

S. 321

A. 99

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2015

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law and the public authorities law, in relation to the establishment, extension, powers and expenses of underground utility improvement districts

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

1 Section 1. Section 190 of the town law, as amended by chapter 378 of
2 the laws of 2012, is amended to read as follows:
3 S 190. Establishment or extension of improvement districts. Upon a
4 petition as hereinafter provided, the town board of any town may establish or extend in said town a sewer, drainage, water, water quality
5 treatment, park, public parking, lighting, snow removal, water supply,
6 sidewalk, a fallout shelter district or refuse and garbage district,
7 aquatic plant growth control district, ambulance district, watershed
8 protection improvement district, UNDERGROUND UTILITY IMPROVEMENT
9 DISTRICT, and in any town bordering upon or containing within its boundaries any navigable waters of this state, a harbor improvement district,
10 a public dock district, or beach erosion control district, and provide
11 improvements or services, or both, in any such district, wholly at the
12 expense of the district; but no water supply district shall be established or extended to include lands situate within the boundaries of a
13 water district. No such district shall be established or extended in a
14 city or in an incorporated village provided, however, that such a
15 district may be established or extended wholly or partly within an
16 incorporated village on consent of the village expressed in a local law,
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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD02393-01-5

ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article nine of the village law, as the case may be, and except, in the case of a water quality treatment district, on consent of a village expressed in a local law or by resolution of the board of trustees and not subject to any referendum.

S 2. Paragraph a of subdivision 1 of section 193 of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

a. Whenever a petition shall be presented to the town board pursuant to this article, for the establishment or extension of a sewer, wastewater disposal, drainage, water, water quality treatment, park, public parking, lighting, snow removal, water supply, sidewalk, refuse and garbage, aquatic plant growth control district, ambulance district, harbor improvement district, public dock district, beach erosion control district, watershed protection improvement district, UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or a fallout shelter district, the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition, the boundaries of the proposed district, the improvements proposed, the maximum amount proposed to be expended for the improvement as stated in the petition or the maximum amount to be expended for the performance or supplying of services if a maximum amount is stated in the petition, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, and specifying the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof, concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the signboard of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. In the event that the town maintains a website, such information may also be provided on the website. Prior to the publication of a copy of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home was computed.

S 3. Section 198 of the town law is amended by adding a new subdivision 10-h to read as follows:

10-H. UNDERGROUND UTILITY IMPROVEMENT DISTRICT. AFTER AN UNDERGROUND UTILITY IMPROVEMENT DISTRICT HAS BEEN ESTABLISHED, THE TOWN BOARD MAY TAKE SUCH ACTION AS MAY BE REQUIRED TO ADOPT PLANS AND SPECIFICATIONS AND ENTER INTO A CONTRACT OR CONTRACTS, OR TAKE SUCH OTHER ACTIONS AS MAY BE REQUIRED WITH A PUBLIC UTILITY COMPANY, MUNICIPALITY, OR PUBLIC AUTHORITY IN ORDER TO CONSTRUCT UNDERGROUND NEW PUBLIC UTILITY FACILITIES OR CONVERT EXISTING OVERHEAD PUBLIC UTILITY FACILITIES TO UNDERGROUND FACILITIES. FOR THE PURPOSES OF THIS SUBDIVISION, "PUBLIC UTILITY FACILITIES" SHALL INCLUDE THE TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, TELEPHONE LINES, AND CABLE TELEVISION LINES, INCLUDING POLES, WIRES, AND ALL ASSOCIATED STRUCTURES.

1 S 4. Subdivision 3 of section 202 of the town law, as amended by chap-
2 ter 378 of the laws of 2012, is amended to read as follows:

