

406--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. GALLIVAN, AVELLA, BONACIC, DeFRANCISCO, FELDER, LARKIN, LAVALLE, MARCHIONE, MURPHY, RANZENHOFER, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- recommitted to the Committee on Commerce, Economic Development and Small Business in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state administrative procedure act, in relation to review of existing rules and rule making procedure

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

1 Section 1. Paragraph (a) of subdivision 1 and subdivisions 2 and 4 of
2 section 207 of the state administrative procedure act, paragraph (a) of
3 subdivision 1 and subdivision 2 as amended by chapter 462 of the laws of
4 2012 and subdivision 4 as added by chapter 262 of the laws of 1996, are
5 amended to read as follows:

6 (a) Unless the contrary is specifically provided by paragraph (b) of
7 this subdivision or by another law, any rule which is adopted on or
8 after the effective date of this section shall be reviewed in the calen-
9 dar year specified in the notice of adoption for the rule, provided that
10 at a minimum every rule shall be initially reviewed no later than in the
11 fifth calendar year after the year in which the rule is adopted, and,
12 thereafter, every rule shall be re-reviewed at five-year intervals. ALL
13 RULES ADOPTED BEFORE THE EFFECTIVE DATE OF THIS SECTION SHALL BE
14 INITIALLY REVIEWED NO LATER THAN IN THE TWO THOUSAND TWENTY-ONE CALENDAR
15 YEAR, AND, THEREAFTER, EVERY RULE SHALL BE RE-REVIEWED AT FIVE-YEAR
16 INTERVALS.

17 2. An agency shall submit for publication in the regulatory agenda
18 published in January pursuant to section two hundred two-d of this arti-

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

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1 cle a list of the rules which must be reviewed pursuant to subdivision
2 one of this section in the ensuing calendar year. In addition to the
3 information required by such section two hundred two-d, for each rule so
4 listed the agency shall provide an analysis of [the need for and legal
5 basis of such rule,]: (A) THE NEED FOR SUCH RULE, (B) THE LEGAL BASIS
6 OF SUCH RULE, (C) WHETHER THE RULE IS DUPLICATIVE OF ANY OTHER RULE OR
7 REGULATION, (D) WHETHER THE RULE REFLECTS OR UTILIZES CURRENT TECHNOLO-
8 GY, AND (E) WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRACTICES AND
9 STANDARDS. THE AGENCY shall invite public comment on the continuation or
10 modification of the rule and shall indicate the last date for submission
11 of comments which shall be not less than forty-five days from the date
12 of publication. An agency shall also publish the list of rules that must
13 be reviewed pursuant to this section on its website. If the original
14 notice of proposed rule making for a listed rule required the prepara-
15 tion of a regulatory flexibility analysis, a rural area flexibility
16 analysis, or a job impact statement, the agency shall so indicate and
17 shall provide outreach as appropriate to potentially affected small
18 businesses, local governments and public and private interests in rural
19 areas that the rule is being reviewed. Such outreach may include solici-
20 tation of input through electronic means or through any of the activ-
21 ities listed in subdivision six of section two hundred two-b and subdi-
22 vision seven of section two hundred two-bb of this article.

23 4. If an agency determines that a rule subject to the provisions of
24 this section should continue without modification, it shall publish a
25 notice to that effect, which shall identify the rule and the statutory
26 authority for the rule, and include a statement setting forth a reasoned
27 justification for continuation of the rule without modification and an
28 assessment of public comments, prepared in accordance with subdivision
29 four-a of section two hundred two of this [chapter] ARTICLE, which were
30 submitted to the agency in response to the listing of the rule in the
31 regulatory agenda, AND A SUMMARY OF THE ANALYSIS REQUIRED UNDER SUBDIVI-
32 SION TWO OF THIS SECTION.

33 S 2. Paragraph (f) of subdivision 1 of section 202 of the state admin-
34 istrative procedure act, as amended by chapter 610 of the laws of 1987,
35 subparagraph (iv) as amended by chapter 703 of the laws of 1991, subpar-
36 agraph (v) as amended by chapter 429 of the laws of 2003, subparagraph
37 (vii) as amended by chapter 171 of the laws of 1994 and subparagraph
38 (viii) as amended by chapter 229 of the laws of 2000, is amended to read
39 as follows:

40 (f) The notice of proposed rule making shall:

41 (i) cite the statutory authority, including particular sections and
42 subdivisions, under which the rule is proposed for adoption;

43 (ii) give the date, time and place of any public hearing or hearings
44 which are scheduled;

45 (iii) state whether or not the place of any public hearing or hearings
46 shall be reasonably accessible to persons with a mobility impairment;
47 for purposes hereof, "persons with a mobility impairment" shall mean
48 those persons with a physical impairment which is permanent and severely
49 limits that person's mobility, or a person who is unable to ambulate
50 without the aid of a wheelchair or other prosthetic device; provided,
51 however, that the failure of such accessibility in accordance herewith,
52 upon diligent effort to have provided same, shall have no effect upon
53 any actions or proceedings taken at any such subject hearings;

