

7097

I N S E N A T E

March 24, 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 online posting of full text of rules, statements and analyses

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

1 Section 1. Paragraph (g) of subdivision 2 of section 201-a of the
2 state administrative procedure act, as added by chapter 189 of the laws
3 of 1996, is amended to read as follows:

4 (g) When any statement issued pursuant to this section exceeds two
5 thousand words, the agency shall prepare a summary of such statement in
6 less than two thousand words FOR PUBLICATION IN THE STATE REGISTER IN
7 WHICH IT SHALL IDENTIFY THE WEBSITE OF THE AGENCY, OR OF ANOTHER STATE
8 ENTITY, ON WHICH THE FULL TEXT OF THE STATEMENT HAS BEEN POSTED.

9 S 2. Paragraph (a) of subdivision 1 of section 202 of the state admin-
10 istrative procedure act, as amended by chapter 429 of the laws of 2003,
11 is amended to read as follows:

12 (a) Prior to the adoption of a rule, an agency shall submit a notice
13 of proposed rule making to the secretary of state for publication in the
14 state register and shall afford the public an opportunity to submit
15 comments on the proposed rule. Unless a different time is specified by
16 statute [or this paragraph], the notice of proposed rule making must
17 appear in the state register at least forty-five days prior to either

18 (i) the addition, amendment or repeal of a rule for which statute does
19 not require that a public hearing be held prior to adoption, or

20 (ii) the first public hearing on a proposed rule for which such hear-
21 ing is so required.

22 The notice of proposed rule making shall indicate the last date for
23 submission of comments on the proposed rule, which, unless a different
24 time is specified in statute or this paragraph, shall be not less than
25 forty-five days after the date of publication of such notice, or, if
26 statute requires that a public hearing be held prior to adoption, not
27 less than five days after the date of the last public hearing scheduled

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

LBD14398-02-6

1 to be held on the proposed rule. Notwithstanding any other provision of
2 this paragraph, when the notice of proposed rule making contains only a
3 description of the subject, purpose and substance of the rule as
4 provided in subparagraph (v) of paragraph (f) of this subdivision, [and]
5 the full text of the proposed rule [has not been] SHALL BE posted on a
6 website maintained by the agency or another state entity[, the last date
7 for submission of comments shall be not less than sixty days after the
8 date of publication of such notice, unless the rule is a consensus rule
9 or a] AND SHALL REMAIN POSTED UNTIL SUCH PROPOSED RULE IS ADOPTED,
10 REVISED, WITHDRAWN OR EXPIRES PURSUANT TO THIS ARTICLE, EXCEPT THAT SUCH
11 WEB POSTING SHALL NOT BE REQUIRED FOR ANY rule defined in subparagraph
12 (ii) of paragraph (a) of subdivision two of section one hundred two of
13 this chapter.

14 S 3. Subparagraphs (v), (vi) and (vii) of paragraph (f) of subdivision
15 1 of section 202 of the state administrative procedure act, subparagraph
16 (v) as amended by chapter 429 of the laws of 2003, subparagraph (vi) as
17 amended by chapter 610 of the laws of 1987 and subparagraph (vii) as
18 amended by chapter 171 of the laws of 1994, are amended to read as
19 follows:

20 (v) contain the complete text of the proposed rule, provided, however,
21 if such text exceeds two thousand words, the notice shall contain only a
22 description of the subject, purpose and substance of such rule in less
23 than two thousand words and shall identify the address of the website[,
24 if any,] on which the full text has been posted;

25 (vi) include a regulatory impact statement prepared pursuant to
26 section two hundred two-a of this [chapter] ARTICLE, provided, however,
27 if such statement exceeds two thousand words, the notice shall include
28 only a summary of such statement in less than two thousand words AND
29 THE FULL TEXT OF SUCH STATEMENT SHALL BE POSTED ON A WEBSITE MAINTAINED
30 BY THE AGENCY OR ANOTHER STATE ENTITY UNTIL SUCH STATEMENT IS REVISED OR
31 THE PROPOSED RULE IS ADOPTED OR WITHDRAWN OR EXPIRES PURSUANT TO THIS
32 ARTICLE;

33 (vii) include a regulatory flexibility analysis and a rural area flex-
34 ibility analysis prepared pursuant to sections two hundred two-b and two
35 hundred two-bb of this [chapter] ARTICLE, provided, however, if an anal-
36 ysis exceeds two thousand words, the notice shall include only a summary
37 of such analysis in less than two thousand words AND THE FULL TEXT OF
38 SUCH ANALYSIS SHALL BE POSTED ON A WEBSITE MAINTAINED BY THE AGENCY OR
39 ANOTHER STATE ENTITY UNTIL SUCH ANALYSIS IS REVISED OR THE PROPOSED RULE
40 IS ADOPTED OR WITHDRAWN OR EXPIRES PURSUANT TO THIS ARTICLE;

41 S 4. Subparagraphs (ii), (v) and (vi) of paragraph (c) of subdivision
42 4-a of section 202 of the state administrative procedure act, subpara-
43 graphs (ii) and (v) as added by chapter 336 of the laws of 1989, subpar-
44 agraph (vi) as amended by chapter 171 of the laws of 1994 and such para-
45 graph as relettered by chapter 335 of the laws of 1992, are amended to
46 read as follows:

