

# STATE OF NEW YORK

8470

2017-2018 Regular Sessions

## IN ASSEMBLY

June 16, 2017

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

AN ACT to amend the state administrative procedure act, in relation to  
agencies adopting emergency rules

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

1 Section 1. Paragraphs (a) and (b) of subdivision 6 of section 202 of  
2 the state administrative procedure act, paragraph (a) as added by chap-  
3 ter 17 of the laws of 1984 and paragraph (b) as amended by chapter 483  
4 of the laws of 1988, are amended to read as follows:

5 (a) Notwithstanding any other provision of law, if an agency finds for  
6 a good cause that the immediate adoption of a rule is necessary for the  
7 preservation of the public health, safety or general welfare [~~and that~~  
8 ~~compliance with the requirements of subdivision one of this section~~  
9 ~~would be contrary to the public interest, the agency may dispense with~~  
10 ~~all or part of such requirements and adopt the rule on an emergency~~  
11 ~~basis~~], and one or more of the following conditions are met, the agency  
12 may dispense with all or part of the requirements of subdivision one of  
13 this section and adopt the rule on an emergency basis:

14 (i) the usual rule making procedures are impractical because there is  
15 an emergency that poses an imminent and actual threat to public health  
16 or safety; or

17 (ii) the delay involved in adopting the rule through the usual rule  
18 making procedure would cause the agency to be out of compliance with a  
19 judicial decision, federal or state law; or

20 (iii) the delay in adopting the rule through the usual rule making  
21 procedure would result in a loss of federal funds; or

22 (iv) the delay involved in adopting the rule through the usual rule  
23 making procedure provided in subdivision one of this section would lead  
24 to irreparable injury.

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

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1     (a-1) Within thirty days of the adoption of the emergency rule, the  
2     agency shall separately submit a notice of proposed rule making for such  
3     rule to the secretary of state to commence the usual rule making proce-  
4     dures set forth in subdivision one of this section.

5     (b) Unless otherwise provided by law, such emergency rule shall not  
6     remain in effect for longer than ninety days after being filed with the  
7     secretary of state unless within such time the agency complies with the  
8     requirements of subdivision one of this section and adopts the rule  
9     pursuant to the provisions of subdivision five of this section,  
10    provided, however, if such emergency rule is readopted prior to the  
11    expiration of such ninety day period such readoption and any subsequent  
12    readoptions shall remain in effect for no longer than sixty days. Upon  
13    any readoption, the agency shall publish and make available to the  
14    public an assessment of public comments received on the emergency rule  
15    or the separate notice of proposed rulemaking for such rule. The emer-  
16    gency rule may remain in effect, at the latest, for as long as the sepa-  
17    rate notice of proposed rulemaking remains in effect pursuant to subdi-  
18    vision two of this section. When the separate notice of proposed  
19    rulemaking expires pursuant to subdivision two of this section, the  
20    emergency rule shall also expire and be ineffective for the purposes of  
21    this section.

22     § 2. This act shall take effect immediately.