STATE OF NEW YORK

2839--A

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sens. KAPLAN, GALLIVAN -- 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 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:

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

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

2. Before proposing a rule for adoption or adopting a rule on an emergency basis, an agency shall evaluate the potential impact of the rule on jobs and employment opportunities.

(a) When it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency shall include in the notice of proposed rule making or the notice of emergency adoption a statement that the agency has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities; provided, however, that, where appropriate, such statement shall indicate that the agency has determined the rule will have a positive impact on jobs and employment oppor-

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

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tunities, or will have no impact on jobs and employment opportunities. Except where it is evident from the subject matter of the rule that the rule could only have a positive impact or no impact on jobs and employment opportunities, the agency shall include in the statement prepared pursuant to this paragraph a summary of the information and methodology underlying its determination.

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

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

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

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

(iv) any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities; and

(v) any measures which the agency [~~has taken~~] **or other state agencies deemed to have a significant impact have taken or could take** to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities.

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

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

(i) [~~the~~] **it is necessary to correct or supplement** information presented in the **previous** statement [~~is~~] **that was** inadequate or incomplete;

(ii) the proposed rule contains any substantial revisions which necessitate that such statement be modified; or

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

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

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

(g) When any statement issued pursuant to this section exceeds two thousand words, the agency shall prepare a summary of such statement in

less than two thousand words for publication in the state register in which it shall identify the website of the agency, or of another state entity, on which the full text of the statement has been posted.

(h) An agency may consider a series of closely related and simultaneously proposed rules as one rule for the purpose of submitting a consolidated job impact statement.

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

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

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

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

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

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

(iii) include appropriate recommendations for additional evaluation of the impact of the rule or of any measures which the agency should consider to minimize any adverse impacts of the rule on jobs or employment opportunities; and

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

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

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

(ii) after the expiration of the time period set forth in the statement of concurrence.

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

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

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

6. For the purposes of this section:

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

(i) any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this [~~article~~] chapter;

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

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

(b) "impact on jobs or employment opportunities" shall mean a change in the number of jobs and employment opportunities, including opportunities for self-employment, primarily attributable to the adoption of a rule, which would otherwise be available to the residents of the state in the two-year period commencing on the date the rule takes effect. "Impact on jobs or employment opportunities" shall also mean a significant change in employment status, including whether adoption of a rule would have a significant impact on average wage levels, hours and/or duration of employment.

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

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

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

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

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

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

(vii) give the name, address and telephone number of an agency representative knowledgeable on the rule, from whom the complete revised text of such rule, any revised regulatory impact statement**, any revised job impact statement,** any revised regulatory flexibility analysis and any revised rural area flexibility analysis may be obtained; from whom information about any additional public hearing may be obtained; and to whom written data, views and arguments may be submitted;

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

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

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

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

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

(x) give the name, public office address and telephone number of an agency representative, knowledgeable on the rule, from whom a complete text of such rule, the regulatory impact statement, **the job impact statement,** regulatory flexibility analysis, and the rural area flexibil-

ity analysis may be obtained; from whom information about any public hearing may be obtained; and to whom written data, views and arguments may be submitted; and

§ 6. Paragraphs (a) and (b) of subdivision 6-a of section 202 of the state administrative procedure act, as amended by chapter 512 of the laws of 2019, are amended to read as follows:

(a) An agency shall transmit a copy of any rule making notice prepared pursuant to this article to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission at the time such notice is submitted to the secretary of state for publication in the state register. Such transmittal shall include the complete rule text, regulatory impact statement, **job impact statement,** regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof, and any other information submitted to the secretary of state pursuant to this article. Furthermore, such transmittal may be completed by electronic means in accordance with article three of the state technology law.

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

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