STATE OF NEW YORK

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2021-2022 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. BARCLAY, MONTESANO, NORRIS, PALMESANO, HAWLEY, BRABENEC, J. M. GIGLIO, WALSH, B. MILLER, LAWLER, MANKTELOW, JENSEN, GALLAHAN, ASHBY, DeSTEFANO, GOODELL -- Multi-Sponsored by -- M. of A. BROWN, DiPIETRO, FRIEND -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the state administrative procedure act and the legislative law, in relation to the division of regulatory review and economic growth

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

Section 1. The executive law is amended by adding a new article 43 to read as follows:

ARTICLE 43

DIVISION OF REGULATORY REVIEW AND ECONOMIC GROWTH

Section 930. Definitions.
931. Division of regulatory review and economic growth.
932. General functions, powers and duties.
933. Assistance of other state agencies.
934. Regulation review.
935. Division annual recommendations.
936. Implementation of recommendations.
937. Cost of regulation study.

§ 930. Definitions. When used in this article, the following terms shall have the following meanings:

1. "Commissioner" means the commissioner of the division of regulatory review and economic growth.

2. "Division" means the division of regulatory review and economic growth created by this article.

3. "Permit" shall mean the whole or part of any state agency permit, license, certificate, approval, registration, charter, or similar form of permission or authority required by law or by state agency rule

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

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having the force and effect of law, which is required for a business undertaking, project or activity; provided, however, it shall not mean individual licenses for practicing a profession prescribed in title eight of the education law, filings under the uniform commercial code, or routine licenses and permits for individual privileges, including licenses for operating a motor vehicle and amateur sporting licenses, such as for hunting and fishing.

4. "Rule" means a rule as defined in subparagraph (i) of paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act, including rules of the workers' compensation board, but does not include the rules of the state comptroller or attorney general, rules regarding jurisdictional classifications pursuant to subdivision one of section six of the civil service law, and the alteration of hunting or fishing seasons pursuant to article eleven of the environmental conservation law.

5. "State agency" means an agency as defined in subdivision one of section one hundred two of the state administrative procedure act.

§ 931. Division of regulatory review and economic growth. 1. There is hereby created in the executive department the division of regulatory review and economic growth. The head of the division shall be the commissioner of the division who shall be appointed by the governor with the consent of the senate and serve a term of five years.

2. The commissioner must have at least ten years of experience running a for-profit business, with at least three years experience as the chief executive officer, chief operating officer, chief financial officer, president, owner, or any other title used for the highest ranking officer, administrator or manager of a for-profit business.

3. The commissioner shall be appointed by the governor within thirty days of the effective date of this section and within thirty days of the expiration of every five year term thereafter, and upon confirmation of the senate shall serve a term of five years effective from the date of confirmation. If the senate rejects an appointment, the governor shall have thirty days from the date of the rejection to appoint another commissioner.

4. The commissioner may only be removed from office by a felony conviction or a crime involving a violation of his or her oath of office or by the assent of two-thirds of the members elected to each branch of the legislature voting separately.

5. Such commissioner shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation and shall be allowed his or her actual and necessary expenses in the performance of his or her duties.

6. Upon appointment and until such term expires, the commissioner shall not (a) participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which he or she is registered to vote; (b) endorse any candidate or political party; or (c) make contributions to any candidate, political party committee, political action committee or political committee pursuant to subdivision ten of section 14-114 of the election law.

7. The commissioner shall direct the work of the division and shall be the chief executive officer of the division. The commissioner may enter into contracts and expend money, and appoint such officers and employees as he or she may deem necessary, prescribe their duties, fix their compensation, and provide for the reimbursement of their expenses, all

within amounts made available therefor by appropriation. Such staff shall be management confidential employees with an understanding of private sector business.

§ 932. General functions, powers and duties. The division of regulatory review and economic growth, by and through the commissioner or his or her duly authorized officers and employees, shall have the following functions, powers and duties:

1. To provide an oversight, review and analysis of the rules and regulatory processes of state agencies.

2. To make binding recommendations to the governor and legislature on burdensome New York state codes, rules, regulations, regulatory processes, and permit requirements to eliminate or amend them, pursuant to section nine hundred thirty-five of this article.

3. To review the environmental quality review process established under article eight of the environmental conservation law and make recommendations pursuant to subdivision two of this section to establish a more efficient, predictable, timely, and transparent process, and to ensure that the process does not stifle economic growth in New York state.

4. To review permit requirements and the need by the state to require such permits. The division shall make recommendations pursuant to subdivision two of this section to eliminate, consolidate, simplify, expedite, or otherwise improve permits, permit procedures, and paperwork burdens affecting local governments, school districts or businesses.

