

5353--A

Cal. No. 927

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 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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, as  
2 added by chapter 479 of the laws of 2001, is amended to read as follows:  
3 S 204-a. Alternate methods for implementing regulatory mandates. 1. As  
4 used in this section:  
5 (a) "local government" means any county, city, town, village, school  
6 district, fire district or other special district;  
7 (b) "regulatory mandate" means any rule which requires one or more  
8 local governments to create a new program, increase the level of service  
9 for an existing program or otherwise comply with mandatory requirements;  
10 and  
11 (c) "petition" means a document submitted by a local government OR  
12 GOVERNMENTS seeking approval of an alternate method for implementing a  
13 regulatory mandate.  
14 2. A LOCAL GOVERNMENT, OR TWO OR MORE LOCAL GOVERNMENTS ACTING JOINT-  
15 LY, MAY SEEK APPROVAL FOR AN ALTERNATE METHOD OF IMPLEMENTING A REGULA-  
16 TORY MANDATE BY SUBMITTING TO THE APPROPRIATE STATE AGENCY A petition  
17 WHICH shall include BUT NOT BE LIMITED TO:  
18 (a) FOR EACH INVOLVED LOCAL GOVERNMENT, an indication that submission  
19 has been approved by the governing body of the local government or by an  
20 officer duly authorized by the governing body to do so;

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

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

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

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

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

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

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

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

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

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

1 specifically authorized by law to waive such provision. An approval  
2 shall include a timetable for agency evaluation of the effectiveness of  
3 the alternate method.

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

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

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

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

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

1 the underlying rule. Any action on a petition by a state agency shall be  
2 subject to review pursuant to article seventy-eight of the civil prac-  
3 tice law and rules.

4 [8] 9. In accordance with the timetable established pursuant to  
5 subdivision [four] THREE of this section, the agency shall evaluate the  
6 effectiveness of the alternate method in carrying out the objectives of  
7 the regulatory mandate. The evaluation shall identify any savings or  
8 other benefits, and any costs or other disadvantages, of implementing  
9 the alternate method, and shall address the desirability of incorporat-  
10 ing the alternate method into the rules of the agency. Notice of avail-  
11 ability of the evaluation shall be published in the state register.

12 S 2. This act shall take effect on the first of January after it shall  
13 have become a law.