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I N S E N A T E

February 9, 2012

Introduced by Sens. CARLUCCI, KLEIN, SAVINO, VALESKY -- 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 authorizing regulated businesses to petition a state agency for an alternate method of implementing a regulatory mandate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 204-a of the state administrative procedure act, as
2 amended by section 1 of subpart H of part C of chapter 97 of the laws of
3 2011, is amended to read as follows:
4 S 204-a. Alternate methods for implementing regulatory mandates. 1. As
5 used in this section:
6 (a) "local government" means any county, city, town, village, school
7 district, fire district or other special district;
8 (b) "REGULATED BUSINESS" MEANS ANY GROUP OF BUSINESSES OF A SIMILAR
9 TYPE OR TRADE, OR FROM THE SAME REGION OR AREA OF THE STATE, OR ANY
10 GROUP OF BUSINESSES WITHIN THE STATE, THAT ARE SUBJECT TO THE REGULATION
11 OF ANY AGENCY. SUCH TERM SHALL INCLUDE ANY ENTITY OR GROUP WHICH REPRESENTS
12 SUCH BUSINESSES;
13 (C) "regulatory mandate" means any rule which (I) requires one or more
14 local governments to create a new program, increase the level of service
15 for an existing program or otherwise comply with mandatory requirements;
16 OR (II) REGULATES THE CONDUCTING AND MANAGEMENT OF ANY BUSINESS IN THIS
17 STATE; and
18 [(c)] (D) "petition" means a document submitted by a local government
19 OR REGULATED BUSINESSES seeking approval of an alternate method for
20 implementing a regulatory mandate.
21 2. A local government, or two or more local governments acting jointly,
22 may seek approval for an alternate method of implementing a regulatory
23 mandate by submitting to the appropriate state agency a petition
24 which shall include but not be limited to:

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

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1 (a) for each involved local government, an indication that submission
2 has been approved by the governing body of the local government or by an
3 officer duly authorized by the governing body to do so;

4 (b) an identification of the regulatory mandate which is the subject
5 of the petition and information sufficient to establish that the
6 proposed alternate method of implementation is consistent with and will
7 effectively carry out the objectives of the regulatory mandate;

8 (c) information sufficient to establish that the proposed alternate
9 method of implementation is consistent with and will effectively carry
10 out the objectives of the regulatory mandate;

11 (d) documentation that the petition has been submitted to the author-
12 ized agents of any certified or recognized employee organizations
13 representing employees who would be effected by implementation of the
14 alternate method;

15 (e) whether the state has provided financial assistance for complying
16 with the regulatory mandate; and

17 (f) the name, public office address and telephone number of the repre-
18 sentative of the local government who will coordinate requests for addi-
19 tional information on the petition; and

20 (g) where two or more local governments have petitioned jointly,
21 information which addresses the manner in which responsibility for
22 implementation will be allocated between or among the participating
23 local governments.

24 2-A. REGULATED BUSINESSES MAY SEEK APPROVAL FOR AN ALTERNATE METHOD OF
25 IMPLEMENTING A REGULATORY MANDATE BY SUBMITTING TO THE APPROPRIATE STATE
26 AGENCY A PETITION WHICH SHALL INCLUDE BUT NOT BE LIMITED TO:

27 (A) FOR EACH INVOLVED REGULATED BUSINESS, AN INDICATION THAT
28 SUBMISSION HAS BEEN APPROVED BY THE OWNER OR GOVERNING BODY OF THE REGU-
29 LATED BUSINESS TO DO SO;

30 (B) AN IDENTIFICATION OF THE REGULATORY MANDATE WHICH IS THE SUBJECT
31 OF THE PETITION;

32 (C) INFORMATION SUFFICIENT TO ESTABLISH THAT THE PROPOSED ALTERNATE
33 METHOD OF IMPLEMENTATION IS CONSISTENT WITH AND WILL EFFECTIVELY CARRY
34 OUT THE OBJECTIVES OF THE REGULATORY MANDATE; AND

35 (D) THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE REPRES-
36 TATIVE OF THE REGULATED BUSINESSES WHO WILL COORDINATE REQUESTS FOR
37 ADDITIONAL INFORMATION ON THE PETITION.

