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I N S E N A T E

January 13, 2016

Introduced by Sen. MURPHY -- 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 improving evaluations of the potential impact of rules on jobs and employment opportunities

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

1 Section 1. Section 201-a of the state administrative procedure act, as
2 added by chapter 189 of the laws of 1996, is amended to read as follows:
3 S 201-a. Job impact. 1. In developing a rule, an agency shall strive
4 to accomplish the objectives of applicable statutes in a manner which
5 minimizes any unnecessary adverse impacts on existing jobs and promotes
6 the development of new employment opportunities, including opportunities
7 for self-employment, for the residents of the state.
8 2. Before proposing a rule for adoption or adopting a rule on an emer-
9 gency basis, an agency shall evaluate the potential impact of the rule
10 on jobs and employment opportunities.
11 (a) When it is apparent from the nature and purpose of the rule that
12 it will not have a substantial adverse impact on jobs and employment
13 opportunities, the agency shall include in the notice of proposed rule
14 making or the notice of emergency adoption a statement that the agency
15 has determined that the rule will not have a substantial adverse impact
16 on jobs and employment opportunities; provided, however, that, where
17 appropriate, such statement shall indicate that the agency has deter-
18 mined the rule will have a positive impact on jobs and employment oppor-
19 tunities, or will have no impact on jobs and employment opportunities.
20 Except where it is evident from the subject matter of the rule that the
21 rule could only have a positive impact or no impact on jobs and employ-
22 ment opportunities, the agency shall include in the statement prepared
23 pursuant to this paragraph a summary of the information and methodology
24 underlying its determination.
25 (b) When it is apparent from the nature and purpose of the rule that
26 it may have a substantial adverse impact on jobs or employment opportu-

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

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1 nities, the agency shall issue a job impact statement which contains
2 information on:

3 (i) the nature of the impact the rule will have on jobs and employment
4 opportunities;

5 (ii) the categories of jobs or employment opportunities affected by
6 the rule;

7 (iii) the approximate number of jobs or employment opportunities
8 affected in each category;

9 (iv) any region of the state where the rule would have a dispropor-
10 tionate adverse impact on jobs or employment opportunities; and

11 (v) any measures which the agency [has taken] OR OTHER STATE AGENCIES
12 HAVE TAKEN OR COULD TAKE to minimize any unnecessary adverse impacts on
13 existing jobs and to promote the development of new employment opportu-
14 nities.

15 (c) When the information available to an agency is insufficient to
16 enable it to determine whether a rule will have a substantial adverse
17 impact on jobs or employment opportunities, or to prepare a job impact
18 statement pursuant to paragraph (b) of this subdivision, the agency
19 shall issue a statement indicating the information which it needs to
20 complete a job impact statement and requesting the assistance of other
21 state agencies and the public in obtaining such information.

22 (d) An agency shall issue a revised job impact statement when:

23 (i) [the] IT IS NECESSARY TO CORRECT OR SUPPLEMENT information
24 presented in the PREVIOUS statement [is] THAT WAS inadequate or incom-
25 plete;

26 (ii) the proposed rule contains any substantial revisions which neces-
27 sitate that such statement be modified; or

28 (iii) the agency has issued a statement pursuant to paragraph (c) of
29 this subdivision, and has received information from other state agencies
30 or the public which enable it to provide a more complete evaluation of
31 the potential impact of the rule on jobs and employment opportunities.

32 (e) If, after requesting the assistance of other state agencies and
33 the public pursuant to paragraph (c) of this subdivision, an agency is
34 still unable to determine whether the rule will have a substantial
35 adverse impact on jobs and employment opportunities, it may adopt the
36 rule. When adopting a rule pursuant to this paragraph, the agency shall
37 issue a revised job impact statement which includes information on the
38 measures the agency took to evaluate the potential impact of the rule on
39 jobs and employment opportunities. NO RULE MAY BE ADOPTED PURSUANT TO
40 THIS PARAGRAPH IF IT IS THE SUBJECT OF A STATEMENT OF CONCURRENCE PURSU-
41 ANT TO SUBDIVISION THREE OF THIS SECTION UNTIL THE REQUIREMENTS OF
42 SUBDIVISION THREE OF THIS SECTION HAVE BEEN MET.

