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I N   S E N A T E

March 24, 2016

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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.

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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.