STATE OF NEW YORK

8047

IN SENATE

January 21, 2022

Introduced by Sen. MATTERA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government 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.

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

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77. Certified audit requirement.

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

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

§ 75. Powers of the office. 1. The legislative office of fiscal transparency shall:

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

b. analyze and report on all agency rule making approved in the previous fiscal year, that lacked a specific appropriation, or whereby the authorized rule making resulted in an unidentified fiscal impact, or any rule making that resulted in a fiscal impact exceeding five million dollars; and

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

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

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

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

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

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

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

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

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

§ 76. Records access. 1. Each agency or institution of the state shall, upon request, furnish and make available to the legislative office of fiscal transparency all records, documents, materials, personnel, information or other resources as the office deems necessary to conduct a review of the rule making procedures subject to this act. Any record, document, material or other information made confidential by law shall be provided to the office, which shall also maintain such confidentiality. All records, documents, materials or other information of the office shall be deemed to be a record of the legislature.

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

§ 77. Certified audit requirement. The receipt and audit of the executive capital program and financial plan pre-submission disclosure, as required by section twenty-two-c of the state finance law, shall include an independent certified public accountant's audit report containing an opinion that the financial statements are presented fairly in all material respects and in conformity with generally accepted accounting principles, including compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants.

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

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

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

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

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

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

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

§ 13. Fiscal notes on executive orders affecting political subdivisions. 1. For the purposes of this section, the term "political subdivision" means any county, city, town, village, special district or school district.

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

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

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

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

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

3. The finance and ways and means committees in the senate and assembly must consider the proposed rule during the first scheduled committee meeting, immediately following receipt of the proposed rule by the committee chair and ranking minority member.

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

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

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

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

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

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

9-b. Make monthly reports during state fiscal years commencing on or after April first, nineteen hundred eighty-two, within ten days of the close of each month, to the **legislative office of fiscal transparency, the** chairman of the senate finance committee and the chairman of the assembly ways and means committee for the use of such committees and the information of the legislature, containing a complete statement of disbursements, expenditures, receipts and revenues for the prior month and year-to-date **of all state and federal funds**. The reports shall include information for all funds and, with regard to such disbursements and expenditures, shall be based on the then current fiscal year's appropriations and appropriations available from the prior fiscal year. Such reports for each fiscal year shall contain such additional and detailed information and shall be organized in such manner as the chairman of the senate finance committee and the chairman of the assembly ways and means committee shall have last requested at least forty-five days prior to the beginning of such fiscal year. The comptroller may promulgate such rules and regulations, applicable to any or all state officers or employees, as may be necessary to obtain any data required for making such reports. Such reports shall be prepared and presented in accordance with the accounting principles and policies used in the preparation of the budget documents for the then current fiscal year submitted by the governor pursuant to sections twenty-two and twenty-three of this chapter unless the chairman of the senate finance committee and the chairman of the assembly ways and means committee shall have requested a different preparation or presentation. **Such monthly reports shall be certified by the independent certified public accountants as selected in the same manner as provided for in section ninety-two of the legislative law.**

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

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