

STATE OF NEW YORK

2839

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sen. KAPLAN -- 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 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
19 appropriate, such statement shall indicate that the agency has deter-
20 mined the rule will have a positive impact on jobs and employment oppor-
21 tunities, or will have no impact on jobs and employment opportunities.
22 Except where it is evident from the subject matter of the rule that the
23 rule could only have a positive impact or no impact on jobs and employ-

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

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1 ment opportunities, the agency shall include in the statement prepared
2 pursuant to this paragraph a summary of the information and methodology
3 underlying its determination.

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

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

10 (ii) the categories of jobs or employment opportunities affected by
11 the rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (j) An agency shall make available the methodology and data or data
8 sources used to prepare any statement issued pursuant to paragraph (b)
9 of this subdivision.

10 3. (a) The commissioner of labor and the commissioner of economic
11 development may review any statement issued pursuant to this section,
12 and may consult informally with any agency preparing such a statement
13 and advise it on the potential impact of a rule on jobs and employment
14 opportunities.

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

23 (i) identify each proposed rule which is the subject of the statement
24 of concurrence;

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

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

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

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

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

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

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

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

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

56 6. For the purposes of this section:

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

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

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

7 (iii) any rule proposed or adopted by the state comptroller or the
8 attorney general.

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

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

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

29 § 2. Subparagraphs (vi) and (viii) of paragraph (f) of subdivision 1
30 of section 202 of the state administrative procedure act, subparagraph
31 (vi) as amended by chapter 304 of the laws of 2016 and subparagraph
32 (viii) as amended by chapter 229 of the laws of 2000, are amended to
33 read as follows:

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

43 (viii) give the name, public office address and telephone number of an
44 agency representative, who is knowledgeable on the proposed rule, from
45 whom the complete text of such rule and any scientific or statistical
46 study, report and analysis that served as the basis for the rule and any
47 supporting data, the regulatory impact statement, the job impact state-
48 ment, the regulatory flexibility analysis, and the rural area flexibili-
49 ty analysis may be obtained; from whom information about any public
50 hearing may be obtained; and to whom written data, views and arguments
51 may be submitted; and

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

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

10 (vii) give the name, address and telephone number of an agency repre-
11 sentative knowledgeable on the rule, from whom the complete revised text
12 of such rule, any revised regulatory impact statement, any revised job
13 impact statement, any revised regulatory flexibility analysis and any
14 revised rural area flexibility analysis may be obtained; from whom
15 information about any additional public hearing may be obtained; and to
16 whom written data, views and arguments may be submitted;

17 § 4. Subparagraphs (v) and (viii) of paragraph (c) of subdivision 5 of
18 section 202 of the state administrative procedure act, subparagraph (v)
19 as amended by chapter 304 of the laws of 2016 and subparagraph (viii) as
20 amended by chapter 171 of the laws of 1994, are amended to read as
21 follows:

22 (v) include a revised regulatory impact statement, when required by
23 the provisions of paragraph (b) of subdivision six of section two
24 hundred two-a of this article and any revised job impact statement
25 prepared pursuant to section two hundred one-a of this article,
26 provided, however, if either such statement exceeds two thousand words,
27 the notice shall include only a summary of such statement in less than
28 two thousand words;

29 (viii) give the name, public office address and telephone number of an
30 agency representative from whom the complete text of the rule and any
31 revised regulatory impact statement, revised job impact statement,
32 revised regulatory flexibility analysis, revised rural area flexibility
33 analysis or assessment of comments may be obtained; and

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

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

48 (x) give the name, public office address and telephone number of an
49 agency representative, knowledgeable on the rule, from whom a complete
50 text of such rule, the regulatory impact statement, the job impact
51 statement, regulatory flexibility analysis, and the rural area flexibil-
52 ity analysis may be obtained; from whom information about any public
53 hearing may be obtained; and to whom written data, views and arguments
54 may be submitted; and

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

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

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

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