

CHAPTER 336

LAWS OF 1989

SENATE BILL _____

ASSEMBLY BILL 5163-A

S. 3397--A

A. 5163--A

1989-1990 Regular Sessions

SENATE / ASSEMBLY

March 7, 1989

IN SENATE -- Introduced by Sens. PRESENT, COOK, GOLD -- (at request of the Administrative Regulations Review Commission) -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. PROUD -- Multi-Sponsored by -- M. of A. HARRIS -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state administrative procedure act and the executive law, in relation to a notice of revised rule making

| | |
|------------------------|---|
| Bill compared by _____ | DATE RECEIVED BY GOVERNOR: <u>6/80</u> |
| _____ | ACTION MUST BE TAKEN BY: <u>7/12</u> |
| _____ | GOVERNOR'S ACTION: |
| _____ | DATE <u>JUL 10 1989</u> |
| _____ | Memorandum No. _____ |

18
30
/ 5

000000

| | | | | | |
|---------------|----------------|------------|---------------------|---------------|---------------|
| SENATE VOTE | <u>55</u> Y | <u>0</u> N | HOME RULE MESSAGE | <u> </u> Y | <u> </u> N |
| Date | <u>6/21/89</u> | | Bill is disapproved | | |
| ASSEMBLY VOTE | <u>138</u> Y | <u>0</u> N | | | |
| Date | <u>6/7/89</u> | | Counsel to Governor | | |

1989

SENATE JOURNAL

JUN 2 1 1989

PAGE 67

ASSEMBLY

The Assembly Bill

by Mr. PROUD

Calendar No. 1170

Assembly No. 5163-A

Sen. Rept. No. _____

Entitled: "

AN ACT to amend the state administrative procedure act and the executive law, in relation to a notice of revised rule making

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

| AYE | Dist. | | NAY | AYE | Dist. | | NAY |
|-----|-------|--------------------------|---------|-----|-------|------------------------|-----|
| | 17 | Mr. Babbush | | | 58 | Mr. Masiello | |
| | 33 | Mr. Bernstein | | | 46 | Mr. McHugh | |
| | 43 | Mr. Bruno | | | 23 | Mr. Mega | |
| | 25 | Mr. Connor | | | 30 | Mrs. Mendez | |
| | 40 | Mr. Cook | | | 22 | Ms. Montgomery | |
| | 61 | Mr. Daly | | | 42 | Mr. Nolan | |
| | 47 | Mr. Donovan | EXCUSED | | 27 | Mr. Ohrenstein | |
| | 6 | Mr. Dunne | | | 14 | Mr. Onorato | |
| | 44 | Mr. Farley | EXCUSED | | 36 | Mrs. Oppenheimer | |
| | 31 | Mr. Galiber | | | 11 | Mr. Padavan | |
| | 13 | Mr. Gold | | | 29 | Mr. Paterson | |
| | 37 | Mrs. Goodhue | | | 54 | Mr. Perry | |
| | 26 | Mr. Goodman | | | 56 | Mr. Present | |
| | 39 | Mr. Gray | | | 55 | Mr. Quattrociochi | |
| | 18 | Mr. Halperin | | | 41 | Mr. Rolison | |
| | 48 | Ms. Hoffmann | | | 32 | | |
| | 10 | Mr. Jenkins | | | 50 | Mr. Seward | |
| | 4 | Mr. Johnson | | | 60 | Mr. Sheffer | |
| | 53 | Mr. Kehoe | | | 9 | Mr. Skelos | |
| | 52 | Mr. Kuhl | | | 20 | Miss Smith | |
| | 2 | Mr. Lack | | | 19 | Mr. Solomon | |
| | 1 | Mr. LaValle | | | 35 | Mr. Spano | |
| | 28 | Mr. Leichter | | | 57 | Mr. Stachowski | |
| | 38 | Mr. E. Levy | | | 45 | Mr. Stafford | |
| | 8 | Mr. N. Levy | | | 12 | Mr. Stavisky | |
| | 51 | Mr. Libous | | | 3 | Mr. Trunzo | |
| | 49 | Mr. Lombardi | | | 7 | Mr. Tully | |
| | 15 | Mr. Maltese | | | 34 | Mr. Velella | |
| | 24 | Mr. Marchi | | | 59 | Mr. Volker | |
| | 5 | Mr. Marino | | | 16 | Mr. Weinstein | |
| | 21 | Mr. Markowitz | | | | | |

AYES 55
NAYS 0

000003

Ordered, that the Secretary return said bill to the Assembly with a message that the Senate has concurred in the passage of the same.