5. To encourage and facilitate the participation of federal and local government agencies in regulatory review.

6. To establish an 800 hotline and website to provide businesses with one contact number to direct questions and to provide assistance to businesses in the state or businesses looking to open or expand in New York state. Such hotline may be used to report regulatory burdens, state agencies overreaching their power, excessive fines and to submit requests for regulatory review by the commissioner.

7. To adopt such rules and regulations, procedures, instructions, and forms as are necessary or desirable to carry out the functions, powers, and duties imposed upon the division by this article.

8. To publish an annual report, after January first and before February first, commencing two thousand twenty-three, including all recommendations proposed by the division and those recommendations implemented by the state during the prior calendar year. Such report shall include specific details concerning estimated cost savings to the taxpayers from proposed recommendations and actual cost savings to the taxpayers from implemented recommendations.

§ 933. Assistance of other state agencies. To effectuate the purposes of this article, the commissioner may request and shall be entitled to receive from any state agency, and the same are authorized to provide, such assistance, services, facilities, and data as will enable the division to carry out its functions, powers and duties.

§ 934. Regulation review. 1. In developing a rule, each agency head shall, prior to submitting a notice of proposed or revised rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act, submit to the commissioner, in such form and manner as the commissioner may prescribe, the complete text of the rule, any impact statements which would be required by article two of the state administrative procedure act to propose the rule, and any cost-benefit analysis, risk assessment and/or the results

of a negotiated rulemaking or policy dialogue undertaken in conjunction with the development of the rule.

2. The commissioner shall review the agency's submission to determine whether it is complete and in accordance with the goals, criteria and requirements of this article and article two of the state administrative procedure act, including whether the rule:

(a) is clearly within the authority delegated by law;

(b) is consistent with and necessary to achieve a specific legislative intent of promoting economic growth or protecting the health and safety of the public;

(c) is consistent with state statutory requirements;

(d) does not impose a mandate on local governments, school districts or businesses that is not fully funded, except as specifically required by state statute;

(e) is clearly written so that its meaning will be easily understood by those persons affected by it;

(f) does not unnecessarily duplicate or exceed existing federal or state statutes or rules;

(g) prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting the legislative or administrative requirements and objectives underlying the rule;

(h) is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with everyday risks familiar to the public;

(i) gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives;

(j) is based upon the best scientific, technical and economic information that can reasonably and affordably be obtained; and

(k) if possible and practical, favors market-oriented solutions and performance standards over command-and-control regulation.

3. If the commissioner determines that the submission is complete, complies with the provisions of subdivision two of this section, will promote economic growth, or is vital to protect the health and safety of the public, the commissioner shall authorize the agency to submit the rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act.

4. If the commissioner determines the submission is not complete or does not comply with the requirements of subdivision two of this section, or is detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public, the commissioner may reject the rule or return it to the agency, together with any direction that the agency amend, prepare or revise the rule, any supporting impact statements, cost benefit analysis, risk assessment, and/or undertake a negotiated rulemaking or policy dialogue to develop a rule for proposal. The division may assist the agency in developing a proposal that meets the requirements of subdivision two of this section.

5. An agency may consult informally with the division regarding proposed rules, supporting impact statements, and other documents at any time prior to the submission of such materials pursuant to subdivision one of this section. Such informal consultation shall not be binding on the division or the agency.

6. No agency head shall submit a notice of proposed or revised rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act, without express approval by the commissioner. The commissioner, in his or her sole

discretion, may reject any particular rule or category of rules he or she determines is detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public. The divisions shall promptly notify the agency of any such rejection.

§ 935. Division annual recommendations. On or before January first, two thousand twenty-two and annually thereafter, the division shall transmit to the governor and the legislature a report containing its recommendations, which shall include:

1. specific recommendations for repealing or amending New York state codes, rules, regulations, regulatory processes, and permit requirements as it deems necessary to lower costs for local governments, school districts and businesses or promote economic growth; and

2. recommended dates by which such actions should occur.

§ 936. Implementation of recommendations. 1. Notwithstanding any contrary provision of law, rule or regulation related to the repeal or amendment of any New York state codes, rules, regulations, regulatory processes, and permit requirements identified in the division's recommendations, the secretary of state shall take all actions necessary to implement, in a reasonable, cost-efficient manner, the recommendations of the division pursuant to section nine hundred thirty-five of this article, including, but not limited to coordination with state agencies, authorities, and other parties as the commissioner deems appropriate.

2. The provisions of subdivision one of this section shall not apply: (a) unless the governor has transmitted the division's report under section nine hundred thirty-five of this article with his or her written approval of the recommendations of the division pursuant to section nine hundred thirty-five of this article to the secretary of state and transmitted a message to the legislature stating his or her approval or rejection of the report within five days of receiving such report; and (b) if a majority of the members of each house of the legislature vote to adopt a concurrent resolution rejecting the recommendations of the division pursuant to section nine hundred thirty-five of this article in their entirety within sixty days, after receiving a message from the governor under this subdivision. In no event shall the secretary of state begin to implement the recommendations of the division pursuant to section nine hundred thirty-five of this article prior to the expiration of the legislature's sixty day review period.

