

STATE OF NEW YORK

8685

IN ASSEMBLY

January 10, 2022

Introduced by M. of A. JENSEN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the legislative law, in relation to creating the legislative office of fiscal transparency; to amend the state administrative procedure act and the executive law, in relation to requiring fiscal notes on proposed rules and executive orders affecting political subdivisions; to amend the legislative law, in relation to requiring legislative committee approval of certain proposed rules; and to amend the state finance law, in relation to requiring the comptroller to make monthly reports to the legislative office of fiscal transparency

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

Section 1. This act shall be known and may be cited as the "respect taxpayer dollars act".

§ 2. Legislative findings and intent. The Legislature declares that state government has a responsibility to be accountable and transparent in such a way that the general public can understand the value received for the tax dollars spent by the state. This act is intended to create a review process for the executive budget and certain rule making procedures by state government agencies. Implementing an independent fiscal review of the executive budget proposal and rule making procedures that have a significant fiscal impact, will promote transparency and accountability to the voters and restore public trust.

§ 3. The legislative law is amended by adding a new article 4-B to read as follows:

ARTICLE 4-B

LEGISLATIVE OFFICE OF FISCAL TRANSPARENCY

Section 73. Legislative office of fiscal transparency; organization.

74. Legislative office of fiscal transparency; oversight committee.

75. Powers of the office.

76. Records access.

77. Certified audit requirement.

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

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78. Reporting and disclosures.

§ 73. Legislative office of fiscal transparency; organization. 1. There is hereby created within the legislature the legislative office of fiscal transparency (LOFT). The purpose of the office shall be to assist the legislature in performing its constitutional and statutory function of ensuring that government funds are expended in a fiscally responsible manner by reviewing and providing non-partisan expertise in the review and analysis of the executive budget proposal, for the purpose of identifying proposals with unknown fiscal impacts and to serve as a review body of rulemaking fiscal note compliance and administration.

2. The legislative office of fiscal transparency shall consist of two directors, one of whom shall be the director for administration and the other of whom shall be the director for operations. The directors shall be appointed jointly by the temporary president of the senate and the speaker of the assembly. Provided, however, if both the temporary president of the senate and the speaker of the assembly shall have been elected to office on the same major party ballot line, then the ranking member of the Democrat party in the senate and the ranking member of the Democrat party in the assembly shall jointly appoint the director of operations and the ranking member of the Republican party in the senate and the ranking member of the Republican party in the assembly shall jointly appoint the director of administration. Such appointments shall be evidenced by the joint certificate of the appointing officers filed in the office of the secretary of state. Each such director shall hold office until his or her successor is appointed in the same manner as hereinabove provided. The directors shall receive such compensation as may be provided within the amount of the appropriation made by law for the maintenance and operation of the office. The directors and employees of the office shall be considered as employees of the legislature for all purposes.

3. All expenses of the office shall be paid by the legislature, subject to the approval of the president pro tempore of the senate and the speaker of the assembly. Employees of the office shall be employed by the legislature.

§ 74. Legislative office of fiscal transparency; oversight committee.

1. There is hereby created within the legislature a committee to oversee the operations of the legislative office of fiscal transparency. The committee shall consist of eight members, as follows:

a. Four members of the senate, each to serve for a term of one calendar year. The four members shall be the temporary president of the senate; the chairperson of the senate finance committee; the minority leader of the senate; and the ranking minority member of the senate finance committee.

b. Four members of the assembly, each to serve for a term of one calendar year. Such members shall be the speaker of the assembly; the chairperson of the ways and means committee; the minority leader of the assembly; and the ranking minority member of the ways and means committee.

2. The president pro tempore of the senate and the speaker of the assembly shall act as co-chairs of the oversight committee.

