

# STATE OF NEW YORK

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3751--A

Cal. No. 100

2017-2018 Regular Sessions

## IN SENATE

January 26, 2017

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Introduced by Sens. MURPHY, PHILLIPS -- 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 -- 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 state administrative procedure act, in relation to improving evaluations of the potential impact of rules on jobs and employment opportunities

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

1 Section 1. Section 201-a of the state administrative procedure act, as  
2 added by chapter 189 of the laws of 1996, paragraph (g) of subdivision 2  
3 as amended by chapter 304 of the laws of 2016, is amended to read as  
4 follows:

5 § 201-a. Job impact. 1. In developing a rule, an agency shall strive  
6 to accomplish the objectives of applicable statutes in a manner which  
7 minimizes any unnecessary adverse impacts on existing jobs and promotes  
8 the development of new employment opportunities, including opportunities  
9 for self-employment, for the residents of the state.

10 2. Before proposing a rule for adoption or adopting a rule on an emer-  
11 gency basis, an agency shall evaluate the potential impact of the rule  
12 on jobs and employment opportunities.

13 (a) When it is apparent from the nature and purpose of the rule that  
14 it will not have a substantial adverse impact on jobs and employment  
15 opportunities, the agency shall include in the notice of proposed rule  
16 making or the notice of emergency adoption a statement that the agency  
17 has determined that the rule will not have a substantial adverse impact  
18 on jobs and employment opportunities; provided, however, that, where

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

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1 appropriate, such statement shall indicate that the agency has deter-  
2 mined the rule will have a positive impact on jobs and employment oppor-  
3 tunities, or will have no impact on jobs and employment opportunities.  
4 Except where it is evident from the subject matter of the rule that the  
5 rule could only have a positive impact or no impact on jobs and employ-  
6 ment opportunities, the agency shall include in the statement prepared  
7 pursuant to this paragraph a summary of the information and methodology  
8 underlying its determination.

9 (b) When it is apparent from the nature and purpose of the rule that  
10 it may have a substantial adverse impact on jobs or employment opportu-  
11 nities, the agency shall issue a job impact statement which contains  
12 information on:

13 (i) the nature of the impact the rule will have on jobs and employment  
14 opportunities;

15 (ii) the categories of jobs or employment opportunities affected by  
16 the rule;

17 (iii) the approximate number of jobs or employment opportunities  
18 affected in each category;

19 (iv) any region of the state where the rule would have a dispropor-  
20 tionate adverse impact on jobs or employment opportunities; and

21 (v) any measures which the agency [~~has taken~~] or other state agencies  
22 have taken or could take to minimize any unnecessary adverse impacts on  
23 existing jobs and to promote the development of new employment opportu-  
24 nities.

25 (c) When the information available to an agency is insufficient to  
26 enable it to determine whether a rule will have a substantial adverse  
27 impact on jobs or employment opportunities, or to prepare a job impact  
28 statement pursuant to paragraph (b) of this subdivision, the agency  
29 shall issue a statement indicating the information which it needs to  
30 complete a job impact statement and requesting the assistance of other  
31 state agencies and the public in obtaining such information.

32 (d) An agency shall issue a revised job impact statement when:

33 (i) [~~the~~] it is necessary to correct or supplement information  
34 presented in the previous statement [~~is~~] that was inadequate or incom-  
35 plete;

36 (ii) the proposed rule contains any substantial revisions which neces-  
37 sitate that such statement be modified; or

38 (iii) the agency has issued a statement pursuant to paragraph (c) of  
39 this subdivision, and has received information from other state agencies  
40 or the public which enable it to provide a more complete evaluation of  
41 the potential impact of the rule on jobs and employment opportunities.

