

5353

2015-2016 Regular Sessions

I N S E N A T E

May 13, 2015

Introduced by Sen. MURPHY -- 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 petitions for alternate methods of implementing regulatory mandates

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,
2 as added by chapter 479 of the laws of 2001, is amended to read as
3 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) "regulatory mandate" means any rule which requires one or more
9 local governments to create a new program, increase the level of service
10 for an existing program or otherwise comply with mandatory requirements;
11 and
12 (c) "petition" means a document submitted by a local government OR
13 GOVERNMENTS seeking approval of an alternate method for implementing a
14 regulatory mandate.
15 2. A LOCAL GOVERNMENT, OR TWO OR MORE LOCAL GOVERNMENTS ACTING JOINT-
16 LY, MAY SEEK APPROVAL FOR AN ALTERNATE METHOD OF IMPLEMENTING A REGULA-
17 TORY MANDATE BY SUBMITTING TO THE APPROPRIATE STATE AGENCY A petition
18 WHICH shall include, BUT NOT BE LIMITED TO:
19 (a) FOR EACH INVOLVED LOCAL GOVERNMENT, an indication that submission
20 has been approved by the governing body of the local government or by an
21 officer duly authorized by the governing body to do so;
22 (b) an identification of the regulatory mandate which is the subject
23 of the petition and information sufficient to establish that the

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

LBD11023-02-5

1 proposed alternate method of implementation is consistent with and will
2 effectively carry out the objectives of the regulatory mandate;

3 (c) information on [the] ANY process used by the local government OR
4 GOVERNMENTS to ensure, WHERE APPROPRIATE, that all stakeholders have
5 been [appropriately] involved in the process of developing the alternate
6 method, including where relevant the date of any hearing, forum or other
7 meeting to seek input on the alternate method;

8 (d) documentation that the petition has been submitted to the author-
9 ized agents of any certified or recognized employee organizations
10 representing employees who would be [effected] AFFECTED by implementa-
11 tion of the alternate method;

12 (e) [a proposed plan and timetable for compiling and reporting infor-
13 mation to facilitate evaluation of the effectiveness of the alternate
14 method;

15 (f) if] WHETHER the state [provides] HAS PROVIDED financial assistance
16 for complying with the regulatory mandate[, any proposed amount or
17 percentage of such assistance which would be returned to the state due
18 to savings from implementing the alternate method]; [and

19 (g)] (F) the name, public office address and telephone number of the
20 representative of [the] EACH PETITIONING local government who will coor-
21 dinate requests for additional information on the petition[.]; AND

22 [3. Two] (G) WHERE TWO or more local governments [may submit a peti-
23 tion] HAVE PETITIONED jointly, [provided that each local government
24 meets the requirements of paragraphs (a), (c), (d) and (g) of subdivi-
25 sion two of this section, and provided that the petition] INFORMATION
26 WHICH addresses the manner in which responsibility for implementation
27 will be allocated between or among the participating local governments.

28 [4.] 3. The agency shall cause a notice of the petition to be
29 published in the state register AND A NEWSPAPER OF GENERAL CIRCULATION
30 IN THE IMPACTED COMMUNITY and shall receive comments on the petition for
31 a period of thirty days. Such notice shall either include the full text
32 of the information set forth in the petition or shall set forth the
33 address of a website on which the full text has been posted. The notice
34 shall include the name, public office address [and], telephone number[,
35 and may include a fax number] and electronic mail address[,] of an agen-
36 cy representative from whom additional information on the petition can
37 be obtained and to whom comments on the petition may be submitted.

38 [5.] 4. (a) Not later than thirty days after the last day of the
39 comment period, the agency shall approve or disapprove the petition. The
40 agency may approve the petition without change or with such conditions
41 or modifications as the agency deems appropriate. Notice of the agency
42 determination INCLUDING ANY SUCH CONDITIONS OR MODIFICATIONS shall be
43 provided in writing to the local government and shall be published in
44 the state register. SUCH NOTICE SHALL EITHER INCLUDE THE FULL TEXT OF
45 THE DETERMINATION OR SHALL SET FORTH THE ADDRESS OF A WEBSITE ON WHICH
46 THE FULL TEXT HAS BEEN POSTED. The agency shall not grant a petition
47 unless it determines that the petition has met the requirements of
48 subdivision two of this section and that the local government has estab-
49 lished that the alternate method is consistent with and will effectively
50 carry out the objectives of the regulatory mandate; provided, however,
51 that no petition shall be approved which would result in the contraven-
52 tion of any environmental, health or safety standard or would reduce any
53 benefits or rights accorded by law or rule to third parties. In approv-
54 ing a petition, an agency may waive a statutory provision only if it is
55 specifically authorized by law to waive such provision. An approval

1 shall include a timetable for agency evaluation of the effectiveness of
2 the alternate method.