38 3. The agency shall cause a notice of the petition to be published in
39 the state register and a newspaper of general circulation in the
40 impacted community OR COMMUNITIES and shall receive comments on the
41 petition for a period of thirty days. Such notice shall either include
42 the full text of the information set forth in the petition or shall set
43 forth the address of a website on which the full text has been posted.
44 The notice shall include the name, public office OR BUSINESS address and
45 telephone number, and may include a fax number and electronic mail
46 address, of an agency representative from whom additional information on
47 the petition can be obtained and to whom comments on the petition may be
48 submitted.

49 4. Not later than thirty days after the last day of the comment peri-
50 od, the agency shall approve or disapprove the petition. The agency may
51 approve the petition without change or with such conditions or modifica-
52 tions as the agency deems appropriate. Notice of the agency determi-
53 nation shall be provided in writing to the local government OR REGULATED
54 BUSINESSES and shall be published in the state register. The agency
55 shall not grant a petition unless it determines that the petition has
56 met the requirements of subdivision two OR TWO-A of this section and

1 that the local government [has] OR REGULATED BUSINESSES HAVE established
2 that the alternate method is consistent with and will effectively carry
3 out the objectives of the regulatory mandate; provided, however, that no
4 petition shall be approved which would result in the [contravention]
5 DIMINUTION OR ABATEMENT of any environmental, health or safety standard
6 or would reduce any benefits or rights accorded by law or rule to third
7 parties. In approving a petition, an agency may waive a statutory
8 provision only if it is specifically authorized by law to waive such
9 provision. An approval shall include a timetable for agency evaluation
10 of the effectiveness of the alternate method.

11 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
12 sion, upon receipt of an objection to a petition from the authorized
13 agent of any certified or recognized employee organization representing
14 employees who would be affected by implementation of the alternate meth-
15 od, the agency shall provide any such organizations with an opportunity
16 for a hearing. If an adjudicatory proceeding is requested, the petition
17 shall not be approved unless the agency determines by a preponderance of
18 the evidence that implementing the alternate method would not affect
19 such employees by contravening any environmental, health or safety stan-
20 dard, reducing any rights or benefits or violating the terms of any
21 negotiated agreement, and that all other requirements of this section
22 have been met. The provisions of this subdivision are in addition to and
23 shall not be construed to impair or modify any rights of such employees
24 under any other law, regulation or contract.

25 5. A local government OR REGULATED BUSINESSES that [objects] OBJECT to
26 a state agency determination to modify or disapprove its petition may
27 appeal in writing to the mandate relief council, who, upon review of the
28 agency's findings and determination, may approve, modify or disapprove
29 the petition.

30 6. Nothing in this section shall require a local government OR REGU-
31 LATED BUSINESSES to commence or continue an alternate method of imple-
32 mentation if it determines in its sole discretion not to do so, except
33 to the extent that a local government [has] OR REGULATED BUSINESSES HAVE
34 committed to commencing or continuing an alternate method in a joint
35 petition submitted pursuant to subdivision two OR TWO-A of this section.

36 7. A state agency may rescind its approval of a petition only after a
37 hearing, provided, however, that the agency may suspend its approval of
38 a petition prior to a hearing if it finds that immediate suspension is
39 necessary to address an imminent threat to health or safety. Notice of a
40 hearing must be provided to the petitioner at least thirty days prior to
41 the hearing and must be posted on the agency's website. Such notice must
42 state the basis for the agency's decision to seek rescission and inform
43 the local government OR REGULATED BUSINESSES that it may request infor-
44 mation relied upon by the agency in making its determination, which
45 information must be provided to the local government OR REGULATED BUSI-
46 NESSES at least seven days in advance of the hearing. After such hear-
47 ing, the agency may rescind its approval upon a finding that the alter-
48 native method of implementation is not consistent with or does not
49 effectively carry out the objectives of the regulatory mandate.

50 8. Notwithstanding any other provision of law, implementation of an
51 alternate method approved by an agency pursuant to this section shall be
52 deemed to lawfully meet all requirements of the regulatory mandate. An
53 agency shall retain the authority to enforce compliance with the alter-
54 nate method in the same manner as it may enforce compliance with the
55 underlying rule. Any action on a petition by a state agency shall be

subject to review pursuant to article seventy-eight of the civil practice law and rules.

