STATE OF NEW YORK

5795--A

Cal. No. 977

2017-2018 Regular Sessions

IN SENATE

May 1, 2017

Introduced by Sens. JACOBS, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the state administrative procedure act, the executive law and the environmental conservation law, in relation to the comment period for proposed rules

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

Section 1. Paragraph (a) of subdivision 1 of section 202 of the state administrative procedure act, as amended by chapter 304 of the laws of 2016, is amended to read as follows:

(a) Prior to the adoption of a rule, an agency shall submit a notice of proposed rule making to the secretary of state for publication in the state register and shall afford the public an opportunity to submit comments on the proposed rule. Unless a different time is specified by statute, the notice of proposed rule making must appear in the state register at least [~~forty-five~~] **sixty** days prior to either

(i) the addition, amendment or repeal of a rule for which statute does not require that a public hearing be held prior to adoption, or

(ii) the first public hearing on a proposed rule for which such hearing is so required.

The notice of proposed rule making shall indicate the last date for submission of comments on the proposed rule, which, unless a different time is specified in statute or this paragraph, shall be not less than [~~forty-five~~] **sixty** days after the date of publication of such notice, or, if statute requires that a public hearing be held prior to adoption,

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

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not less than five days after the date of the last public hearing scheduled to be held on the proposed rule. Notwithstanding any other provision of this paragraph, when the notice of proposed rule making contains only a description of the subject, purpose and substance of the rule as provided in subparagraph (v) of paragraph (f) of this subdivision, the full text of the proposed rule shall be posted on a website maintained by the agency or another state entity and shall remain posted until such proposed rule is adopted, revised, withdrawn or expires pursuant to this article, except that such web posting shall not be required for any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter.

§ 2. Subdivision 2 of section 101-a of the executive law, as amended by chapter 610 of the laws of 1987, is amended to read as follows:

2. Except as provided in subdivision three of this section, at least [~~forty-five~~] sixty days prior to either the adoption of any rule, or, if a public hearing is required by statute, at least [~~forty-five~~] sixty days prior to the first public hearing on a proposed rule, the agency proposing to take such action shall send a notification of such proposed action to the temporary president of the senate and the speaker of the assembly. This notification shall: (a) refer to the statutory authority under which the action is proposed, (b) give the time and place of any public hearing that may be scheduled concerning the proposed action, or state the manner in which data, views or arguments may be submitted to the agency concerning the proposed action, (c) contain a copy of the complete text of the proposed rule, and (d) contain a fiscal statement setting forth the fiscal consequences of the proposed action on the state and its local governments.

§ 3. Paragraph a of subdivision 2 of section 3-0301 of the environmental conservation law, as amended by chapter 412 of the laws of 2016, is amended to read as follows:

a. Adopt, amend or repeal environmental standards, criteria and those rules and regulations having the force and effect of standards and criteria to carry out the purposes and provisions of this act. Any such environmental standard, criterion, rule or regulation or change thereto shall become effective thirty days after being filed with the Secretary of State for publication in the "Official Compilation of Codes, Rules, and Regulations of the State of New York" published pursuant to section [~~102~~] one hundred two of the Executive Law. This provision shall not in any way restrict the commissioner in the exercise of any function, power or duty transferred to him or her and heretofore authorized to be exercised by any other department acting through its commissioner to promulgate, adopt, amend or repeal any standards, rules and regulations. No such environmental standards, criterion, rule or regulation or change thereto shall be proposed for approval unless a public hearing relating to the subject of such standard shall be held by the commissioner prior thereto not less than [~~45~~] sixty days after date of notice therefor, any provision of law to the contrary notwithstanding. Notice shall be given by public advertisement of the date, time, place and purpose of such hearing.

§ 4. Subdivision 1 of section 19-0303 of the environmental conservation law, as amended by chapter 412 of the laws of 2016, is amended to read as follows:

1. A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the state concerned. Notice of such hearing shall be given at least [~~forty-five~~] sixty days prior to the scheduled date of the hearing by public adver-

tisement of the date, time, place and purpose of such hearing. At such hearing, opportunity to be heard by the department with respect to the subject thereof shall be given to the public. A code, rule or regulation or an amendment or repeal thereof shall not become effective until thirty days after certified copies thereof shall have been filed with the secretary of state. Any person heard at such hearing shall be given written notice of the action of the department with respect to the subject thereof.

§ 5. Section 27-0705 of the environmental conservation law, as amended by chapter 412 of the laws of 2016, is amended to read as follows:

§ 27-0705. Adoption of rules and regulations; public hearings.

A rule or regulation or any amendment or repeal thereof shall not be adopted until after public hearing thereon. Notice of such hearing shall be given at least [~~forty-five~~] **sixty** days prior to the scheduled date of the hearing by public advertisement in the area of the state concerned of the date, time, place and purpose of such hearing. At such hearing, opportunity to be heard shall be given to the public. A rule or regulation or an amendment or repeal thereof shall not become effective until sixty days after certified copies thereof shall have been filed with the secretary of state.

§ 6. Subdivision 1 of section 35-0109 of the environmental conservation law, as amended by chapter 412 of the laws of 2016, is amended to read as follows:

1. Notice of public hearing shall be by publication in two newspapers most likely to give notice to the people of this state of such hearings at least once in each of three successive weeks, provided, however, that notice of public hearing shall be given to the manufacturer or manufacturers of such household cleansing products in writing, whenever practicable or in such other form as in the commissioner's judgment will reasonably notify such manufacturer of said hearing. Such hearing shall not be conducted less than [~~forty-five~~] **sixty** days following the date of first publication of notice of such hearing.

§ 7. Section 37-0105 of the environmental conservation law, as amended by chapter 412 of the laws of 2016, is amended to read as follows:

§ 37-0105. Rules and regulations.

The department is hereby authorized to promulgate rules and regulations pertaining to the storage and release to the environment of substances hazardous or acutely hazardous to public health, safety or the environment. Such rules and regulations may require the users of substances which may meet the criteria upon which the lists referred to in paragraphs (a) and (b) of subdivision one of section 37-0103 of this chapter are based to furnish to the department for the public record any information regarding such substances which the said user may have, and the nature and extent of research performed by said user concerning the effects of such substances on human health and the environment. Prior to promulgation of rules and regulations hereunder, public hearings shall be held upon notice in two newspapers in the locality of said public hearings, at least two times per week in each of three successive weeks. Such hearings shall be conducted not less than [~~forty-five (45)~~] **sixty (60)** days following the date of last publication.

§ 8. This act shall take effect October 1, 2017, and shall apply to all notices of proposed rule making published in the state register and to all notifications sent to the temporary president of the senate and the speaker of the assembly on or after such date.