§ 937. Cost of regulation study. 1. The commissioner is hereby authorized and directed to prepare or have prepared a comprehensive study to measure and report the cost of regulations to businesses throughout the state of New York.

2. Such study shall be completed within eighteen months of the effective date of the chapter of the laws of two thousand twenty-one which added this article.

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

(a) An agency shall transmit a copy of any rule making notice prepared pursuant to this article and approved by the commissioner of the division of regulatory review and economic growth pursuant to article forty-three of the executive law to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader in 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 state-

ment, 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.

§ 3. Section 86 of the legislative law, as added by chapter 689 of the laws of 1978, is amended to read as follows:

§ 86. Administrative regulations review commission. There is hereby created an administrative regulations review commission to consist of two members of the senate to be appointed by the temporary president of the senate, two members of the assembly to be appointed by the speaker of the assembly, [~~one member~~] two members of the senate to be appointed by the minority leader of the senate and [~~one member~~] two members of the assembly to be appointed by the minority leader of the assembly. The temporary president of the senate and the speaker of the assembly shall each appoint a co-chairman from among the commission membership. Any vacancies shall be filled in the same manner as the original appointment. Such appointees shall serve at the pleasure of the respective legislative member making such appointment.

§ 4. Section 87 of the legislative law, as added by chapter 689 of the laws of 1978 and subdivision 4 as added by chapter 512 of the laws of 2019, is amended to read as follows:

§ 87. Powers and duties. 1. The commission shall exercise continuous oversight of the process of rule making and examine rules, as defined in subdivision two of section one hundred two of the state administrative procedure act, adopted or proposed by each agency with respect to (i) statutory authority, (ii) compliance with legislative intent, (iii) impact on the economy and on the government operations of the state and its local governments, and (iv) impact on affected parties; and, in furtherance of such duties, may examine other issues it deems appropriate. For purpose of this article, the term agency shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor.

2. The commission shall review any legislation requiring a commissioner or agency as defined by subdivision one of section one hundred two of the state administrative procedure act, to promulgate any codes, rules and regulations necessary for the implementation and make recommendations to the members of the legislature. Such recommendations should include the commission's approval if the legislation is deemed necessary to protect the health and safety of the public or the commission's disapproval if such legislation is deemed detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public.

3. The commission shall review New York state laws that result in the promulgation of codes, rules or regulations by a commissioner or agency as defined by subdivision one of section one hundred two of the state administrative procedure act, or any laws the commission deems a regulatory burden on local governments, school districts or businesses and make recommendations to the members of the legislature. Such recommendations should include the commission's request for the repeal of laws it deems increase costs for local governments, school districts or businesses or are detrimental to economic growth in New York state, or are not vital to protect the health and safety of the public.

4. The commission may employ such staff and retain such consultants and expert services as may be necessary and fix their compensation and

expenses within the amounts appropriated therefor. Employment by the commission shall be deemed to be employment by the legislature for all purposes.

[~~3~~] **5**. The commission shall have the power, subject to the provisions of section seventy-three of the civil rights law, to hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in furtherance of its duties; provided, however, that no subpoena shall issue except upon the affirmative vote of a majority of the whole membership of the commission. The commission may request and shall receive from all agencies such assistance and data as will enable it properly to consummate any such examination, and review.

[~~4.~~] **6.** The commission shall be authorized to request and receive, from a state agency, all rulemaking notices, statements and analyses as provided for pursuant to the state administrative procedure act, data, rules, regulations and other information by electronic means as provided for by article three of the state technology law.

§ 5. Section 88 of the legislative law, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

§ 88. Reports. The commission shall, [~~from time to time~~] **annually**, report its findings and recommendations to the governor, the temporary president of the senate and the speaker of the assembly, **the minority leader of the senate, the minority leader of the assembly,** and to the members of the legislature, and may at any time make recommendations to **the division of regulatory review and economic growth and** an agency based upon its review of that agency's rule making process, or any of the agency's proposed, revised or adopted rules.

§ 6. The legislative law is amended by adding a new section 88-a to read as follows:

§ 88-a. Regulatory Wednesdays. 1. Every Wednesday, which is a scheduled session day for the legislature in every week beginning with a scheduled session day on Monday, shall be deemed regulatory Wednesday. The commission shall be required to meet on every regulatory Wednesday to perform its powers and duties pursuant to section eighty-seven of this article.

2. On every regulatory Wednesday, the senate and assembly shall take up any bills on any order of third reading that are before each respective house for final disposition, that have gained the approval of the commission prior to taking up any other bill on any order of third reading, unless such action is waived, without debate, upon a majority vote of the members present.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to rules and revised rules to be submitted for publication in the state register on and after such date.