A-5163A

NEW YORK STATE ASSEMBLY
TWO HUNDRED TWELFTH SESSION

DATE: 06/07/1989
TIME: 02:09:36 PM

REPRINT
DATE: 06/07/89

BILL: A5163-A

R.R. NO: 196 SPONSOR: PROUD (MS)

Provides for notice of revised text in rule making procedure

| | | | | | |
|-----|---------------|-----|---------------|-----|----------------|
| Y | Abbate PJ | Y | Graber VJ | Y | O'Shea CJ |
| EOR | Abramson E | Y | Grannis A | Y | Parment WL |
| Y | Anderson RR | ABS | Green RL | Y | Parola FE |
| Y | Barbaro FJ | Y | Greene A | Y | Passannante WF |
| Y | Barnett HV | Y | Griffith E | Y | Pataki GE |
| Y | Barraga TF | Y | Hannon K | Y | Pheffer AI |
| Y | Becker GR | Y | Harenberg PE | Y | Pillittere JT |
| Y | Behan JL | Y | Harris GH | Y | Pordum FJ |
| Y | Bennett LE | Y | Hasper J | ABS | Powell J |
| Y | Boylard WF | Y | Hawley RS | Y | Prescott DW |
| Y | Bragman MJ | Y | Healey PB | Y | Proskin AW |
| Y | Brennan JF | ABS | Hevesi AG | Y | Proud G |
| Y | Brodsky RL | Y | Hikind D | Y | Rappleyea CD |
| Y | Brown HC | Y | Hill EH | Y | Reynolds TM |
| Y | Bush WE | Y | Hillman MC | Y | Robach RJ |
| Y | Butler DJ | Y | Hinchey MD | Y | Saland SM |
| Y | Canestrari RJ | Y | Holland JR | Y | Sanders S |
| Y | Casale AJ | Y | Hoyt WB | Y | Sawicki J |
| Y | Catapano TF | Y | Jacobs RS | Y | Schimminger RL |
| Y | Chesbro RT | Y | Jenkins C | Y | Schmidt FD |
| Y | Clark BM | Y | Kaufman SB | Y | Seabrook L |
| Y | Cochrane JC | Y | Keane RJ | ABS | Sears WR |
| Y | Colman S | Y | Kelleher NW | Y | Seminerio AS |
| Y | Connelly EA | Y | King RL | Y | Serrano JE |
| Y | Connors RJ | Y | Koppell GO | ABS | Siegel MA |
| Y | Conte JD | Y | Lafayette IC | Y | Silver S |
| Y | Cooke AT | Y | Larkin WJ | Y | Singer CD |
| Y | Coombe RI | Y | Lasher HL | Y | Straniere RA |
| Y | Crowley J | Y | Leibell VL | Y | Sullivan EC |
| Y | D'Andrea RA | Y | Lentol JR | Y | Sullivan PM |
| Y | Daniels GL | Y | Lopez VJ | Y | Sweeney RK |
| Y | Davidson DR | Y | Luster MA | Y | Tallon JR |
| Y | Davis G | Y | Madison GH | Y | Talomie FG |
| Y | Dearie JC | Y | Marshall HM | Y | Tedisco J |
| EOR | Del Toro A | EOR | Martinez I | Y | Tocci RC |
| Y | Diaz HL | Y | Mayersohn N | Y | Tokasz P |
| Y | DiNapoli TP | Y | McCann JW | Y | Tonko PD |
| Y | Dugan EC | Y | McGee PK | Y | Vann A |
| Y | Eannace RJ | Y | McPhillips MM | Y | Vitaliano EN |
| Y | Eve AO | Y | Miller RH | ABS | Warren GE |
| Y | Farrell HD | Y | Murphy MJ | Y | Weinstein HE |
| Y | Faso JJ | Y | Murtaugh JB | Y | Weisenberg H |
| Y | Feldman D | ABS | Nadler J | Y | Weprin S |
| Y | Flanagan JJ | Y | Nagle JF | Y | Wertz RC |
| Y | Friedman G | Y | Nolan CT | Y | Winner GH |
| Y | Frisa D | Y | Norman C | Y | Yevoli LJ |
| Y | Gaffney RJ | Y | Nortz HR | Y | Young GP |
| Y | Gantt DF | Y | Nozzolio MF | Y | Zaleski TM |
| Y | Genovesi AJ | Y | O'Neil JG | EOR | Zimmer MN |
| Y | Gottfried RN | Y | Ortloff C | . | Mr. Speaker |

YEAS: 138

NAYS: 0

CONTROL: 12753192

CERTIFICATION: /S/ FRANCINE M. MISASI
CLERK OF THE ASSEMBLY

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT,
ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASONS.

CG0004

Pv.

MEMORANDUM

S.3397-A BY: Senator Jess J. Present

A.5163-A BY: Assemblyman Gary Proud

AN ACT to amend the state administrative procedure act, in relation to rule making procedure

PURPOSE:

This bill will require an agency to publish in the State Register a Notice of Revised Text to inform the public of any substantial revisions in the text of a proposed rule prior to its adoption. The bill also clarifies when an agency must identify changes in an adopted rule when the adopted text is compared to the text of the rule as it was originally proposed.

SUMMARY OF PROVISIONS:

Section 102 of State Administrative Procedure Act (SAPA) is amended by adding a definition for "substantial revision."

The bill adds a new subdivision 4-a to section 202 of SAPA and provides for a Notice of Revised Text. The Notice of Revised Text must be published in the State Register when there is a substantial revision in the text of a rule to be adopted when compared to the text of the rule as originally proposed. If a proposed rule contains a substantial revision it can not be adopted until at least 30 days after the Notice of Revised Text has appeared in the State Register.