43 (f) When adopting a rule on an emergency basis, an agency may defer
44 the issuance of any statement pursuant to this section, provided that
45 the statement is published in the state register within thirty days of
46 the effective date of the emergency rule.

47 (g) When any statement issued pursuant to this section exceeds two
48 thousand words, the agency shall prepare a summary of such statement in
49 less than two thousand words.

50 (h) An agency may consider a series of closely related and simultane-
51 ously proposed rules as one rule for the purpose of submitting a consol-
52 idated job impact statement.

53 (i) Where a rule would have a measurable impact on opportunities for
54 self-employment, the agency shall include a discussion of such impact in
55 any statement prepared pursuant to this section.

(J) AN AGENCY SHALL MAKE AVAILABLE THE METHODOLOGY AND DATA OR DATA SOURCES USED TO PREPARE ANY STATEMENT ISSUED PURSUANT TO THIS SECTION.

3. (a) The commissioner of labor and the commissioner of economic development may review any statement issued pursuant to this section, and may consult informally with any agency preparing such a statement and advise it on the potential impact of a rule on jobs and employment opportunities. THE COMMISSIONER OF LABOR AND THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW ANY STATEMENT ISSUED PURSUANT TO THIS SECTION THAT INDICATES THAT THE RULE MAY HAVE A SUBSTANTIAL ADVERSE IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES AND CONSIDER WHETHER ADDITIONAL EVALUATION IS NEEDED PURSUANT TO THIS SUBDIVISION.

(b) When the commissioner of labor and the commissioner of economic development concur in a determination that additional evaluation of the potential impact of a proposed rule on jobs and employment opportunities is needed to assist in the minimization of any unnecessary adverse impacts of the rule on jobs or employment opportunities, they shall issue a statement of concurrence and transmit a copy of such statement to the agency and to the secretary of state for publication in the state register. The statement of concurrence shall:

(i) identify each proposed rule which is the subject of the statement of concurrence;

(ii) set forth the basis for the determination that additional evaluation of the potential impact of the rule is needed to assist in the minimization of any unnecessary adverse impacts on jobs or employment opportunities, and, where relevant, identify each aspect of the job impact statement which is incomplete or deficient;

(iii) include appropriate recommendations for additional evaluation of the impact of the rule or of any measures which the agency should consider to minimize any adverse impacts of the rule on jobs or employment opportunities; and

(iv) specify a time period of not more than ninety days for the agency to perform such additional evaluation or consider such recommendations.

(c) An agency shall strive to perform such additional evaluation or consider such measures as are recommended in a statement of concurrence within the time period set forth therein. No agency shall adopt the rule which is the subject of the statement of concurrence until:

(i) the agency has performed the additional evaluation or considered the measures recommended in the statement of concurrence, and has issued a revised job impact statement, which is acceptable to the commissioners of economic development and labor, setting forth any changes which it will make to the rule to minimize any adverse impacts on jobs or employment opportunities; or

(ii) after the expiration of the time period set forth in the statement of concurrence.

(d) The statement of concurrence shall be considered public comment for the purpose of this article and shall be summarized and analyzed in any assessment of public comment.

4. Nothing in this section shall be construed as preventing an agency from adopting a rule on an emergency basis at any time.

5. Copies of any statement prepared pursuant to this section, including any statement of concurrence, shall be distributed as provided in subdivision six-a of section two hundred two of this article.

6. For the purposes of this section:

(a) "rule" shall mean any rule proposed or any rule adopted on an emergency basis pursuant to this article, except for:

1 (i) any rule defined in subparagraph (ii) of paragraph (a) of subdivi-
2 sion two of section one hundred two of this [article] CHAPTER;

3 (ii) any rule defined in [subdivisions ten,] SUBDIVISION eleven [or
4 twelve] of section one hundred two of this [article] CHAPTER; or

5 (iii) any rule proposed or adopted by the state comptroller or the
6 attorney general.