3 3. The expense of the establishment of a park, public parking, water,
4 lighting, snow removal, water supply, water, water storage and distrib-
5 ution, sidewalk, refuse and garbage, aquatic plant growth control
6 district, ambulance district, harbor improvement district, watershed
7 protection improvement district, UNDERGROUND UTILITY IMPROVEMENT
8 DISTRICT, public dock district, fallout shelter district, or beach
9 erosion control district, and providing improvements or services, or
10 both, therefor, and of constructing lateral water mains pursuant to
11 paragraph (b) of subdivision one of section one hundred ninety-nine OF
12 THIS ARTICLE, shall be assessed, levied and collected from the several
13 lots and parcels of land within the district for each purpose in the
14 same manner and at the same time as other town charges, except as other-
15 wise provided by law. In the event that any order adopted pursuant to
16 section two hundred nine-d of this chapter for the establishment of a
17 water district, sidewalk district, a public parking district, a refuse
18 and garbage district, an aquatic plant growth control district, lighting
19 district, watershed protection improvement district, UNDERGROUND UTILITY
20 IMPROVEMENT DISTRICT, or beach erosion and control district or that any
21 petition for the establishment of a water district, sidewalk district, a
22 public parking district, a refuse and garbage district, an aquatic plant
23 growth control district, lighting district, or beach erosion control
24 district, shall contain a statement that the cost of constructing the
25 water system, sidewalks, lighting system, or acquiring and improving
26 lands for public parking or for refuse and garbage purposes or for beach
27 erosion control, or for watershed protection improvement district, OR
28 FOR UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or for aquatic plant
29 growth control, shall be assessed by the town board in proportion as
30 nearly as may be to the benefit which each lot or parcel will derive
31 therefrom, the amount to be raised for the payment of the principal and
32 interest of the bonds issued for the construction of the water system,
33 sidewalks, lighting system, or acquiring and improving lands for public
34 parking or for refuse and garbage purposes or for beach erosion control,
35 or for aquatic plant growth control, or for watershed protection
36 improvement district, OR FOR UNDERGROUND UTILITY IMPROVEMENT DISTRICT,
37 pursuant to such petition or order, shall be assessed on the lands with-
38 in such district in the same manner as provided in the case of trunk
39 sewers. The expense of constructing lateral water mains pursuant to
40 paragraph (c) of subdivision one of section one hundred ninety-nine OF
41 THIS ARTICLE shall be assessed, levied and collected from the several
42 lots and parcels of land within the district in proportion to the area
43 of such lot or parcel of land to the total area of the district.

44 S 5. Subdivision 2 of section 202-b of the town law, as amended by
45 chapter 378 of the laws of 2012, is amended to read as follows:

46 2. The town board may, on behalf of a park, public parking, ambulance,
47 lighting, snow removal, refuse and garbage, public dock, watershed
48 protection improvement district, UNDERGROUND UTILITY IMPROVEMENT
49 DISTRICT, or beach erosion control district, and within the limitations
50 of section one hundred ninety-eight of this chapter, acquire additional
51 apparatus and equipment and replace obsolete, inadequate, damaged,
52 destroyed or worn-out apparatus and equipment, and it may construct
53 additional facilities and appurtenances thereto or reconstruct or
54 replace obsolete, inadequate, damaged, destroyed or worn-out facilities
55 and appurtenances thereto. Such expenditure shall be authorized in the
56 manner provided in subdivision one of this section, except that the map

1 and plan described by said subdivision one shall not be required. However,
2 er, nothing herein contained shall be construed to limit or supersede
3 the provisions of section seventy-two hundred three of the education
4 law.

5 S 6. Subdivision 1 of section 209-a of the town law, as amended by
6 chapter 378 of the laws of 2012, is amended to read as follows:

7 1. the term "improvement district" shall include only a sewer, waste-
8 water disposal, drainage, water, park, public parking, lighting, snow
9 removal, water supply, sidewalk, refuse and garbage, aquatic plant
10 growth control, or watershed protection improvement district, OR UNDER-
11 GROUND UTILITY IMPROVEMENT DISTRICT, or ambulance district in any town,
12 and, in any town bordering upon or containing within its boundaries any
13 navigable water of this state a public dock or beach erosion control
14 district;

15 S 7. Subdivision 1 of section 209-d of the town law, as amended by
16 chapter 378 of the laws of 2012, is amended to read as follows:

17 1. Subsequent to the date of the filing of the map, plans and report
18 in the office of the town clerk as required in section two hundred
19 nine-c of this article the town board may adopt an order and enter the
20 same in the minutes of its proceedings reciting a description of the
21 boundaries of the proposed district or extension in a manner sufficient
22 to identify the lands included therein as in a deed of conveyance, the
23 improvements proposed, the maximum amount proposed to be expended for
24 the improvement, the estimated cost of hook-up fees, if any, to, and the
25 cost of the district or extension to, the typical property and, if
26 different, the typical one or two family home, the proposed method of
27 financing to be employed, the fact that a map, plan and report describ-
28 ing the same are on file in the town clerk's office for public
29 inspection and specifying the time when and the place where said board
30 will meet and hold a public hearing to hear all persons interested in
31 the subject thereof, concerning the same. If such order proposes only
32 the performance or supplying of certain services, it may state the maxi-
33 mum amount to be expended annually for such services. The board shall
34 cause a copy of such order to be published at least once in the official
35 paper, the first publication thereof to be not less than ten nor more
36 than twenty days before the day set therein for the hearing as afore-
37 said, and shall also cause a copy thereof to be posted on the sign-board
38 of the town maintained pursuant to subdivision six of section thirty of
39 this chapter, not less than ten nor more than twenty days before the day
40 designated for the hearing as aforesaid. Such order may further state
41 such place other than the town clerk's office where the map, plan and
42 report may be examined in advance of the hearing, if the town board
43 determines that, in the public interest, some other additional place is
44 necessary or desirable. If a water district, sidewalk district, a public
45 parking district, a refuse and garbage district, aquatic plant growth
46 control district, watershed protection improvement district, UNDERGROUND
47 UTILITY IMPROVEMENT DISTRICT, or beach erosion control district is
48 proposed, such order may contain a statement that the cost of construct-
49 ing the water system, sidewalks or acquiring lands for public parking or
50 for refuse and garbage purposes, or aquatic plant growth control
51 purposes or for beach erosion control or for watershed protection
52 improvement purposes, OR FOR UNDERGROUND UTILITY IMPROVEMENT PURPOSES,
53 shall be assessed by the town board in proportion as nearly as may be to
54 the benefit which each lot or parcel will derive therefrom. Prior to the
55 publication of the order, the board shall cause to be prepared, and file
56 for public inspection with the town clerk, a detailed explanation of how