Subdivisions three and five of section 202, subdivision six of section 202-a and subdivision seven of section 202-b of SAPA are amended to delete the term "substantive" when referring to changes in the adopted text of a rule.

Subdivision one of section 203 of SAPA is amended to delete the reference to delaying the effective date of a rule when there are substantive changes in the adopted text of the rule.

JUSTIFICATION:

Pursuant to SAPA, an agency must publish a Notice of Proposed Rule Making in the State Register at least 45 days prior to the adoption of a rule. This Notice must contain the text of the proposed rule and serves to provide public notice of the rule making. The public is afforded the opportunity to comment on the

text of the proposed rule during this time. When adopting a rule the agency must determine if there are substantive changes in the rule by comparing the adopted text to the text of the rule as proposed. If substantive changes exist, the Notice of Adoption must identify the sections of the rule which have been changed, and the agency must determine if these changes affect the Regulatory Impact Statement or the Regulatory Flexibility Analysis. In addition, the agency is currently prevented from having the rule become effective for at least 21 days after the rule is filed with the Secretary of State.

Often the text of an adopted rule is a revised version of the text which was originally proposed. These revisions may be a result of the agency's reevaluation of the rule proposal or of public comments received by the agency. However, under present law the public is not required to be provided an opportunity to review the revised text of the rule proposal until after the rule is finally adopted. Usually public notice of any changes in the proposed rule's text are not made unless the Notice of Adoption identifies that there have been substantive changes in the adopted text of the rule.

This bill gives the public notice of the fact that the agency has made substantial revisions to the text of a proposed rule. In addition, the public will be given at least 30 days to review the revised text and to submit comments to the agency before the rule is adopted. Any comments an agency may receive on the revised text can be used to improve the rule and more effectively implement the agency's policy.

Under this legislation, the word "substantive" in the term substantive changes is deleted. The effect of deleting this word would be to require an agency to identify all changes in the rule when the text of the adopted rule is different from the text of the proposed rule. This has become necessary because the term substantive changes has never been defined in SAPA leading to confusion and varied interpretations of the term. Numerous instances have occurred where an agency makes significant changes in the rule text during the course of the rule making process and fails to identify these changes in the adoption notice. This situation leads the public to believe that there have been no substantial changes to the rule when in fact they have occurred. This bill will eliminate the problem by making agencies identify all changes in the rule text.

In addition, this bill deletes from SAPA the provision which delays the effective date of a rule for 21 days when an agency states in the Notice of Adoption that there have been substantive changes. With the publication of a Notice of Revised Rule Making as provided by this bill, major changes in the rule making will be exposed to public notice and comment thereby eliminating the need to delay the rule's effective date when substantive changes occur. In addition, with the enactment of Chapter 610 of the Laws of 1987, all rule adoptions are delayed until the Notice of

Adoption appears in the **State Register** which occurs 15 to 22 days after the adopted rule is filed with the Secretary of State. These changes make it unnecessary and impractical to require a special 21-day delay.

Therefore, this bill provides a procedure where the public is given public notice and an opportunity for public comment whenever an agency makes a substantial revision to the text of a proposed rule. In addition, whenever an agency makes any changes to the text of the proposed rule the agency must identify those changes in the Notice of Adoption. The provisions of this bill will provide the public an opportunity to more fully participate in the rule making process and to be better informed of changes in the text of a rule prior to its adoption.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This bill shall take effect on January 1 next succeeding the date on which it shall have become law.

000007

A.5163-A

337

NFIB New York

National Federation of
Independent Business

July 18, 1989

Evan Davis, Esq.
Counsel to the Governor
State Capitol - Room #210
Albany, New York 12224

RE: A.5163-A (Proud)/S.3397-A (Present)
Notice of Changes to Proposed Rule

Dear Mr. Davis:

The National Federation of Independent Business, representing over 32,000 small business owners in New York State, supports this bill which would require agencies to publish a notice of revised text in the State Register, when there are substantial changes in a proposed rule.

The procedures for issuing agency rules and regulations have been prudently designed to allow interested parties an opportunity to comment. This is vitally important to prevent the adoption of rules which overstep the bounds of law or common sense, and which inadvertently create undue hardships for affected parties. The comment period often results in substantial changes to the proposed rule, but these changes are themselves never subjected to the same scrutiny. Changes may be the result of public comment, but equally dangerous flaws could creep into a revised text just as readily as in an originally proposed text. The provisions of this bill address this problem.

We know that agencies will be apt to oppose this proposal because of the delay it may impose upon the process of the adoption of rules, but you should not make that your sole criteria for evaluating the bill. The regulatory environment of New York needs to be streamlined and made less burdensome if our economy is to do as well as it can. This bill makes a meaningful change in that direction.

In allowing a 30-day period of time to review the text of a "substantially" revised rule, this bill would serve to assure that better rules are adopted which more effectively and fairly implement legislative policies.

For the above stated reasons, we urge that the Governor approve this bill.

Sincerely,



Mark P. Alesse
State Director

000051

MPA/dmk

State Office
Suite 400
134 State St
Albany, NY 12207
(518) 454-1262



The Guardian of
Small Business