7 (b) "impact on jobs or employment opportunities" shall mean a change
8 in the number of jobs and employment opportunities, including opportu-
9 nities for self-employment, primarily attributable to the adoption of a
10 rule, which would otherwise be available to the residents of the state
11 in the two-year period commencing on the date the rule takes effect.
12 "IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES" SHALL ALSO MEAN A SIGNIF-
13 ICANT CHANGE IN EMPLOYMENT STATUS, INCLUDING WHETHER ADOPTION OF A RULE
14 WOULD HAVE A SIGNIFICANT IMPACT ON AVERAGE WAGE LEVELS, HOURS AND/OR
15 DURATION OF EMPLOYMENT.

16 (c) "substantial adverse impact on jobs or employment opportunities"
17 shall mean a decrease of more than one hundred full-time annual jobs and
18 employment opportunities, including opportunities for self-employment,
19 in the state, or the equivalent in part-time or seasonal employment,
20 which would otherwise be available to the residents of the state in the
21 two-year period commencing on the date the rule takes effect. "SUBSTAN-
22 TIAL ADVERSE IMPACT ON JOBS OR EMPLOYMENT OPPORTUNITIES" SHALL ALSO MEAN
23 ANY CHANGES IN THE STATUS OF SUCH JOBS AND EMPLOYMENT OPPORTUNITIES,
24 INCLUDING BUT NOT LIMITED TO ANY SIGNIFICANT NET REDUCTIONS IN AVERAGE
25 WAGE LEVELS, HOURS AND/OR DURATION OF EMPLOYMENT, THAT WOULD REPRESENT A
26 SUBSTANTIAL ADVERSE IMPACT ON INCOMES OR ECONOMIC SECURITY.

27 S 2. Subparagraphs (vi) and (viii) of paragraph (f) of subdivision 1
28 of section 202 of the state administrative procedure act, subparagraph
29 (vi) as amended by chapter 610 of the laws of 1987 and subparagraph
30 (viii) as amended by chapter 229 of the laws of 2000, are amended to
31 read as follows:

32 (vi) include a regulatory impact statement prepared pursuant to
33 section two hundred two-a of this [chapter] ARTICLE AND ANY JOB IMPACT
34 STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED ONE-A OF THIS
35 ARTICLE, provided, however, if EITHER such statement exceeds two thou-
36 sand words, the notice shall include only a summary of such statement in
37 less than two thousand words;

38 (viii) give the name, public office address and telephone number of an
39 agency representative, who is knowledgeable on the proposed rule, from
40 whom the complete text of such rule and any scientific or statistical
41 study, report and analysis that served as the basis for the rule and any
42 supporting data, the regulatory impact statement, THE JOB IMPACT STATE-
43 MENT, the regulatory flexibility analysis, and the rural area flexibili-
44 ty analysis may be obtained; from whom information about any public
45 hearing may be obtained; and to whom written data, views and arguments
46 may be submitted; and

47 S 3. Subparagraphs (v) and (vii) of paragraph (c) of subdivision 4-a
48 of section 202 of the state administrative procedure act, subparagraph
49 (v) as added by chapter 336 of the laws of 1989 and such paragraph as
50 relettered by chapter 335 of the laws of 1992 and subparagraph (vii) as
51 amended by chapter 171 of the laws of 1994, are amended to read as
52 follows:

53 (v) include a revised regulatory impact statement, when required by
54 the provisions of [subparagraph (ii) of paragraph (a) of] subdivision
55 six of section two hundred two-a of this [chapter] ARTICLE AND ANY
56 REVISED JOB IMPACT STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED

1 ONE-A OF THIS ARTICLE, provided, however, if EITHER such statement
2 exceeds two thousand words, the notice shall include only a summary of
3 such statement in less than two thousand words;

4 (vii) give the name, address and telephone number of an agency repre-
5 sentative knowledgeable on the rule, from whom the complete revised text
6 of such rule, any revised regulatory impact statement, ANY REVISED JOB
7 IMPACT STATEMENT, any revised regulatory flexibility analysis and any
8 revised rural area flexibility analysis may be obtained; from whom
9 information about any additional public hearing may be obtained; and to
10 whom written data, views and arguments may be submitted;