42 (e) If, after requesting the assistance of other state agencies and  
43 the public pursuant to paragraph (c) of this subdivision, an agency is  
44 still unable to determine whether the rule will have a substantial  
45 adverse impact on jobs and employment opportunities, it may adopt the  
46 rule. When adopting a rule pursuant to this paragraph, the agency shall  
47 issue a revised job impact statement which includes information on the  
48 measures the agency took to evaluate the potential impact of the rule on  
49 jobs and employment opportunities. No rule may be adopted pursuant to  
50 this paragraph if it is the subject of a statement of concurrence pursu-  
51 ant to subdivision three of this section until the requirements of  
52 subdivision three of this section have been met.

53 (f) When adopting a rule on an emergency basis, an agency may defer  
54 the issuance of any statement pursuant to this section, provided that  
55 the statement is published in the state register within thirty days of  
56 the effective date of the emergency rule.

1 (g) When any statement issued pursuant to this section exceeds two  
2 thousand words, the agency shall prepare a summary of such statement in  
3 less than two thousand words for publication in the state register in  
4 which it shall identify the website of the agency, or of another state  
5 entity, on which the full text of the statement has been posted.

6 (h) An agency may consider a series of closely related and simultane-  
7 ously proposed rules as one rule for the purpose of submitting a consol-  
8 idated job impact statement.

9 (i) Where a rule would have a measurable impact on opportunities for  
10 self-employment, the agency shall include a discussion of such impact in  
11 any statement prepared pursuant to this section.

12 (j) An agency shall make available the methodology and data or data  
13 sources used to prepare any statement issued pursuant to paragraph (b)  
14 of subdivision two of this section.

15 3. (a) The commissioner of labor and the commissioner of economic  
16 development may review any statement issued pursuant to this section,  
17 and may consult informally with any agency preparing such a statement  
18 and advise it on the potential impact of a rule on jobs and employment  
19 opportunities.

20 (b) When the commissioner of labor and the commissioner of economic  
21 development concur in a determination that additional evaluation of the  
22 potential impact of a proposed rule on jobs and employment opportunities  
23 is needed to assist in the minimization of any unnecessary adverse  
24 impacts of the rule on jobs or employment opportunities, they shall  
25 issue a statement of concurrence and transmit a copy of such statement  
26 to the agency and to the secretary of state for publication in the state  
27 register. The statement of concurrence shall:

28 (i) identify each proposed rule which is the subject of the statement  
29 of concurrence;

30 (ii) set forth the basis for the determination that additional evalu-  
31 ation of the potential impact of the rule is needed to assist in the  
32 minimization of any unnecessary adverse impacts on jobs or employment  
33 opportunities, and, where relevant, identify each aspect of the job  
34 impact statement which is incomplete or deficient;

35 (iii) include appropriate recommendations for additional evaluation of  
36 the impact of the rule or of any measures which the agency should  
37 consider to minimize any adverse impacts of the rule on jobs or employ-  
38 ment opportunities; and

39 (iv) specify a time period of not more than ninety days for the agency  
40 to perform such additional evaluation or consider such recommendations.

41 (c) An agency shall strive to perform such additional evaluation or  
42 consider such measures as are recommended in a statement of concurrence  
43 within the time period set forth therein. No agency shall adopt the rule  
44 which is the subject of the statement of concurrence until:

45 (i) the agency has performed the additional evaluation or considered  
46 the measures recommended in the statement of concurrence, and has issued  
47 a revised job impact statement, which is acceptable to the commissioners  
48 of economic development and labor, setting forth any changes which it  
49 will make to the rule to minimize any adverse impacts on jobs or employ-  
50 ment opportunities; or

51 (ii) after the expiration of the time period set forth in the state-  
52 ment of concurrence.

53 (d) The statement of concurrence shall be considered public comment  
54 for the purpose of this article and shall be summarized and analyzed in  
55 any assessment of public comment.

1 4. Nothing in this section shall be construed as preventing an agency  
2 from adopting a rule on an emergency basis at any time.

3 5. Copies of any statement prepared pursuant to this section, includ-  
4 ing any statement of concurrence, shall be distributed as provided in  
5 subdivision six-a of section two hundred two of this article.