9. In accordance with the timetable established pursuant to subdivision three of this section, the agency shall evaluate the effectiveness of the alternate method in carrying out the objectives of the regulatory mandate. The evaluation shall identify any savings or other benefits, and any costs or other disadvantages, of implementing the alternate method, and shall address the desirability of incorporating the alternate method into the rules of the agency. Notice of availability of the evaluation shall be published in the state register.

S 2. Section 204-a of the state administrative procedure act, as added by chapter 479 of the laws of 2001, is amended to read as follows:

S 204-a. Alternate methods for implementing regulatory mandates. 1. As used in this section:

(a) "local government" means any county, city, town, village, school district, fire district or other special district;

(b) "REGULATED BUSINESSES" MEANS ANY GROUP OF BUSINESSES OF A SIMILAR TYPE OR TRADE, OR FROM THE SAME REGION OR AREA OF THE STATE, OR ANY GROUP OF BUSINESSES WITHIN THE STATE, THAT ARE SUBJECT TO THE REGULATION OF ANY AGENCY. SUCH TERM SHALL INCLUDE ANY ENTITY OR GROUP WHICH REPRESENTS SUCH BUSINESSES;

(C) "regulatory mandate" means any rule which (I) requires one or more local governments to create a new program, increase the level of service for an existing program or otherwise comply with mandatory requirements; OR (II) REGULATES THE CONDUCTING AND MANAGEMENT OF ANY BUSINESS IN THIS STATE; and

[(c)] (D) "petition" means a document submitted by a local government seeking approval of an alternate method for implementing a regulatory mandate.

2. A petition shall include:

(a) an indication that submission has been approved by the governing body of the local government or by an officer duly authorized by the governing body to do so;

(b) an identification of the regulatory mandate which is the subject of the petition and information sufficient to establish that the proposed alternate method of implementation is consistent with and will effectively carry out the objectives of the regulatory mandate;

(c) information on the process used by the local government to ensure that all stakeholders have been appropriately involved in the process of developing the alternate method, including where relevant the date of any hearing, forum or other meeting to seek input on the alternate method;

(d) documentation that the petition has been submitted to the authorized agents of any certified or recognized employee organizations representing employees who would be effected by implementation of the alternate method;

(e) a proposed plan and timetable for compiling and reporting information to facilitate evaluation of the effectiveness of the alternate method;

(f) if the state provides financial assistance for complying with the regulatory mandate, any proposed amount or percentage of such assistance which would be returned to the state due to savings from implementing the alternate method; and

(g) the name, public office address and telephone number of the representative of the local government who will coordinate requests for additional information on the petition.

1 2-A. REGULATED BUSINESSES MAY SEEK APPROVAL FOR AN ALTERNATE METHOD OF
2 IMPLEMENTING A REGULATORY MANDATE BY SUBMITTING TO THE APPROPRIATE STATE
3 AGENCY A PETITION WHICH SHALL INCLUDE BUT NOT BE LIMITED TO:

4 (A) FOR EACH INVOLVED REGULATED BUSINESS, AN INDICATION THAT
5 SUBMISSION HAS BEEN APPROVED BY THE OWNER OR GOVERNING BODY OF THE REGU-
6 LATED BUSINESS TO DO SO;

7 (B) AN IDENTIFICATION OF THE REGULATORY MANDATE WHICH IS THE SUBJECT
8 OF THE PETITION;

9 (C) INFORMATION SUFFICIENT TO ESTABLISH THAT THE PROPOSED ALTERNATE
10 METHOD OF IMPLEMENTATION IS CONSISTENT WITH AND WILL EFFECTIVELY CARRY
11 OUT THE OBJECTIVES OF THE REGULATORY MANDATE; AND

12 (D) THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE REPRES-
13 TATIVE OF THE REGULATED BUSINESSES WHO WILL COORDINATE REQUESTS FOR
14 ADDITIONAL INFORMATION ON THE PETITION.

15 3. Two or more local governments may submit a petition jointly,
16 provided that each local government meets the requirements of paragraphs
17 (a), (c), (d) and (g) of subdivision two of this section, and provided
18 that the petition addresses the manner in which responsibility for
19 implementation will be allocated between or among the participating
20 local governments.

