STATE OF NEW YORK

8470--A

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 -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, do enact as follows:

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

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

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

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

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

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

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

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

(b) Unless otherwise provided by law, such emergency rule shall not remain in effect for longer than ninety days after being filed with the secretary of state unless within such time the agency complies with the requirements of subdivision one of this section and adopts the rule pursuant to the provisions of subdivision five of this section, provided, however, if such emergency rule is readopted prior to the expiration of such ninety day period such readoption and any subsequent readoptions shall remain in effect for no longer than sixty days. **Upon any readoption, the agency shall publish and make available to the public an assessment of public comments received on the emergency rule or the separate notice of proposed rulemaking for such rule. The emergency rule may remain in effect, at the latest, for as long as the separate notice of proposed rulemaking remains in effect pursuant to subdivision two of this section. When the separate notice of proposed rulemaking expires pursuant to subdivision two of this section, the emergency rule shall also expire and be ineffective for the purposes of this section.**

§ 2. This act shall take effect immediately.