

# STATE OF NEW YORK

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2842

2019-2020 Regular Sessions

## IN SENATE

January 29, 2019

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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, the executive law and the legislative law, in relation to the transmittal of certain records by electronic means

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

1 Section 1. Paragraph (c) of subdivision 1 of section 202 of the state  
2 administrative procedure act, as added by chapter 17 of the laws of  
3 1984, is amended to read as follows:

4 (c) When appropriate in the judgment of the agency, a notice may also  
5 be published in newspapers of general circulation and in trade, industry  
6 or professional publications as the agency may select, and may be posted  
7 on the agency's internet website, and may be transmitted to newspapers  
8 and trade, industry or professional publications by electronic means in  
9 accordance with article three of the state technology law.

10 § 2. Subdivision 6-a of section 202 of the state administrative proce-  
11 dure act, as added by chapter 850 of the laws of 1990, paragraphs (a),  
12 (b) and (c) as amended by chapter 295 of the laws of 2017, is amended to  
13 read as follows:

14 6-a. Distribution of rule making information. (a) An agency shall  
15 transmit a copy of any rule making notice prepared pursuant to this  
16 article to the governor, the temporary president of the senate, the  
17 speaker of the assembly and the administrative regulations review  
18 commission at the time such notice is submitted to the secretary of  
19 state for publication in the state register. Such transmittal shall  
20 include the complete rule text, regulatory impact statement, regulatory  
21 flexibility analysis, rural area flexibility analysis, or revisions  
22 thereof, and any other information submitted to the secretary of state  
23 pursuant to this article. Furthermore, such transmittal may be completed

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

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1 by electronic means in accordance with article three of the state tech-  
2 nology law.

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

10 (c) An agency shall notify every person who has submitted a written or  
11 electronic request to be notified of all proposed, revised, emergency  
12 and/or adopted rules which may affect such person. The agency may allow  
13 requests for only the rules of particular divisions or programs within  
14 the agency that are of interest to such person. Written requests shall  
15 expire annually on the thirty-first day of December with renewals for  
16 the succeeding year to be accepted on or after December first. Elec-  
17 tronic requests shall not expire, but shall continue until the person  
18 submits a request to discontinue such notification. Notices issued  
19 pursuant to such requests shall be sent to the last address or electron-  
20 ic mail address specified by the person. An agency may charge any person  
21 requesting such notice a fee consisting of the cost of preparation,  
22 handling and postage; provided, however, that no fee shall be charged  
23 for electronic notices. As an alternative to sending a document elec-  
24 tronically, an agency may identify the document and provide a link to  
25 the section of its website containing the full text of such document.

26 § 3. The opening paragraph of subdivision 3 of section 202-bb of the  
27 state administrative procedure act, as added by chapter 171 of the laws  
28 of 1994, is amended to read as follows:

29 In proposing a rule for adoption or in adopting a rule on an emergency  
30 basis, the agency shall issue a rural area flexibility analysis regard-  
31 ing the rule being proposed for adoption or the emergency rule being  
32 adopted. A copy of such analysis and any finding, and reasons for such  
33 finding, pursuant to this section, shall be submitted in writing, and  
34 may be transmitted electronically in accordance with article three of  
35 the state technology law, to the governor, the temporary president of  
36 the senate, the speaker of the assembly, the office for regulatory and  
37 management assistance and the administrative regulations review commis-  
38 sion at the time such analysis is submitted or electronically transmit-  
39 ted to the secretary of state for publication and, upon written or elec-  
40 tronic request, a copy shall be sent or electronically transmitted to  
41 any other person. Each rural area flexibility analysis shall contain:

42 § 4. Paragraph (a) of subdivision 1 of section 202-d of the state  
43 administrative procedure act, as amended by chapter 418 of the laws of  
44 2016, is amended to read as follows:

45 (a) The departments of health, education, environmental conservation,  
46 financial services, labor, agriculture and markets, motor vehicles and  
47 state, the offices of children and family services and temporary and  
48 disability assistance, the division of housing and community renewal,  
49 the state gaming commission, the office of mental health, the office for  
50 people with developmental disabilities and the workers' compensation  
51 board, and any other department or agency specified by the governor or  
52 his or her designee shall, and any other agency may, in its discretion,  
53 submit in writing or electronically in accordance with article three of  
54 the state technology law to the secretary of state, for publication in  
55 any regular issue of the state register published during the month of  
56 January, a regulatory agenda to solicit comments concerning any rule

1 which the agency is considering to propose, but for which no notice of  
2 proposed rule making has been submitted pursuant to subdivision one of  
3 section two hundred two of this article.