47 (ii) contain the complete revised text of the proposed rule, provided,
48 however, if such text exceeds two thousand words, the notice may contain
49 only a description of the subject, purpose and substance of such rule in
50 less than two thousand words AND SHALL IDENTIFY THE WEBSITE OF THE AGEN-
51 CY, OR OF ANOTHER STATE ENTITY, ON WHICH THE COMPLETE REVISED TEXT HAS
52 BEEN POSTED;

53 (v) include a revised regulatory impact statement, when required by
54 the provisions of [subparagraph (ii) of] paragraph [(a)] (B) of subdivi-
55 sion six of section two hundred two-a of this [chapter] ARTICLE,
56 provided, however, if such statement exceeds two thousand words, the

notice shall include only a summary of such statement in less than two thousand words AND SHALL IDENTIFY THE WEBSITE OF THE AGENCY, OR OF ANOTHER STATE ENTITY, ON WHICH THE COMPLETE REVISED TEXT HAS BEEN POSTED;

(vi) include a revised regulatory flexibility analysis and a rural area flexibility analysis, when required by the provisions [of subparagraph (ii)] of paragraph [(a)] (B) of subdivision seven of section two hundred two-b and paragraph (b) of subdivision eight of section two hundred two-bb of this [chapter] ARTICLE, provided, however, if such [statement] ANALYSIS exceeds two thousand words, the notice shall include only a summary of such [statement] ANALYSIS in less than two thousand words AND SHALL IDENTIFY THE WEBSITE OF THE AGENCY, OR OF ANOTHER STATE ENTITY, ON WHICH THE FULL TEXT OF THE REVISED ANALYSIS HAS BEEN POSTED;

S 5. Paragraph (c) of subdivision 4-a of section 202 of the state administrative procedure act, as amended by chapter 210 of the laws of 1998 is relettered paragraph (d).

S 6. Subparagraphs (v) and (vi) of paragraph (c) of subdivision 5 of section 202 of the state administrative procedure act, subparagraph (v) as amended by chapter 610 of the laws of 1987 and subparagraph (vi) as amended by chapter 171 of the laws of 1994, are amended to read as follows:

(v) include a revised regulatory impact statement, when required by the provisions of [subparagraph (ii) of] paragraph [(a)] (B) of subdivision six of section two hundred two-a of this [chapter] ARTICLE, provided, however, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

(vi) include a revised regulatory flexibility analysis and a rural area flexibility analysis, when required by the provisions of [subparagraph (ii) of] paragraph [(a)] (B) of subdivision seven of section two hundred two-b and paragraph (b) of subdivision eight of section two hundred two-bb of this [chapter] ARTICLE, provided, however, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

S 7. Subdivision 6 of section 202-a of the state administrative procedure act, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

6. Each agency shall issue a revised regulatory impact statement when: [(i)] (A) the information presented in the statement is inadequate or incomplete, provided, however, such revised statement shall be submitted as soon as practicable to the secretary of state for publication in the state register, provided, further, if such statement exceeds two thousand words, the notice shall include only a summary of such statement in less than two thousand words;

[(ii)] (B) a proposed rule contains any substantial revisions and such revisions necessitate that such statement be modified. A revised statement shall describe the reasons for such changes and shall include any modifications in the regulatory impact statement that are necessary as a result of such changes; or

[(iii)] (C) there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such statement be modified. A revised statement shall describe the reasons for such changes and shall

1 include any modifications in the regulatory impact statement that are
2 necessary as a result of such changes.

3 S 8. Subdivision 7 of section 202-b of the state administrative proce-
4 dure act, as amended by chapter 850 of the laws of 1990, is amended to
5 read as follows:

6 7. Each agency shall issue a revised regulatory flexibility analysis
7 when:

8 [(i)] (A) the information presented in the analysis submitted pursuant
9 to this section is inadequate or incomplete, provided, however, such
10 revised analysis shall be submitted as soon as practicable to the secre-
11 tary of state for publication in the state register, provided, further,
12 if such statement exceeds two thousand words, the notice shall include
13 only a summary of such statement in less than two thousand words;

14 [(ii)] (B) a proposed rule contains any substantial revisions and such
15 revisions necessitate that such analysis be modified; or

16 [(iii)] (C) there are no substantial revisions in the proposed rule
17 but there are changes in the text of the rule as adopted when compared
18 with the text of the latest published version of the proposed rule and
19 such changes would necessitate that such analysis be modified.

20 S 9. Subdivision 7 of section 202-bb of the state administrative
21 procedure act, as added by chapter 171 of the laws of 1994, is amended
22 to read as follows:

23 7. When any rule is proposed for which a rural area flexibility analy-
24 sis is required, the agency shall assure that public and private inter-
25 ests in rural areas have been given an opportunity to participate in the
26 rule making through such activities as:

27 [(i)] (A) the publication of a general notice of the proposed rule
28 making;

29 [(ii)] (B) notification of public and private interests in rural areas
30 directly affected by the proposed rule;

31 [(iii)] (C) the conduct of special public hearings or meetings
32 concerning the proposed rule for those public and private interests
33 affected by the rule; and

34 [(iv)] (D) the adoption or modification of agency procedural rules
35 that will minimize the cost or complexity of participation in the rule
36 making.

37 S 10. This act shall take effect on the first of January next succeed-
38 ing the date upon which it shall have become a law, and shall apply to
39 any notice of proposed rule making or notice of revised rule making
40 published on or after such date.