11 S 4. Subparagraphs (v) and (viii) of paragraph (c) of subdivision 5 of
12 section 202 of the state administrative procedure act, subparagraph (v)
13 as amended by chapter 610 of the laws of 1987 and subparagraph (viii) as
14 amended by chapter 171 of the laws of 1994, are amended to read as
15 follows:

16 (v) include a revised regulatory impact statement, when required by
17 the provisions of [subparagraph (ii) of paragraph (a) of] subdivision
18 six of section two hundred two-a of this [chapter] ARTICLE AND ANY
19 REVISED JOB IMPACT STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED
20 ONE-A OF THIS ARTICLE, provided, however, if EITHER such statement
21 exceeds two thousand words, the notice shall include only a summary of
22 such statement in less than two thousand words;

23 (viii) give the name, public office address and telephone number of an
24 agency representative from whom the complete text of the rule and any
25 revised regulatory impact statement, REVISED JOB IMPACT STATEMENT,
26 revised regulatory flexibility analysis, REVISED rural area flexibility
27 analysis or assessment of comments may be obtained; and

28 S 5. Subparagraphs (viii) and (x) of paragraph (d) of subdivision 6 of
29 section 202 of the state administrative procedure act, subparagraph
30 (viii) as added by chapter 17 of the laws of 1984 and renumbered by
31 chapter 850 of the laws of 1990 and subparagraph (x) as amended by chap-
32 ter 171 of the laws of 1994, are amended to read as follows:

33 (viii) include a regulatory impact statement prepared pursuant to
34 section two hundred two-a of this [chapter] ARTICLE AND ANY JOB IMPACT
35 STATEMENT PREPARED PURSUANT TO SECTION TWO HUNDRED ONE-A OF THIS ARTI-
36 CLE, or a statement setting forth that the regulatory impact statement
37 AND/OR JOB IMPACT STATEMENT will appear in the state register within
38 thirty days of the effective date of the emergency rule, provided,
39 however, if [either] ANY SUCH statement exceeds two thousand words, the
40 notice shall include only a summary of such statement in less than two
41 thousand words;

42 (x) give the name, public office address and telephone number of an
43 agency representative, knowledgeable on the rule, from whom a complete
44 text of such rule, the regulatory impact statement, THE JOB IMPACT
45 STATEMENT, regulatory flexibility analysis, and the rural area flexibil-
46 ity analysis may be obtained; from whom information about any public
47 hearing may be obtained; and to whom written data, views and arguments
48 may be submitted; and

49 S 6. Paragraphs (a) and (b) of subdivision 6-a of section 202 of the
50 state administrative procedure act, as amended by chapter 171 of the
51 laws of 1994, are amended to read as follows:

52 (a) An agency shall transmit a copy of any rule making notice prepared
53 pursuant to this article to the governor, the temporary president of the
54 senate, the speaker of the assembly[,] AND the administrative regu-
55 lations review commission [and the office of regulatory and management
56 assistance] at the time such notice is submitted to the secretary of

1 state for publication in the state register. Such transmittal shall
2 include the complete rule text, regulatory impact statement, JOB IMPACT
3 STATEMENT, regulatory flexibility analysis, rural area flexibility anal-
4 ysis, or revisions thereof, and any other information submitted to the
5 secretary of state pursuant to this article.

6 (b) An agency shall make a copy of the complete text of any proposed,
7 adopted or emergency rule, regulatory impact statement, JOB IMPACT
8 STATEMENT, regulatory flexibility analysis, rural area flexibility anal-
9 ysis, or revisions thereof available to the public at the time such
10 documents are submitted to the secretary of state for publication in the
11 state register and shall send to any person a copy of such text upon
12 written request.

13 S 7. This act shall take effect on the first of January next succeed-
14 ing the date on which it shall have become a law, and shall apply to any
15 rule first proposed or adopted on an emergency basis on or after such
16 date.