

# STATE OF NEW YORK

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5982--A

Cal. No. 293

2017-2018 Regular Sessions

## IN SENATE

May 9, 2017

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Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the legislative law, the state administrative procedure act and the executive law, in relation to the filing of objections to agency rules by the administrative regulations review commission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 87 of the legislative law is amended by adding a  
2 new subdivision 4 to read as follows:

3 4. The commission shall have the power to object to all, or a portion  
4 of any administrative rule or regulation that has been adopted or that  
5 has been proposed by an agency pursuant to the rule making procedures of  
6 section two hundred two of the state administrative procedure act.  
7 Should in the performance of its duties, a majority of members of the  
8 commission find that an administrative rule or a portion of an adminis-  
9 trative rule is (i) arbitrary, capricious, an abuse of agency  
10 discretion, or is otherwise not in accordance with law; or (ii) is  
11 contrary to constitutional right, power, privilege or immunity; or (iii)  
12 is inconsistent with, or in excess of statutory jurisdiction, authority,  
13 or limitations, or is short of statutory right; or (iv) has been adopted  
14 or has been proposed without substantial observance of the procedures  
15 required by law; the commission may, in writing, notify the agency of  
16 their objection and reason or reasons for their objection. A written  
17 letter of objection must be mailed or delivered to the agency responsi-  
18 ble for the adoption or proposal of the objected to rule. A valid letter  
19 of objection must be signed by each member of the commission that has

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

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1 decided to object to the rule in its entirety, or in part. The commis-  
2 sion must also file a certified copy of the letter of objection with the  
3 department of state, division of administrative rules.

4 § 2. Paragraph (a) of subdivision 9 of section 202 of the state admin-  
5 istrative procedure act is amended by adding three new subparagraphs  
6 (vi), (vii) and (viii) to read as follows:

7 (vi) following receipt of a valid letter of objection that is written  
8 and signed by a majority of the members of the administrative regu-  
9 lations review commission, publish such letter in the next issue of the  
10 state register.

11 (vii) following receipt of a valid response to a letter of objection  
12 written and signed by the commissioner, director or counsel of that  
13 agency, publish such written response in the next issue of the state  
14 register.

15 (viii) reject any letter of objection or any written response to a  
16 letter of objection that is deficient for lacking at least a minimal  
17 explanation of an objectionable issue, or the requisite signature or  
18 signatures, and give prompt notice of deficiency to the administrative  
19 regulations review commission or agency.

20 § 3. Section 202 of the state administrative procedure act is amended  
21 by adding a new subdivision 10 to read as follows:

22 10. Objection. (a) If in the performance of their duties, as specified  
23 in subdivision one of section eighty-seven of the legislative law, a  
24 majority of the members of the administrative regulations review commis-  
25 sion decide to object to an administrative rule or a portion of an  
26 administrative rule that has been adopted or that has been proposed, an  
27 objection must be made in accordance with the procedures specified in  
28 subdivision four of section eighty-seven of the legislative law.

29 (b) An agency that receives a letter of objection pertaining to a rule  
30 that has been proposed, but has not been adopted must read and consider  
31 the objection and issue a written response prior to adoption of the  
32 objected to rule. Agencies must provide written responses to letters of  
33 objection to the department of state, division of administrative rules  
34 for publication in the state register. A written response to a letter of  
35 objection must state that the agency has either (i) agreed to change the  
36 rule in whole, or in part in accordance with the objection and will  
37 publish the requisite notice of revised rule making, or (ii) needs addi-  
38 tional time to consider the objection and possible changes and will  
39 publish a notice of withdrawal, or (iii) that the agency has decided  
40 against making any changes to the proposed rule. Written responses to  
41 letters of objection must state that the objection was read and consid-  
42 ered and include at least a brief explanation of the agency's rationale  
43 for either agreeing with the objection, or requiring additional time for  
44 consideration, or for disagreeing with the objection. Any agency deci-  
45 sion to stop, extend, or proceed with promulgation of all or part of an  
46 objected to rule, must be done in accordance with the rule making  
47 requirements of this section.

48 (c) An agency that receives a letter of objection pertaining to all or  
49 part of a rule that has been adopted must read and consider the  
50 objection and issue a written response within forty-five days of receiv-  
51 ing the letter of objection. Agencies must provide written responses to  
52 letters of objection to the administrative regulations review commission  
53 as well as a certified copy of any such response to the department of  
54 state, division of administrative rules for publication in the state  
55 register. A written response to a letter of objection must state that  
56 the agency either (i) agrees to change the rule in whole, or in part in

1 accordance with the objection and will publish a notice of proposed rule  
2 making needed to promulgate a new corrected rule, or (ii) needs addi-  
3 tional time to consider the objection and possible changes, or (iii)  
4 that the agency has decided against making any changes to the rule.  
5 Written responses to letters of objection must acknowledge that the  
6 objection was read and considered and include at least a brief explana-  
7 tion of the agency's decision to agree with the objection, or to require  
8 additional time for consideration of the objection, or to disagree with  
9 the objection. Should an agency decide that additional time is needed to  
10 consider the objection as well as possible solutions, an agency will be  
11 provided up to an additional forty-five days to provide a written  
12 response to the objection.

13 (d) An agency will not be compelled by the administrative regulations  
14 review commission to change an adopted or proposed rule in response to a  
15 letter of objection; however refusal to do so, can be used as evidence  
16 by a petitioner in action challenging an administrative rule or a  
17 portion of an administrative rule in an adjudicatory hearing pursuant to  
18 article three of this chapter, or an action for declaratory judgment  
19 pursuant to section two hundred five of this article, or in a proceeding  
20 made against an agency pursuant to article seventy-eight of the civil  
21 practice law and rules.

22 § 4. Section 102 of the executive law is amended by adding a new  
23 subdivision 6 to read as follows:

24 6. All letters of objection that state at least a brief explanation of  
25 an objectionable issue pertaining to an adopted or a proposed adminis-  
26 trative rule in its entirety, or in part, that are written and signed by  
27 a majority of the members of the administrative regulations review  
28 commission; as well as any written response to a letter of objection  
29 that includes at least a brief response to the objection and the signa-  
30 ture of the commissioner, director or counsel of a state agency must be  
31 included in the official compilation of codes, rules and regulations of  
32 the state of New York. All such letters of objection and written  
33 responses to objections shall be made available to members of the public  
34 and shall be included within any published unofficial compilations of  
35 the codes, rules and regulations of the state of New York, including the  
36 unofficial version that is linked to on the department of state website.  
37 Letters of objection and written agency responses to objections shall be  
38 received, recorded and compiled consistent with all other requirements  
39 of this section and sections one hundred one-a, one hundred one-b, one  
40 hundred three, one hundred four, one hundred five, one hundred six and  
41 one hundred six-a of this article.

42 § 5. This act shall take effect immediately.