S T A T E O F N E W Y O R K

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:

Section 1. 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) "regulatory mandate" means any rule which 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; and

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

2. A LOCAL GOVERNMENT, OR TWO OR MORE LOCAL GOVERNMENTS ACTING JOINTLY, MAY SEEK APPROVAL FOR AN ALTERNATE METHOD OF IMPLEMENTING A REGULATORY MANDATE BY SUBMITTING TO THE APPROPRIATE STATE AGENCY A petition WHICH shall include BUT NOT BE LIMITED TO:

(a) FOR EACH INVOLVED LOCAL GOVERNMENT, 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;

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

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(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] ANY process used by the local government OR GOVERNMENTS to ensure, WHERE APPROPRIATE, 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] AFFECTED 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] WHETHER the state [provides] HAS PROVIDED 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)] (F) the name, public office address and telephone number of the representative of [the] EACH PETITIONING local government who will coordinate requests for additional information on the petition[.]; AND

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

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

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

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

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

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

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

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

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

the 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.

[8] 9. In accordance with the timetable established pursuant to subdivision [four] 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. This act shall take effect on the first of January after it shall have become a law.