STATE OF NEW YORK

6095

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law and the state administrative procedure act, in relation to providing the administrative regulations review commission with the ability to delay the adoption of proposed administrative rules

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

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

4. The commission shall have the power to delay the adoption of a proposed administrative rule. Should in the performance of its duties, a majority of the members of the commission agree that a proposed administrative rule raises one or more questions or concerns in relation to any of the four issues for consideration that are specified in subdivision one of this section, the commission may, in writing, notify the agency responsible for the proposed rule that the commission has decided to delay the adoption of the rule by ninety days. A written letter to delay adoption of a proposed rule must be mailed or delivered to the agency that proposed the rule at issue. A valid letter to delay adoption of a rule must be signed by each member of the commission that has agreed to delay the adoption and must include at least a brief explanation of the commission's one or more questions or concerns regarding the proposed rule. The commission must also file a certified copy of the letter to delay adoption of a rule with the department of state, division of administrative rules.

§ 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 9 of section 202 of the state administrative procedure act, subparagraph (iv) as amended and subparagraph (v) as added by chapter 490 of the laws of

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

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2016, are amended and three new subparagraphs (vi), (vii) and (viii) are added to read as follows:

(iv) publish all notices and statements, required by this section and section two hundred one-a of this chapter, in the state register as soon as practicable; [~~and~~]

(v) prescribed guidance, developed in consultation with the office of information technology services, for online posting of text and information pursuant to this section[~~.~~]**;**

(vi) following the receipt of a certified copy of a valid letter to delay adoption of a rule, publish such a letter in the next issue of the state register;

(vii) publish a clear and conspicuous notice of delay, which shall state that the rule making process for the proposed rule will be delayed ninety days; such notices shall be published to accompany related letters to delay the adoption of a rule in the state register; and

(viii) reject any letter to delay adoption of a rule that is deficient for lacking at least a minimal explanation of the questions or concerns pertaining to the proposed rule, or the requisite signatures and give prompt notice of the deficiency to the administrative regulations review commission.

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

10. Delay adoption of a proposed rule. (a) If in the performance of their duties, as specified in subdivision one of section eighty-seven of the legislative law, a majority of the members of the administrative regulations review commission agree that a proposed administrative rule raises one or more questions or concerns in relation to any of the four issues for consideration that are specified in subdivision one of section eighty-seven of the legislative law, the commission may, delay the adoption of such a rule by ninety days, pursuant to the requirements of subdivision four of section eighty-seven of the legislative law.

(b) The ninety day period to delay rule making shall begin on the date that the notice of delay is published in the state register and shall end ninety days following the publication of the notice of delay.

(c) If a ninety day period of delay begins during the public comment period for a proposed rule, the agency responsible for the proposed rule will be required to consider all public comments received during that period of delay.

(d) Any agency that receives a letter to delay adoption of a rule shall consider every question or concern raised by the administrative regulations review commission within that letter. Agencies must also consider proposing alternative means in order to address the one or more questions or concerns that is stated in the letter to delay adoption of a rule.

(e) Following consideration of all questions or concerns, as well as alternatives, agencies shall be allowed to withdraw or revise a proposed rule during or after the ninety day period of delay has ended, pursuant to the rule making requirements of this section.

(f) No agency shall be compelled to change a proposed rule in response to a letter to delay adoption of a rule. However, any agency that receives a letter to delay adoption of a rule must at least respond to each specific question or concern raised in that letter, within the assessment of public comment made pursuant to the notice of adoption requirements of paragraph (b) of subdivision five of this section.

(g) The administrative regulations review commission will have no ability to delay a rule that is adopted on an emergency basis pursuant to subdivision six of this section.

§ 4. This act shall take effect immediately.