

# STATE OF NEW YORK

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2649

2017-2018 Regular Sessions

## IN SENATE

January 17, 2017

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Introduced by Sen. CARLUCCI -- 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,  
2 as added by chapter 479 of the laws of 2001, is amended to read as  
3 follows:

4       § 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 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 repre-**  
**sents 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**  
**state;** and

18       [~~(e)~~] **(d)** "petition" means a document submitted by a local government  
19 seeking approval of an alternate method for implementing a regulatory  
20 mandate.

21       2. A petition shall include:

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

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1       (a) an indication that submission has been approved by the governing  
2 body of the local government or by an officer duly authorized by the  
3 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 on the process used by the local government to ensure  
9 that all stakeholders have been appropriately involved in the process of  
10 developing the alternate method, including where relevant the date of  
11 any hearing, forum or other meeting to seek input on the alternate meth-  
12 od;

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

17      (e) a proposed plan and timetable for compiling and reporting informa-  
18 tion to facilitate evaluation of the effectiveness of the alternate  
19 method;

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

24      (g) the name, public office address and telephone number of the repre-  
25 sentative of the local government who will coordinate requests for addi-  
26 tional information on the petition.

27      2-a. Regulated businesses may seek approval for an alternate method of  
28 implementing a regulatory mandate by submitting to the appropriate state  
29 agency a petition which shall include but not be limited to:

30      (a) for each involved regulated business, an indication that  
31 submission has been approved by the owner or governing body of the regu-  
32 lated business to do so;

33      (b) an identification of the regulatory mandate which is the subject  
34 of the petition;

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

38      (d) the name, business address and telephone number of the represen-  
39 tative of the regulated businesses who will coordinate requests for  
40 additional information on the petition.

41      3. Two or more local governments may submit a petition jointly,  
42 provided that each local government meets the requirements of paragraphs  
43 (a), (c), (d) and (g) of subdivision two of this section, and provided  
44 that the petition addresses the manner in which responsibility for  
45 implementation will be allocated between or among the participating  
46 local governments.

47      4. The agency shall cause a notice of the petition to be published in  
48 the state register and shall receive comments on the petition for a  
49 period of thirty days. Such notice shall either include the full text of  
50 the information set forth in the petition or shall set forth the address  
51 of a website on which the full text has been posted. The notice shall  
52 include the name, public office or business address and telephone  
53 number, and may include a fax number and electronic mail address, of an  
54 agency representative from whom additional information on the petition  
55 can be obtained and to whom comments on the petition may be submitted.

1       5. (a) Not later than thirty days after the last day of the comment  
2 period, the agency shall approve or disapprove the petition. The agency  
3 may approve the petition without change or with such conditions or  
4 modifications as the agency deems appropriate. Notice of the agency  
5 determination shall be provided in writing to the local government or  
6 regulated businesses and shall be published in the state register. The  
7 agency shall not grant a petition unless it determines that the petition  
8 has met the requirements of subdivision two or two-a of this section and  
9 that the local government [has] or regulated businesses have established  
10 that the alternate method is consistent with and will effectively carry  
11 out the objectives of the regulatory mandate; provided, however, that no  
12 petition shall be approved which would result in the [~~contravention~~]  
13 diminution or abatement of any environmental, health or safety standard  
14 or would reduce any benefits or rights accorded by law or rule to third  
15 parties. In approving a petition, an agency may waive a statutory  
16 provision only if it is specifically authorized by law to waive such  
17 provision. An approval shall include a timetable for agency evaluation  
18 of the effectiveness of the alternate method.

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

33      6. Nothing in this section shall require a local government or regu-  
34 lated businesses to commence or continue an alternate method of imple-  
35 mentation if it determines in its sole discretion not to do so, except  
36 to the extent that a local government [has] or regulated businesses have  
37 committed to commencing or continuing an alternate method in a joint  
38 petition submitted pursuant to subdivision three of this section. A  
39 state agency may rescind its approval of a petition at any time if it  
40 determines, based on the information reported pursuant to paragraph (e)  
41 of subdivision two of this section or other information available to it,  
42 that the alternate method is not effectively carrying out the objectives  
43 of the regulatory mandate or is being implemented in a manner detri-  
44 mental to the public interest.

45      7. Notwithstanding any other provision of law, implementation of an  
46 alternate method approved by an agency pursuant to this section shall be  
47 deemed to lawfully meet all requirements of the regulatory mandate. An  
48 agency shall retain the authority to enforce compliance with the alter-  
49 nate method in the same manner as it may enforce compliance with the  
50 underlying rule. Any action on a petition by a state agency shall be  
51 subject to review pursuant to article seventy-eight of the civil prac-  
52 tice law and rules.

53      8. In accordance with the timetable established pursuant to subdivi-  
54 sion four of this section, the agency shall evaluate the effectiveness  
55 of the alternate method in carrying out the objectives of the regulatory  
56 mandate. The evaluation shall identify any savings or other benefits,

1 and any costs or other disadvantages, of implementing the alternate  
2 method, and shall address the desirability of incorporating the alter-  
3 nate method into the rules of the agency. Notice of availability of the  
4 evaluation shall be published in the state register.

5 § 2. This act shall take effect on the first of January next succeed-  
6 ing the date on which it shall have become a law.