3. A quorum of the oversight committee shall consist of at least five members; provided, any action by the oversight committee shall require the vote of at least three members from at least one house of the legislature. The agenda for each meeting shall be set by the co-chairs and shall be made available to the public, by posting on the senate and assembly websites, at least twenty-four hours prior to the time of the

1 meeting. Meetings of the oversight committee shall be governed by joint
2 rules to be promulgated by the legislature. Members of the oversight
3 committee shall receive reimbursement for actual and necessary expenses
4 incurred in connection with their duties as members of the oversight
5 committee in accordance with other provisions of law relating to travel
6 reimbursement for members of the legislature.

7 4. The members and co-chairs of the oversight committee shall be
8 appointed no later than July first, two thousand twenty-three, and the
9 oversight committee shall hold its first meeting no later than August
10 first, two thousand twenty-three.

11 § 75. Powers of the office. 1. The legislative office of fiscal trans-
12 parency shall:

13 a. receive, concurrently with the submission to the legislature, the
14 executive budget proposal;

15 b. analyze and report on all agency rule making approved in the previ-
16 ous fiscal year, that lacked a specific appropriation, or whereby the
17 authorized rule making resulted in an unidentified fiscal impact, or any
18 rule making that resulted in a fiscal impact exceeding five million
19 dollars; and

20 c. conduct an independent comprehensive performance audit (ICPA)
21 regarding the operations of the agency in relation to expenditures
22 related to rule making as authorized by legislation passed in the previ-
23 ous fiscal year, as required in order to fulfill the duties imposed upon
24 the office by law or as otherwise directed by the oversight committee.

25 2. The oversight committee, subject to the direction of the president
26 pro tempore of the senate and the speaker of the assembly, shall ensure
27 that the functions performed by the office pursuant to the provisions of
28 subdivision one of this section do not duplicate those of the senate
29 finance committee and the assembly ways and means committee and their
30 respective staffs.

31 3. a. As used in this article, "independent comprehensive performance
32 audit (ICPA)" includes, but is not limited to, a review and analysis of
33 the economy, efficiency, effectiveness and compliance of the policies,
34 management, fiscal affairs and operations of state agencies, divisions,
35 programs and accounts as such relate to the enactment of rules and regu-
36 lations as authorized by the legislature.

37 b. The results of an ICPA may be used by the legislature to implement
38 the best budgeting and policymaking practices for government services to
39 run in the most cost-effective way. The office may, at the direction of
40 the oversight committee and subject to the approval of the president pro
41 tempore of the senate and the speaker of the assembly, contract with a
42 private company, nonprofit organization or academic institution to
43 assist with an independent comprehensive performance audit or for
44 professional consulting and administrative support services. The office
45 may, but shall not be required to, contract with the department of audit
46 and control to conduct an ICPA. The office shall develop the scope of
47 services for a request for proposals issued, for professional services
48 necessary to complete each ICPA. Prior to entering into any contract,
49 the office shall obtain no less than three separate bids for the audit-
50 ing services, unless the office determines that fewer than three enti-
51 ties meet the qualifications to bid to perform such services as set
52 forth by the office. The cost of the contract shall be paid by the
53 legislature.

54 c. An independent comprehensive performance audit shall address but
55 not be limited to the following topics:

1 (1) policies which shall include constitutional mandates, if any,
2 statutory mandates, statutory authorizations, administrative rules or
3 policies of the affected agency reflected in internal agency documents
4 or agency practices;

5 (2) all sources of funding received by the agency, inclusive of feder-
6 al funds, state appropriations, state-dedicated revenues, fee revenue
7 sources, the use of agency revolving funds or any other fund or revenue
8 source which is used to pay the expenses of the agency;

9 (3) management of the agency which shall include, but not be limited
10 to, its governance, capacity, divisions, programs, accounts, information
11 technology systems and policies and agency operations which include
12 objective analysis of the roles and functions of the department; and

13 (4) a schedule for implementation of agency-specific recommendations
14 in relation to rule making procedures that result in a fiscal impact
15 upon the state in excess of five million dollars.

