SHALL MEET NOT LESS THAN THREE TIMES EACH CALENDAR YEAR. SPECIAL MEETINGS OF THE COUNCIL SHALL BE HELD AT THE CALL OF THE CHAIR.

3. THE COUNCIL SHALL HAVE THE POWER TO CONSIDER ANY MATTER RELATING TO THE FUNCTIONS, POWERS AND DUTIES OF THE OFFICE. FURTHERMORE, THE COUNCIL MAY ADVISE THE OFFICE ON POLICIES, GOALS AND OPERATIONS RELATED TO THE ADVANCEMENT OF THE GOALS OF THE COUNCIL AND LEGISLATIVE FINDINGS CONTAINED IN SECTION EIGHT HUNDRED SEVENTY-FIVE OF THIS ARTICLE.

4. THE COUNCIL MAY REVIEW PROPOSED RULES PROMULGATED BY AGENCIES AND PROVIDE COMMENTS TO THE OFFICE THEREON.

5. THE COUNCIL MAY SUBMIT RECOMMENDATIONS TO THE OFFICE FOR THE IMPROVEMENT, MODIFICATION OR EXTENSION OF THE SERVICES OF THE OFFICE, AND FOR ACTIONS DESIGNED TO ELIMINATE, CONSOLIDATE OR SIMPLIFY RULES PROMULGATED BY AGENCIES OR WHICH ALREADY EXIST.

S 3. Section 102 of the state administrative procedure act is amended by adding a new subdivision 12 to read as follows:

12. "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE RULE MAKING COMPLIANCE ESTABLISHED PURSUANT TO ARTICLE THIRTY-NINE OF THE EXECUTIVE LAW.

S 4. Subdivision 1 of section 202 of the state administrative procedure act is amended by adding a new paragraph (g) to read as follows:

(G) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, UPON THE FILING WITH THE SECRETARY OF STATE BY THE OFFICE OF A NON-COMPLIANCE NOTICE, PURSUANT TO SUBDIVISION FIVE OF SECTION EIGHT HUNDRED SEVENTY-EIGHT OF THE EXECUTIVE LAW, RELATED TO ANY NOTICE OF PROPOSED RULEMAKING, REVISED RULEMAKING OR ADOPTION FOR SUCH RULEMAKING, NO SUCH RULEMAKING NOTICE RELATED TO SUCH NON-COMPLIANCE NOTICE SHALL BE PUBLISHED UNTIL SUCH NON-COMPLIANCE NOTICE IS RESCINDED. SUCH RESCISSION SHALL BE PUBLISHED IN THE STATE REGISTER.

S 5. Subparagraph (iii) of paragraph (a) of subdivision 9 of section 202 of the state administrative procedure act, as amended by chapter 230 of the laws of 2006, is amended to read as follows:

(iii) reject those notices which are not in substantial compliance with the provisions of this [section] ARTICLE OR WHICH RELATE TO RULEMAKING NOTICES THAT THE OFFICE HAS ISSUED A NON-COMPLIANCE NOTICE, give prompt notice of such rejection to the agency, and advise such agency on the corrective action required; and

S 6. Section 102-a of the state administrative procedure act, as amended by section 3 of part O of chapter 60 of the laws of 2011, is amended to read as follows:

S 102-a. Small business regulation guides. For each rule or group of related rules which significantly impact a substantial number of small

businesses, the agency which adopted the rule shall post on its website AND PROVIDE TO THE OFFICE one or more guides explaining the actions a small business may take to comply with such rule or group of rules if the agency determines that such guide or guides will assist small businesses in complying with the rule, and shall designate each such posting as a "small business regulation guide". The guide shall explain the actions a small business may take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language that it is likely to be understood by affected small businesses. Agencies shall cooperate with other state agencies in developing such guides.

S 7. 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 of the proposed rule to the state, local governments or regulated persons, 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. 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 THE OFFICE, 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 8. Paragraph (a) of subdivision 6-a 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:

(a) An agency shall transmit a copy of any rule making notice prepared pursuant to this article to the governor, the temporary president of the senate, the speaker of the assembly, the administrative regulations review commission and the office [of regulatory and management assistance] at the time such notice is submitted to the secretary of state for publication in the state register. Such transmittal shall include the complete rule text, regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof, and any other information submitted to the secretary of state pursuant to this article.

S 9. Subparagraph (i) of paragraph (b) of subdivision 9 of section 202 of the state administrative procedure act, as added by chapter 230 of the laws of 2006, is amended to read as follows:

(i) The secretary of state [may] SHALL, in addition to publication of the state register, publish an electronic copy of the state register which shall be freely available on the internet.

S 10. The opening paragraph 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 to read as follows:

In proposing a rule for adoption or in adopting a rule on an emergency basis, the agency shall issue a regulatory flexibility analysis regarding the rule being proposed for adoption or the emergency rule being adopted. A copy of such analysis and any finding, and reasons for such finding, pursuant to subdivision three of this section, shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the office [of business permits and regulatory assistance] and the administrative regulations review commission at the time such analysis is submitted to the secretary of state for publication and, upon written request, a copy shall be sent to any other person. Each regulatory flexibility analysis shall contain:

S 11. This act shall take effect immediately; provided, however, that sections one and three through ten of this act shall take effect on the first of January next succeeding the date on which it shall have become a law.