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

17 5. NOT LATER THAN THE FIRST DAY OF FEBRUARY, ANY AGENCY THAT HAS MADE
18 ONE OR MORE DETERMINATIONS PURSUANT TO SUBDIVISION FOUR OF THIS SECTION
19 IN THE PRECEDING CALENDAR YEAR SHALL SUBMIT FOR PUBLICATION IN THE STATE
20 REGISTER A NOTICE IDENTIFYING, FOR EACH SUCH DETERMINATION, THE LOCAL
21 GOVERNMENT OR GOVERNMENTS THAT SUBMITTED THE PETITION, THE REGULATORY
22 MANDATE, THE ISSUE OF THE STATE REGISTER IN WHICH THE NOTICE OF DETERMI-
23 NATION WAS PUBLISHED, AND THE ADDRESS OF A WEBSITE ON WHICH THE FULL
24 TEXT OF THE DETERMINATION HAS BEEN POSTED. THE FULL TEXT SHALL BE MAIN-
25 TAINED FOR THE ENTIRE PERIOD THAT A PETITION REMAINS APPROVED.

26 6. Nothing in this section shall require a local government to
27 commence or continue an alternate method of implementation if it deter-
28 mines in its sole discretion not to do so, except to the extent that a
29 local government has committed to commencing or continuing an alternate
30 method in a joint petition submitted pursuant to subdivision [three] TWO
31 of this section.

32 7. A state agency may rescind its approval of a petition [at any time
33 if it determines, based on the information reported pursuant to para-
34 graph (e) of subdivision two of this section or other information avail-
35 able to it, that the alternate method is not effectively carrying out
36 the objectives of the regulatory mandate or is being implemented in a
37 manner detrimental to the public interest] ONLY AFTER A HEARING,
38 PROVIDED, HOWEVER, THAT THE AGENCY MAY SUSPEND ITS APPROVAL OF A PETI-
39 TION PRIOR TO A HEARING IF IT FINDS THAT IMMEDIATE SUSPENSION IS NECES-
40 SARY TO ADDRESS AN IMMINENT THREAT TO HEALTH OR SAFETY. NOTICE OF A
41 HEARING MUST BE PROVIDED TO THE PETITIONER AT LEAST THIRTY DAYS PRIOR TO
42 THE HEARING AND MUST BE POSTED ON THE AGENCY'S WEBSITE. SUCH NOTICE MUST
43 STATE THE BASIS FOR THE AGENCY'S DECISION TO SEEK RESCISSION AND INFORM
44 THE LOCAL GOVERNMENT THAT IT MAY REQUEST INFORMATION RELIED UPON BY THE
45 AGENCY IN MAKING ITS DETERMINATION, WHICH INFORMATION MUST BE PROVIDED
46 TO THE LOCAL GOVERNMENT AT LEAST SEVEN DAYS IN ADVANCE OF THE HEARING.
47 AFTER SUCH HEARING, THE AGENCY MAY RESCIND ITS APPROVAL UPON A FINDING
48 THAT THE ALTERNATIVE METHOD OF IMPLEMENTATION IS NOT CONSISTENT WITH OR
49 DOES NOT EFFECTIVELY CARRY OUT THE OBJECTIVES OF THE REGULATORY MANDATE.

50 [7.] 8. Notwithstanding any other provision of law, implementation of
51 an alternate method approved by an agency pursuant to this section shall
52 be deemed to lawfully meet all requirements of the regulatory mandate.
53 An agency shall retain the authority to enforce compliance with the
54 alternate method in the same manner as it may enforce compliance with
55 the underlying rule. Any action on a petition by a state agency shall be

1 subject to review pursuant to article seventy-eight of the civil prac-
2 tice law and rules.
3 [8.] 9. In accordance with the timetable established pursuant to
4 subdivision [four] THREE of this section, the agency shall evaluate the
5 effectiveness of the alternate method in carrying out the objectives of
6 the regulatory mandate. The evaluation shall identify any savings or
7 other benefits, and any costs or other disadvantages, of implementing
8 the alternate method, and shall address the desirability of incorporat-
9 ing the alternate method into the rules of the agency. Notice of avail-
10 ability of the evaluation shall be published in the state register.
11 S 2. This act shall take effect on the first of January next succeed-
12 ing the date on which it shall have become a law.