6 6. For the purposes of this section:

7 (a) "rule" shall mean any rule proposed or any rule adopted on an  
8 emergency basis pursuant to this article, except for:

9 (i) any rule defined in subparagraph (ii) of paragraph (a) of subdivi-  
10 sion two of section one hundred two of this ~~[article]~~ chapter;

11 (ii) any rule defined in ~~[subdivisions ten]~~ subdivision eleven ~~[or~~  
12 ~~twelve]~~ of section one hundred two of this ~~[article]~~ chapter; or

13 (iii) any rule proposed or adopted by the state comptroller or the  
14 attorney general.

15 (b) "impact on jobs or employment opportunities" shall mean a change  
16 in the number of jobs and employment opportunities, including opportu-  
17 nities for self-employment, primarily attributable to the adoption of a  
18 rule, which would otherwise be available to the residents of the state  
19 in the two-year period commencing on the date the rule takes effect.

20 "Impact on jobs or employment opportunities" shall also mean a signif-  
21 icant change in employment status, including whether adoption of a rule  
22 would have a significant impact on average wage levels, hours and/or  
23 duration of employment.

24 (c) "substantial adverse impact on jobs or employment opportunities"  
25 shall mean a decrease of more than one hundred full-time annual jobs and  
26 employment opportunities, including opportunities for self-employment,  
27 in the state, or the equivalent in part-time or seasonal employment,  
28 which would otherwise be available to the residents of the state in the  
29 two-year period commencing on the date the rule takes effect. "Substan-  
30 tial adverse impact on jobs or employment opportunities" shall also mean  
31 any changes in the status of such jobs and employment opportunities,  
32 including but not limited to any significant net reductions in average  
33 wage levels, hours and/or duration of employment, that would represent a  
34 substantial adverse impact on incomes or economic security.

35 § 2. Subparagraphs (vi) and (viii) of paragraph (f) of subdivision 1  
36 of section 202 of the state administrative procedure act, subparagraph  
37 (vi) as amended by chapter 304 of the laws of 2016 and subparagraph  
38 (viii) as amended by chapter 229 of the laws of 2000, are amended to  
39 read as follows:

40 (vi) include a regulatory impact statement prepared pursuant to  
41 section two hundred two-a of this article and any job impact statement  
42 prepared pursuant to section two hundred one-a of this article,  
43 provided, however, if either such statement exceeds two thousand words,  
44 the notice shall include only a summary of such statement in less than  
45 two thousand words and the full text of such statement shall be posted  
46 on a website maintained by the agency or another state entity until such  
47 statement is revised or the proposed rule is adopted or withdrawn or  
48 expires pursuant to this article;

49 (viii) give the name, public office address and telephone number of an  
50 agency representative, who is knowledgeable on the proposed rule, from  
51 whom the complete text of such rule and any scientific or statistical  
52 study, report and analysis that served as the basis for the rule and any  
53 supporting data, the regulatory impact statement, the job impact state-  
54 ment, the regulatory flexibility analysis, and the rural area flexibili-  
55 ty analysis may be obtained; from whom information about any public

1 hearing may be obtained; and to whom written data, views and arguments  
2 may be submitted; and

3 § 3. Subparagraphs (v) and (vii) of paragraph (c) of subdivision 4-a  
4 of section 202 of the state administrative procedure act, subparagraph  
5 (v) as amended by chapter 304 of the laws of 2016, and subparagraph  
6 (vii) as amended by chapter 171 of the laws of 1994, are amended to read  
7 as follows:

8 (v) include a revised regulatory impact statement, when required by  
9 the provisions of paragraph (b) of subdivision six of section two  
10 hundred two-a of this article and any revised job impact statement  
11 prepared pursuant to section two hundred one-a of this article,  
12 provided, however, if either such statement exceeds two thousand words,  
13 the notice shall include only a summary of such statement in less than  
14 two thousand words and shall identify the website of the agency, or of  
15 another state entity, on which the complete revised text has been post-  
16 ed;

