

# STATE OF NEW YORK

2903

2023-2024 Regular Sessions

## IN ASSEMBLY

February 1, 2023

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:

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

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

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

### ARTICLE 4-B

#### LEGISLATIVE OFFICE OF FISCAL TRANSPARENCY

16 Section 73. Legislative office of fiscal transparency; organization.

17 74. Legislative office of fiscal transparency; oversight commit-  
18 tee.

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

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1 75. Powers of the office.

2 76. Records access.

3 77. Certified audit requirement.

4 78. Reporting and disclosures.

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

14 2. The legislative office of fiscal transparency shall consist of two  
15 directors, one of whom shall be the director for administration and the  
16 other of whom shall be the director for operations. The directors shall  
17 be appointed jointly by the temporary president of the senate and the  
18 speaker of the assembly. Provided, however, if both the temporary presi-  
19 dent of the senate and the speaker of the assembly shall have been  
20 elected to office on the same major party ballot line, then the ranking  
21 member of the Democrat party in the senate and the ranking member of the  
22 Democrat party in the assembly shall jointly appoint the director of  
23 operations and the ranking member of the Republican party in the senate  
24 and the ranking member of the Republican party in the assembly shall  
25 jointly appoint the director of administration. Such appointments shall  
26 be evidenced by the joint certificate of the appointing officers filed  
27 in the office of the secretary of state. Each such director shall hold  
28 office until his or her successor is appointed in the same manner as  
29 hereinabove provided. The directors shall receive such compensation as  
30 may be provided within the amount of the appropriation made by law for  
31 the maintenance and operation of the office. The directors and employees  
32 of the office shall be considered as employees of the legislature for  
33 all purposes.

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

38 § 74. Legislative office of fiscal transparency; oversight committee.  
39 1. There is hereby created within the legislature a committee to over-  
40 see the operations of the legislative office of fiscal transparency. The  
41 committee shall consist of eight members, as follows:

42 a. Four members of the senate, each to serve for a term of one calen-  
43 dar year. The four members shall be the temporary president of the  
44 senate; the chairperson of the senate finance committee; the minority  
45 leader of the senate; and the ranking minority member of the senate  
46 finance committee.

47 b. Four members of the assembly, each to serve for a term of one  
48 calendar year. Such members shall be the speaker of the assembly; the  
49 chairperson of the ways and means committee; the minority leader of the  
50 assembly; and the ranking minority member of the ways and means commit-  
51 tee.

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

54 3. A quorum of the oversight committee shall consist of at least five  
55 members; provided, any action by the oversight committee shall require  
56 the vote of at least three members from at least one house of the legis-

1 lature. The agenda for each meeting shall be set by the co-chairs and  
2 shall be made available to the public, by posting on the senate and  
3 assembly websites, at least twenty-four hours prior to the time of the  
4 meeting. Meetings of the oversight committee shall be governed by joint  
5 rules to be promulgated by the legislature. Members of the oversight  
6 committee shall receive reimbursement for actual and necessary expenses  
7 incurred in connection with their duties as members of the oversight  
8 committee in accordance with other provisions of law relating to travel  
9 reimbursement for members of the legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 4. All members of the finance and ways and means committees in the  
56 senate and assembly shall be provided a copy of the proposed rule at

1 least three calendar days prior to acting upon such rule and shall be  
2 afforded sufficient time to debate the merits of the proposed rule,  
3 including the fiscal impact of the proposal and the need to promulgate  
4 the proposed rule in order to implement the law as intended.

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

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

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

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

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

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

53 § 9. This act shall take effect on January 1, 2025.