

# STATE OF NEW YORK

5912

2017-2018 Regular Sessions

## IN SENATE

May 5, 2017

Introduced by Sen. JACOBS -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

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:

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 substantial threat to public  
16 health or safety; or

17 (ii) the usual rule making procedures are impractical because a judi-  
18 cial decision, federal or state law or rule or other exigent circum-  
19 stances require an agency to immediately create or change a rule upon  
20 which the public can rely; or

21 (iii) the usual rule making procedures are impractical because it is  
22 necessary for an agency to adopt a rule immediately in order to fulfill  
23 its legal obligations; or

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

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1 (iv) failure to adopt a rule immediately would cause a delay that  
2 would frustrate or be in direct contravention of the stated goals of a  
3 statute and be contrary to the public interest; or

4 (v) the delay involved in adopting the rule through the usual rule  
5 making procedure provided in subdivision one of the section would lead  
6 to irreparable injury and thus would be contrary to the public interest;  
7 or

8 (vi) any delay in adopting the rule would cause a denial of funds or  
9 services from sources outside government which would otherwise be avail-  
10 able to the state and thus be contrary to the public interest.

11 (b) Unless otherwise provided by law, such emergency rule shall not  
12 remain in effect for longer than ninety days after being filed with the  
13 secretary of state unless within such time the agency complies with the  
14 requirements of subdivision one of this section and adopts the rule  
15 pursuant to the provisions of subdivision five of this section,  
16 provided, however, if such emergency rule is readopted prior to the  
17 expiration of such ninety day period such readoption and any subsequent  
18 readoptions shall remain in effect for no longer than sixty days. The  
19 agency may adopt the rule for two additional sixty day periods. At the  
20 end of the third sixty day emergency period the agency must adopt the  
21 rule permanently or the rule shall be deemed to be expired.

22 § 2. This act shall take effect immediately.