16 § 76. Records access. 1. Each agency or institution of the state
17 shall, upon request, furnish and make available to the legislative
18 office of fiscal transparency all records, documents, materials, person-
19 nel, information or other resources as the office deems necessary to
20 conduct a review of the rule making procedures subject to this act. Any
21 record, document, material or other information made confidential by law
22 shall be provided to the office, which shall also maintain such confi-
23 dentiality. All records, documents, materials or other information of
24 the office shall be deemed to be a record of the legislature.

25 2. Each state agency and other affected persons shall cooperate with
26 the oversight committee and the office in the providing of any informa-
27 tion requested. The oversight committee shall have the power to conduct
28 hearings, administer oaths, issue subpoenas and compel the attendance of
29 witnesses and the production of information.

30 § 77. Certified audit requirement. The receipt and audit of the execu-
31 tive capital program and financial plan pre-submission disclosure, as
32 required by section twenty-two-c of the state finance law, shall include
33 an independent certified public accountant's audit report containing an
34 opinion that the financial statements are presented fairly in all mate-
35 rial respects and in conformity with generally accepted accounting prin-
36 ciples, including compliance with all pronouncements of the financial
37 accounting standards board and the American Institute of Certified
38 Public Accountants.

39 § 78. Reporting and disclosures. The legislative office of fiscal
40 transparency shall prepare and submit to the oversight committee a
41 report of its findings for any performance evaluation or independent
42 comprehensive performance audit conducted at the direction of the over-
43 sight committee. No such evaluation or independent comprehensive
44 performance audit shall be conducted without prior approval of the over-
45 sight committee. Such reports shall be available to the public, other
46 than with respect to any information or material made confidential by
47 law. The oversight committee may make recommendations to the agency
48 evaluated, or to the legislature and the governor, for further action as
49 it deems necessary, and may direct the office to monitor and report on
50 implementation of such recommendations.

51 § 4. The state administrative procedure act is amended by adding two
52 new sections 201-b and 202-f to read as follows:

53 § 201-b. Fiscal notes on proposed rules. 1. For the purposes of this
54 section, the term "political subdivision" means any county, city, town,
55 village, special district or school district.

1 2. Each agency proposing a rule shall attach a fiscal note to a
2 proposed rule which would affect the revenues or expenses, or both, of
3 any political subdivision. Such fiscal notes shall fully disclose the
4 costs and source of funding of every provision of the proposed rule
5 which would affect the revenue or expenses of any political subdivision.

6 3. Fiscal notes shall not, however, be required for proposed rules
7 which provide discretionary authority to political subdivisions.

8 § 202-f. Legislative approval. In addition to the procedure required
9 pursuant to section two hundred two of this article and prior to the
10 submission of a notice of proposed rulemaking to the secretary of state
11 for publication in the state register, an agency proposing a rule with a
12 fiscal impact in excess of five million dollars, shall submit such
13 proposed rule to the legislative office of fiscal transparency estab-
14 lished under article four-B of the legislative law with a fiscal note as
15 required by section two hundred one-b of this article. Upon approval of
16 compliance by the legislative office of fiscal transparency, the office
17 shall deliver such proposed rule to the senate finance committee and
18 assembly ways and means committee for their approval. No such rule shall
19 take effect unless it has been approved by a two-thirds majority vote of
20 each committee with jurisdiction to which it has been referred.

21 § 5. The executive law is amended by adding a new section 13 to read
22 as follows:

23 § 13. Fiscal notes on executive orders affecting political subdivi-
24 sions. 1. For the purposes of this section, the term "political subdivi-
25 sion" means any county, city, town, village, special district or school
26 district.

27 2. The governor shall attach a fiscal note to every executive order
28 which would affect the revenues or expenses, or both, of any political
29 subdivision. Such fiscal notes shall fully disclose the costs and source
30 of funding of every provision of the executive order which would affect
31 the revenue or expenses of any political subdivision.

32 3. Fiscal notes shall not, however, be required for executive orders
33 which provide discretionary authority to political subdivisions.