4 § 5. The opening paragraph of subdivision 1 of section 202-d of the  
5 state administrative procedure act, as added by chapter 698 of the laws  
6 of 1984, is amended to read as follows:

7 An agency may, in its discretion, submit in writing or electronically  
8 in accordance with article three of the state technology law to the  
9 secretary of state, for publication in the first regular issue of the  
10 state register published during the months of January, May and Septem-  
11 ber, a regulatory agenda to afford the agency an opportunity to solicit  
12 comments concerning any rule which the agency is considering proposing,  
13 but for which no notice of proposed rule making has been submitted  
14 pursuant to subdivision one of section two hundred two of this [~~chapter~~]  
15 article. A regulatory agenda shall be comprised of summaries of such  
16 rules. Each summary shall, in less than two thousand words, contain, in  
17 so far as practicable:

18 § 6. Subdivisions 2 and 3 of section 101-a of the executive law,  
19 subdivision 2 as amended by chapter 455 of the laws of 2017 and subdivi-  
20 sion 3 as amended by chapter 483 of the laws of 1988, are amended to  
21 read as follows:

22 2. Except as provided in subdivision three of this section, at least  
23 sixty days prior to either the adoption of any rule, or, if a public  
24 hearing is required by statute, at least sixty days prior to the first  
25 public hearing on a proposed rule, the agency proposing to take such  
26 action shall send in writing or may transmit electronically in accord-  
27 ance with article three of the state technology law, a notification of  
28 such proposed action to the temporary president of the senate and the  
29 speaker of the assembly. This notification shall: (a) refer to the stat-  
30 utory authority under which the action is proposed, (b) give the time  
31 and place of any public hearing that may be scheduled concerning the  
32 proposed action, or state the manner in which data, views or arguments  
33 may be submitted to the agency concerning the proposed action, (c)  
34 contain a copy of the complete text of the proposed rule, and (d)  
35 contain a fiscal statement setting forth the fiscal consequences of the  
36 proposed action on the state and its local governments.

37 3. If the agency finds that it is necessary for the preservation of  
38 the public health, safety or general welfare to dispense with the  
39 requirements of subdivision two of this section, the agency may dispense  
40 with such requirements and adopt the rule, as an emergency measure.  
41 Within five days of the filing of such emergency measure in the office  
42 of the department of state, the agency taking such action shall send or  
43 transmit, as the case may be, the temporary president of the senate and  
44 the speaker of the assembly a notification containing the information  
45 required by subdivision two of this section; provided, however, such  
46 notification shall also: (a) include a brief statement setting forth the  
47 reasons why the agency finds that it is necessary for the preservation  
48 of the public health, safety or general welfare to dispense with the  
49 requirements of subdivision two of this section and adopt the rule as an  
50 emergency measure, and (b) provide the date the emergency measure will  
51 terminate if the agency does not intend to adopt such measure as a  
52 permanent rule, or indicate that the agency intends to adopt such meas-  
53 ure as a permanent rule, in which case compliance with the notification  
54 requirements of this section shall be deemed satisfied. The effective-  
55 ness of any such emergency measure, unless adopted as a permanent rule  
56 in the manner prescribed by law, shall not exceed ninety days after the

1 filing of such measure in the office of the department of state,  
2 provided, however, if such emergency measure is readopted prior to the  
3 expiration of such ninety day period such readoption and any subsequent  
4 readoptions shall remain in effect for no longer than sixty days.

5 § 7. Section 146 of the executive law, as amended by chapter 17 of the  
6 laws of 1984, paragraph (d) of subdivision 1 as amended by chapter 189  
7 of the laws of 1996, subdivision 4-a as amended by chapter 41 of the  
8 laws of 1994, is amended to read as follows:

9 § 146. Publication of certain public notices. 1. The department of  
10 state shall publish, pursuant to the schedule in section one hundred  
11 forty-seven of this article, and post on its internet website a publica-  
12 tion to be known as the state register, in which shall be published and  
13 posted from time to time as received by such department:

14 (a) rules, orders, designations, and notices submitted by the chief  
15 administrator of the courts;

16 (b) notices and advertisements required by state statute or federal  
17 law, rule or regulation to be published by an agency in a newspaper;

18 (c) notices required by statute to be published in newspapers in  
19 actions against foreign corporations;

20 (d) notices and job impact statements required by the state adminis-  
21 trative procedure act to be published in the state register; and

22 (e) any other matter required by statute to be published in the state  
23 register.