1 the estimated cost of hook-up fees, if any, to, and the cost of the
2 district or extension to, the typical property and, if different, the
3 typical one or two family home, was computed.

4 S 8. Section 1020-g of the public authorities law is amended by adding
5 a new subdivision (o) to read as follows:

6 (O) (I) WHERE A TOWN IN THE SERVICE AREA OF THE AUTHORITY HAS ESTAB-
7 LISHED AN UNDERGROUND UTILITY IMPROVEMENT DISTRICT IN ORDER TO UNDER-
8 GROUND THE AUTHORITY'S PUBLIC UTILITY FACILITIES, PURSUANT TO ARTICLE
9 TWELVE OR TWELVE-A OF THE TOWN LAW, SUCH TOWN MAY PETITION THE AUTHORITY
10 TO CONTRIBUTE TO THE DISTRICT AT LEAST FIFTY PERCENT (50%) OF THE NET
11 INCREMENTAL COST OF IMPROVEMENTS FOR THE DISTRICT PURSUANT TO THE
12 PROVISIONS OF THIS SUBDIVISION. "NET INCREMENTAL COST" SHALL BE THE
13 DIFFERENCE BETWEEN THE TOTAL COST OF CONSTRUCTING PUBLIC UTILITY FACILI-
14 TIES UNDERGROUND AND THE TOTAL COST OF CONSTRUCTING SUCH FACILITIES
15 OVERHEAD. THE TERM "PUBLIC UTILITY FACILITIES" SHALL HAVE THE SAME MEAN-
16 ING AS IN SUBDIVISION TEN-H OF SECTION ONE HUNDRED NINETY-EIGHT OF THE
17 TOWN LAW. ANY STATE OR FEDERAL AID TO CONSTRUCT SUCH PUBLIC UTILITY
18 FACILITIES SHALL ALSO BE SUBTRACTED FROM NET INCREMENTAL COST.

19 (II) THE AUTHORITY AND THE TOWN SHALL HOLD A JOINT PUBLIC HEARING ON
20 THE PETITION OF THE TOWN.

21 (III) THE AUTHORITY AND THE TOWN SHALL DETERMINE WHETHER OR NOT FUND-
22 ING BY THE AUTHORITY IS IN THE GENERAL PUBLIC INTEREST.

23 (IV) IN DETERMINING GENERAL PUBLIC INTEREST, THE TOWN AND THE AUTHORI-
24 TY SHALL CONSIDER: (A) WHETHER THE PROJECT WILL AVOID OR ELIMINATE AN
25 UNUSUALLY HEAVY CONCENTRATION OF OVERHEAD ELECTRIC PUBLIC UTILITY FACIL-
26 ITIES, OR (B) WHETHER THE STREET OR ROADWAY IS EXTENSIVELY USED BY THE
27 GENERAL PUBLIC AND CARRIES A HEAVY VOLUME OF PEDESTRIAN OR VEHICLE TRAF-
28 FIC, OR (C) THE STREET OR ROADWAY PASSES THROUGH AN AREA WHICH IS OF
29 GENERAL PUBLIC INTEREST BASED UPON OPEN SPACE RESOURCES, FARMLAND PRES-
30 ERVATION RESOURCES, HISTORIC PRESERVATION RESOURCES, PARK AND RECREATION
31 RESOURCES, OR SCENIC OR AESTHETIC RESOURCES.

32 (V) THE AUTHORITY SHALL COMMIT TO PAY AT LEAST FIFTY PERCENT (50%) OF
33 THE NET INCREMENTAL COST OF THE IMPROVEMENTS OF THE DISTRICT, IF THE
34 AUTHORITY AND THE TOWN EACH FIND THAT ANY OF THE THREE STANDARDS IN
35 PARAGRAPH (IV) OF THIS SUBDIVISION ARE MET.

36 (VI) ANY DETERMINATION UNDER THIS SUBDIVISION SHALL BE SUBJECT TO
37 REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND
38 RULES.

39 S 9. This act shall take effect immediately.