34 § 6. The legislative law is amended by adding a new section 68 to read
35 as follows:

36 § 68. Approval of legislative committees. 1. State agencies intending
37 to promulgate any rule with a fiscal impact in excess of five million
38 dollars must submit such proposed rule to the legislative office of
39 fiscal transparency for review of the sufficiency of form and substance.
40 Upon approval, the office shall deliver to the chair and the ranking
41 minority member of the senate finance and the chair and ranking minority
42 member of the assembly ways and means committees for consideration and
43 approval of the proposed rule.

44 2. The senate finance committee and the assembly ways and means
45 committee shall have jurisdiction to consider and approve a proposed
46 rule, when such rule is authorized to be promulgated by a bill previous-
47 ly passed and enacted by each house of the legislature.

48 3. The finance and ways and means committees in the senate and assem-
49 bly must consider the proposed rule during the first scheduled committee
50 meeting, immediately following receipt of the proposed rule by the
51 committee chair and ranking minority member.

52 4. All members of the finance and ways and means committees in the
53 senate and assembly shall be provided a copy of the proposed rule at
54 least three calendar days prior to acting upon such rule and shall be
55 afforded sufficient time to debate the merits of the proposed rule.

1 including the fiscal impact of the proposal and the need to promulgate
2 the proposed rule in order to implement the law as intended.

3 5. After the proposed rule has been debated and prior to conclusion of
4 the committee meeting, all members of the committee must vote to either
5 approve or reject the proposed rule.

6 6. The chair of the appropriate committee shall provide the results of
7 the committee vote to the state agency that provided the proposed rule
8 and report such vote in the same manner as any vote by the committee.

9 7. A vote to approve a proposed rule by no less than two-thirds of all
10 committee members shall be required before the state agency can proceed
11 to propose the rule pursuant to section two hundred two of the state
12 administrative procedure act.

13 § 7. Subdivision 9-b of section 8 of the state finance law, as sepa-
14 rately added by chapters 405 and 957 of the laws of 1981, is amended to
15 read as follows:

16 9-b. Make monthly reports during state fiscal years commencing on or
17 after April first, nineteen hundred eighty-two, within ten days of the
18 close of each month, to the legislative office of fiscal transparency,
19 the chairman of the senate finance committee and the chairman of the
20 assembly ways and means committee for the use of such committees and the
21 information of the legislature, containing a complete statement of
22 disbursements, expenditures, receipts and revenues for the prior month
23 and year-to-date of all state and federal funds. The reports shall
24 include information for all funds and, with regard to such disbursements
25 and expenditures, shall be based on the then current fiscal year's
26 appropriations and appropriations available from the prior fiscal year.
27 Such reports for each fiscal year shall contain such additional and
28 detailed information and shall be organized in such manner as the chair-
29 man of the senate finance committee and the chairman of the assembly
30 ways and means committee shall have last requested at least forty-five
31 days prior to the beginning of such fiscal year. The comptroller may
32 promulgate such rules and regulations, applicable to any or all state
33 officers or employees, as may be necessary to obtain any data required
34 for making such reports. Such reports shall be prepared and presented in
35 accordance with the accounting principles and policies used in the prep-
36 aration of the budget documents for the then current fiscal year submit-
37 ted by the governor pursuant to sections twenty-two and twenty-three of
38 this chapter unless the chairman of the senate finance committee and the
39 chairman of the assembly ways and means committee shall have requested a
40 different preparation or presentation. Such monthly reports shall be
41 certified by the independent certified public accountants as selected in
42 the same manner as provided for in section ninety-two of the legislative
43 law.

44 § 8. Severability. If any clause, sentence, paragraph, section or part
45 of this act shall be adjudged by any court of competent jurisdiction to
46 be invalid and after exhaustion of all further judicial review, the
47 judgment shall not affect, impair or invalidate the remainder thereof,
48 but shall be confined in its operation to the clause, sentence, para-
49 graph, section or part of this act directly involved in the controversy
50 in which the judgment shall have been rendered.

51 § 9. This act shall take effect on January 1, 2023.