54 (iv) include a statement that interpreter services shall be made
55 available to deaf persons, at no charge, upon written request to such
56 agency representative as shall be designated pursuant to subparagraph

1 [(viii)] (IX) of this paragraph within a reasonable time prior to any
2 scheduled public hearing or hearings. If interpreter services are
3 requested, the agency conducting the rule making proceeding in all
4 instances shall appoint a qualified interpreter who is certified by a
5 recognized national or New York state credentialing authority to inter-
6 pret the proceedings to, and the testimony of, such deaf person. Such
7 agency shall determine a reasonable fee for all such interpreting
8 services which shall be a charge upon the agency;

9 (v) contain the complete text of the proposed rule, provided, however,
10 if such text exceeds two thousand words, the notice shall contain only a
11 description of the subject, purpose and substance of such rule in less
12 than two thousand words and shall identify the address of the website,
13 if any, on which the full text has been posted;

14 (vi) INCLUDE THE NEED FOR SUCH RULE, WHETHER THE RULE IS DUPLICATIVE
15 OF ANY OTHER RULE OR REGULATION, WHETHER THE RULE REFLECTS OR UTILIZES
16 CURRENT TECHNOLOGY, AND WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRAC-
17 TICES AND STANDARDS;

18 (VII) include a regulatory impact statement prepared pursuant to
19 section two hundred two-a of this [chapter] ARTICLE, provided, however,
20 if such statement exceeds two thousand words, the notice shall include
21 only a summary of such statement in less than two thousand words;

22 [(vii)] (VIII) include a regulatory flexibility analysis and a rural
23 area flexibility analysis prepared pursuant to sections two hundred
24 two-b and two hundred two-bb of this [chapter] ARTICLE, provided, howev-
25 er, if an analysis exceeds two thousand words, the notice shall include
26 only a summary of such analysis in less than two thousand words;

27 [(viii)] (IX) give the name, public office address and telephone
28 number of an agency representative, who is knowledgeable on the proposed
29 rule, from whom the complete text of such rule and any scientific or
30 statistical study, report and analysis that served as the basis for the
31 rule and any supporting data, the regulatory impact statement, the regu-
32 latory flexibility analysis, and the rural area flexibility analysis may
33 be obtained; from whom information about any public hearing may be
34 obtained; and to whom written data, views and arguments may be submit-
35 ted; and

36 [(ix)] (X) include any additional matter required by statute.

37 S 3. Paragraph (c) of subdivision 5 of section 202 of the state admin-
38 istrative procedure act, as amended by chapter 610 of the laws of 1987,
39 subparagraph (iii) as amended, subparagraph (ix) as added and subpara-
40 graph (x) as renumbered by chapter 850 of the laws of 1990 and subpara-
41 graphs (vi) and (viii) as amended by chapter 171 of the laws of 1994, is
42 amended to read as follows:

43 (c) The notice of adoption shall:

44 (i) cite the statutory authority, including particular sections and
45 subdivisions, under which the rule is adopted;

46 (ii) contain the complete text of the rule as adopted, provided,
47 however, if such text exceeds two thousand words, the notice shall
48 contain only a description of the subject, purpose and substance of such
49 rule in less than two thousand words;

50 (iii) state whether there have been any changes in the text of the
51 rule as adopted when compared with the text of the latest published
52 version of the proposed rule, and if such changes have occurred, cite
53 the particular sections, subdivisions and paragraphs so changed;

54 (iv) give the effective date of the rule;

55 (v) INCLUDE THE NEED FOR SUCH RULE, WHETHER THE RULE IS DUPLICATIVE OF
56 ANY OTHER RULE OR REGULATION, WHETHER THE RULE REFLECTS OR UTILIZES

1 CURRENT TECHNOLOGY, AND WHETHER THE RULE REFLECTS CURRENT INDUSTRY PRAC-
2 TICES AND STANDARDS;

3 (VI) include a revised regulatory impact statement, when required by
4 the provisions of [subparagraph (ii) of] paragraph [(a)] (II) of subdivi-
5 sion six of section two hundred two-a of this [chapter] ARTICLE,
6 provided, however, if such statement exceeds two thousand words, the
7 notice shall include only a summary of such statement in less than two
8 thousand words;

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

16 [(vii)] (VIII) include the assessment of public comment, prepared
17 pursuant to paragraph (b) of this subdivision, provided, however, if
18 such assessment exceeds two thousand words, the notice shall include
19 only a summary of such assessment in less than two thousand words;

20 [(viii)] (IX) give the name, public office address and telephone
21 number of an agency representative from whom the complete text of the
22 rule and any revised regulatory impact statement, revised regulatory
23 flexibility analysis, rural area flexibility analysis or assessment of
24 comments may be obtained; [and

25 (ix)] (X) state whether any notice of revised rule making had been
26 submitted for such rule making and specify the date or dates that such
27 notice or notices appeared in the state register; and

28 [(x)] (XI) include any additional matter required by statute.

29 S 4. This act shall take effect immediately.