17 (vii) give the name, address and telephone number of an agency repre-  
18 sentative knowledgeable on the rule, from whom the complete revised text  
19 of such rule, any revised regulatory impact statement, any revised job  
20 impact statement, any revised regulatory flexibility analysis and any  
21 revised rural area flexibility analysis may be obtained; from whom  
22 information about any additional public hearing may be obtained; and to  
23 whom written data, views and arguments may be submitted;

24 § 4. Subparagraphs (v) and (viii) of paragraph (c) of subdivision 5 of  
25 section 202 of the state administrative procedure act, subparagraph (v)  
26 as amended by chapter 304 of the laws of 2016 and subparagraph (viii) as  
27 amended by chapter 171 of the laws of 1994, are amended to read as  
28 follows:

29 (v) include a revised regulatory impact statement, when required by  
30 the provisions of paragraph (b) of subdivision six of section two  
31 hundred two-a of this article and any revised job impact statement  
32 prepared pursuant to section two hundred one-a of this article,  
33 provided, however, if either such statement exceeds two thousand words,  
34 the notice shall include only a summary of such statement in less than  
35 two thousand words;

36 (viii) give the name, public office address and telephone number of an  
37 agency representative from whom the complete text of the rule and any  
38 revised regulatory impact statement, revised job impact statement,  
39 revised regulatory flexibility analysis, revised rural area flexibility  
40 analysis or assessment of comments may be obtained; and

41 § 5. Subparagraphs (viii) and (x) of paragraph (d) of subdivision 6 of  
42 section 202 of the state administrative procedure act, subparagraph  
43 (viii) as added by chapter 17 of the laws of 1984 and renumbered by  
44 chapter 850 of the laws of 1990 and subparagraph (x) as amended by chap-  
45 ter 171 of the laws of 1994, are amended to read as follows:

46 (viii) include a regulatory impact statement prepared pursuant to  
47 section two hundred two-a of this [~~chapter~~] article and any job impact  
48 statement prepared pursuant to section two hundred one-a of this arti-  
49 cle, or a statement setting forth that the regulatory impact statement  
50 and/or job impact statement will appear in the state register within  
51 thirty days of the effective date of the emergency rule, provided,  
52 however, if [~~either~~] any such statement exceeds two thousand words, the  
53 notice shall include only a summary of such statement in less than two  
54 thousand words;

55 (x) give the name, public office address and telephone number of an  
56 agency representative, knowledgeable on the rule, from whom a complete

1 text of such rule, the regulatory impact statement, the job impact  
2 statement, regulatory flexibility analysis, and the rural area flexibil-  
3 ity analysis may be obtained; from whom information about any public  
4 hearing may be obtained; and to whom written data, views and arguments  
5 may be submitted; and

6 § 6. Paragraphs (a) and (b) of subdivision 6-a of section 202 of the  
7 state administrative procedure act, as amended by chapter 295 of the  
8 laws of 2017, are amended to read as follows:

9 (a) An agency shall transmit a copy of any rule making notice prepared  
10 pursuant to this article to the governor, the temporary president of the  
11 senate, the speaker of the assembly and the administrative regulations  
12 review commission at the time such notice is submitted to the secretary  
13 of state for publication in the state register. Such transmittal shall  
14 include the complete rule text, regulatory impact statement, job impact  
15 statement, regulatory flexibility analysis, rural area flexibility anal-  
16 ysis, or revisions thereof, and any other information submitted to the  
17 secretary of state pursuant to this article.

18 (b) An agency shall make a copy of the complete text of any proposed,  
19 adopted or emergency rule, regulatory impact statement, job impact  
20 statement, regulatory flexibility analysis, rural area flexibility anal-  
21 ysis, or revisions thereof available to the public at the time such  
22 documents are submitted to the secretary of state for publication in the  
23 state register and shall send to any person a copy of such text upon  
24 written or electronic request.

25 § 7. This act shall take effect on the first of January next succeed-  
26 ing the date on which it shall have become a law, and shall apply to any  
27 rule first proposed or adopted on an emergency basis on or after such  
28 date.