24 2. The secretary of state may, at his or her discretion, publish and  
25 post in the state register any notice or information which is not other-  
26 wise required by statute to be submitted to him or her by an agency or  
27 public corporation for publication in the state register, in instances  
28 where such publication and posting will serve the public interest.

29 3. With regard to rule making notices required to be published and  
30 posted in the state register pursuant to article two of the state admin-  
31 istrative procedure act, the secretary of state may, at his or her  
32 discretion, publish and post the complete text of a proposed or adopted  
33 rule, which is not otherwise required to be published and posted in the  
34 state register, in instances where such publication and posting will  
35 serve the public interest. The secretary of state shall accept from a  
36 state agency all rulemaking notices, statements and analyses as required  
37 by the state administrative procedure act, data, rules, and regulations  
38 as provided for by article three of the state technology law.

39 4. With regard to a notice of adoption published in the state register  
40 pursuant to article two of the state administrative procedure act, for  
41 which the corresponding notice of proposed rule making published and  
42 posted in the state register included the complete text of the rule, the  
43 secretary of state may, at his or her discretion, include only the  
44 changes in such text in the notice of adoption.

45 4-a. Notice of the availability of any state or federal funding which  
46 is to be distributed by any agency upon application by any municipality,  
47 school board, school district, not-for-profit organization or any other  
48 individual or organization entitled to apply for such funding pursuant  
49 to any law, rule or regulation governing the distribution of such funds  
50 shall be published and posted in the state register. Such notice shall  
51 appear in the register no later than forty-five days prior to the last  
52 day for receipt of applications for such funding. Such notice shall not  
53 be required: (i) whenever a notice has been published in the procurement  
54 opportunities newsletter pursuant to article four-C of the economic  
55 development law; (ii) for state or federal transportation funding; and  
56 (iii) in those instances where an entity has been specifically desig-

1 nated by law or legislative resolution to receive funding. Failure to  
2 publish the notice in a timely manner shall not be a basis for setting  
3 aside an award or challenging a contract or other legal claim.

4 5. The publication and posting of notices and advertisements in the  
5 state register shall be additional to their publication in newspapers,  
6 whenever publication in newspapers is required by statute.

7 6. The secretary of state shall promulgate rules establishing proce-  
8 dure, forms, font and style for submission of material by any person,  
9 agency or public corporation for publication and posting in the state  
10 register.

11 § 8. Subdivision 3 of section 148 of the executive law, as amended by  
12 chapter 636 of the laws of 1981, is amended to read as follows:

13 3. Subscriptions to the state register shall be made available to the  
14 public by either first or second class mail, or in electronic form at  
15 the election of the subscriber. A reasonable rate for a subscription to  
16 printed copies of the regular issue and quarterly index required by  
17 subdivision three of section one hundred forty-seven of this article, to  
18 be not more than eighty dollars per year for first class mail delivery  
19 and not more than forty dollars per year for second class mail delivery,  
20 shall be set by the secretary of state. The secretary of state may  
21 charge no more than one dollar and fifty cents per single copy of a  
22 printed regular issue or quarterly index of the state register. Rates  
23 shall not be set at such a level that the anticipated total subscription  
24 revenues exceed the total cost of producing, printing and distributing  
25 the state register.

26 § 9. Subdivision 1 of section 149 of the executive law, as amended by  
27 chapter 17 of the laws of 1984, is amended and a new subdivision 4 is  
28 added to read as follows:

29 1. The printed version of the state register shall be an eight and  
30 one-half by eleven inch booklet with three holes punched in the left  
31 hand margin to make such register suitable for storage in an eight and  
32 one-half by eleven inch loose-leaf binder.

33 4. To the extent practicable, every version of the state register  
34 transmitted by electronic means shall substantially comply with the  
35 provisions of this section.

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

38 4. The commission shall be authorized to request and receive, from a  
39 state agency, all rulemaking notices, statements and analyses as  
40 provided for pursuant to the state administrative procedure act, data,  
41 rules, regulations and other information by electronic means as provided  
42 for by article three of the state technology law.

43 § 11. This act shall take effect on the one hundred twentieth day  
44 after it shall have become a law, provided that the amendments to para-  
45 graph (a) of subdivision 1 of section 202-d of the state administrative  
46 procedure act, made by section four of this act, shall be subject to the  
47 expiration and reversion of such subdivision pursuant to section 2 of  
48 chapter 402 of the laws of 1994, as amended, when upon such date the  
49 provisions of section five of this act shall take effect; and provided,  
50 further, that effective immediately, the addition, amendment and/or  
51 repeal of any rule or regulation necessary for the implementation of  
52 this act on its effective date are authorized and directed to be made  
53 and completed on or before such effective date.