21 4. The agency shall cause a notice of the petition to be published in
22 the state register and shall receive comments on the petition for a
23 period of thirty days. Such notice shall either include the full text of
24 the information set forth in the petition or shall set forth the address
25 of a website on which the full text has been posted. The notice shall
26 include the name, public office OR BUSINESS address and telephone
27 number, and may include a fax number and electronic mail address, of an
28 agency representative from whom additional information on the petition
29 can be obtained and to whom comments on the petition may be submitted.

30 5. (a) Not later than thirty days after the last day of the comment
31 period, the agency shall approve or disapprove the petition. The agency
32 may approve the petition without change or with such conditions or
33 modifications as the agency deems appropriate. Notice of the agency
34 determination shall be provided in writing to the local government OR
35 REGULATED BUSINESSES and shall be published in the state register. The
36 agency shall not grant a petition unless it determines that the petition
37 has met the requirements of subdivision two OR TWO-A of this section and
38 that the local government [has] OR REGULATED BUSINESSES HAVE established
39 that the alternate method is consistent with and will effectively carry
40 out the objectives of the regulatory mandate; provided, however, that no
41 petition shall be approved which would result in the [contravention]
42 DIMINUTION OR ABATEMENT of any environmental, health or safety standard
43 or would reduce any benefits or rights accorded by law or rule to third
44 parties. In approving a petition, an agency may waive a statutory
45 provision only if it is specifically authorized by law to waive such
46 provision. An approval shall include a timetable for agency evaluation
47 of the effectiveness of the alternate method.

48 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
49 sion, upon receipt of an objection to a petition from the authorized
50 agent of any certified or recognized employee organization representing
51 employees who would be affected by implementation of the alternate meth-
52 od, the agency shall provide any such organizations with an opportunity
53 for a hearing. If an adjudicatory proceeding is requested, the petition
54 shall not be approved unless the agency determines by a preponderance of
55 the evidence that implementing the alternate method would not affect
56 such employees by contravening any environmental, health or safety stan-

1 dard, reducing any rights or benefits or violating the terms of any
2 negotiated agreement, and that all other requirements of this section
3 have been met. The provisions of this subdivision are in addition to and
4 shall not be construed to impair or modify any rights of such employees
5 under any other law, regulation or contract.

6 6. Nothing in this section shall require a local government OR REGU-
7 LATED BUSINESSES to commence or continue an alternate method of imple-
8 mentation if it determines in its sole discretion not to do so, except
9 to the extent that a local government [has] OR REGULATED BUSINESSES HAVE
10 committed to commencing or continuing an alternate method in a joint
11 petition submitted pursuant to subdivision three of this section. A
12 state agency may rescind its approval of a petition at any time if it
13 determines, based on the information reported pursuant to paragraph (e)
14 of subdivision two of this section or other information available to it,
15 that the alternate method is not effectively carrying out the objectives
16 of the regulatory mandate or is being implemented in a manner detri-
17 mental to the public interest.

18 7. Notwithstanding any other provision of law, implementation of an
19 alternate method approved by an agency pursuant to this section shall be
20 deemed to lawfully meet all requirements of the regulatory mandate. An
21 agency shall retain the authority to enforce compliance with the alter-
22 nate method in the same manner as it may enforce compliance with the
23 underlying rule. Any action on a petition by a state agency shall be
24 subject to review pursuant to article seventy-eight of the civil prac-
25 tice law and rules.

26 8. In accordance with the timetable established pursuant to subdivi-
27 sion four of this section, the agency shall evaluate the effectiveness
28 of the alternate method in carrying out the objectives of the regulatory
29 mandate. The evaluation shall identify any savings or other benefits,
30 and any costs or other disadvantages, of implementing the alternate
31 method, and shall address the desirability of incorporating the alter-
32 nate method into the rules of the agency. Notice of availability of the
33 evaluation shall be published in the state register.

34 S 3. This act shall take effect on the first of January next succeed-
35 ing the date on which it shall have become a law; provided that the
36 amendments to section 204-a of the state administrative procedure act,
37 made by section one of this act, shall be subject to the expiration and
38 reversion of such section, pursuant to section 3 of subpart H of part C
39 of chapter 97 of the laws of 2011, and shall be deemed expired there-
40 with, when upon such date the provisions of section two of this act
41 shall take effect.