

S T A T E   O F   N E W   Y O R K

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9166--A

2009-2010 Regular Sessions

I N   A S S E M B L Y

September 30, 2009

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Introduced by M. of A. ZEBROWSKI, GUNTHER -- Multi-Sponsored by -- M. of A. RABBITT -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to the election by certain counties to withdraw from the metropolitan commuter transportation district; and in relation to permitting the county of Putnam to make such election

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

1     Section 1. Section 1279-b of the public authorities law, as added by  
2 chapter 669 of the laws of 1986, the opening paragraph of subdivision 1,  
3 the opening paragraph of paragraph (a) of subdivision 1 and subdivisions  
4 3 and 5 as amended by chapter 670 of the laws of 1986, is amended to  
5 read as follows:  
6     S 1279-b. Transition--election to withdraw from the metropolitan  
7 commuter transportation district. 1. The counties of Dutchess, Orange,  
8 PUTNAM and Rockland shall have an option to withdraw from the metropol-  
9 itan commuter transportation district and have such withdrawal take  
10 effect on either: (a) [January] APRIL first, [nineteen hundred eighty-  
11 seven] TWO THOUSAND ELEVEN. If any such county plans to withdraw from  
12 the district on [January] APRIL first, [nineteen hundred eighty-seven]  
13 TWO THOUSAND ELEVEN, it shall (i) no later than seventy-five days after  
14 the effective date of this section, furnish the commissioner of trans-  
15 portation, and chairman of the authority and the other counties which  
16 have an option to withdraw, a resolution adopted by the county legisla-  
17 ture providing notice of intent to withdraw, (ii) on or before [October]  
18 JANUARY first, [nineteen hundred eighty-six] TWO THOUSAND TEN, furnish  
19 to the commissioner of transportation, the chairman of the authority and

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

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1 other counties which have an option to withdraw, a resolution adopted by  
2 the county legislature providing for a public transportation plan. For  
3 the purposes of this section, a "public transportation plan" shall mean  
4 a plan that maintains adequate and continuous public transportation  
5 services from the withdrawing county to the city of New York or any  
6 terminus previously served, provides a reasonable level of rail passen-  
7 ger service, provides a schedule for implementing such service, protects  
8 the public investment in the rail transportation system and any other  
9 criteria deemed necessary by the commissioner of transportation. SUCH  
10 PUBLIC TRANSPORTATION PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, AN  
11 AGREEMENT BY WHICH SUCH COUNTY SHALL BE ENTITLED TO LEASE THE FACILITIES  
12 AND SERVICES COMPRISING SUCH RAIL TRANSPORTATION SYSTEM AT FAIR MARKET  
13 VALUE AND UNDER SUCH TERMS AND CONDITIONS TO BE DETERMINED AS SET FORTH  
14 IN SUBDIVISION SIX OF THIS SECTION. Prior to withdrawal pursuant to this  
15 paragraph or paragraph (b) of this subdivision, a county must receive  
16 approval of its public transportation plan pursuant to paragraph (c) of  
17 this subdivision, (iii) on or before December fifteenth, [nineteen  
18 hundred eighty-six] TWO THOUSAND TEN, furnish the commissioner of trans-  
19 portation, a copy of an agreement with the authority or an operator of  
20 rail passenger service for the provision of rail passenger service to  
21 and from such county and the city of New York or any terminus previously  
22 served. IF SUCH AGREEMENT HAS NOT BEEN CONCLUDED BY THE RESPECTIVE  
23 PARTIES, AND A PARTY HAS EXERCISED ITS RIGHTS PURSUANT TO SUBDIVISION  
24 SIX OF THIS SECTION, THE APPROVAL OF THE COMMISSIONER OF TRANSPORTATION  
25 SHALL NOT BE REQUIRED AND THE AGREEMENT OR ORDER SET FORTH IN SUBDIVI-  
26 SION SIX OF THIS SECTION, SHALL DETERMINE THE TERMS AND CONDITIONS OF  
27 SUCH WITHDRAWAL.

28 If a county planning to withdraw on [January] APRIL first, [nineteen  
29 hundred eighty-seven] TWO THOUSAND ELEVEN is unable to withdraw because  
30 it could not meet the requirements of this paragraph, it may elect to  
31 withdraw pursuant to paragraph (b) of this subdivision hereafter.

32 (b) January first, [nineteen hundred eighty-eight] TWO THOUSAND TWELVE  
33 or January first, [nineteen hundred eighty-nine] TWO THOUSAND THIRTEEN.  
34 If any such county plans to withdraw on either January first, [nineteen  
35 hundred eighty-eight] TWO THOUSAND TWELVE or January first, [nineteen  
36 hundred eighty-nine] TWO THOUSAND THIRTEEN, it shall (i) no later than  
37 ninety days after the first of January of the year immediately preceding  
38 the year in which such county plans to withdraw from the district,  
39 furnish the commissioner of transportation, the chairman of the authori-  
40 ty and the other counties which have an option to withdraw, a resolution  
41 adopted by the county legislature providing notice of intent to withdraw  
42 from the district, (ii) no later than one hundred twenty days after the  
43 first of January of the year immediately preceding the year in which  
44 such county plans to withdraw from the district furnish to the commis-  
45 sioner of transportation, the chairman of the authority and the counties  
46 which have an option to withdraw a resolution adopted by the county  
47 legislature providing a public transportation plan as described in this  
48 section, (iii) on or before October first of the year immediately  
49 preceding the year in which such county plans to withdraw from the  
50 district, furnish to the commissioner a copy of an agreement with the  
51 authority or an operator of rail passenger service for the provision of  
52 rail passenger service to and from such county and the city of New York  
53 or any terminus previously served. IF SUCH AGREEMENT HAS NOT BEEN  
54 CONCLUDED BY THE RESPECTIVE PARTIES, AND A PARTY HAS EXERCISED ITS  
55 RIGHTS PURSUANT TO SUBDIVISION SIX OF THIS SECTION, THE APPROVAL OF THE  
56 COMMISSIONER OF TRANSPORTATION SHALL NOT BE REQUIRED AND THE AGREEMENT

1 OR ORDER SET FORTH IN SUCH SUBDIVISION SIX SHALL DETERMINE THE TERMS AND  
2 CONDITIONS OF SUCH WITHDRAWAL.

3 (c) No later than thirty days after receipt of the public transporta-  
4 tion plan the commissioner of transportation shall, in writing, either  
5 approve such plan as conforming with the requirements heretofore  
6 described or disapprove such plan as failing to meet such requirements  
7 and the reasons therefor. Disapproval of a plan shall not prohibit a  
8 county from resubmitting a public transportation plan and such resubmit-  
9 ted plan shall be approved or disapproved no later than fifteen days  
10 after receipt by the commissioner of transportation. The public trans-  
11 portation plan shall be subject to any state or federal public hearing  
12 requirements which the authority would be subject to if the authority  
13 made the changes proposed by such plan.

14 (d) Any such county which plans to withdraw from the district must  
15 meet the requirements of this section prior to the effective date of  
16 withdrawal, and no withdrawal for the purposes of this section shall  
17 take effect unless such county furnishes the resolutions and agreement  
18 prior to the effective date of withdrawal.

19 2. The authority and any subsidiary corporation of the authority shall  
20 enter into an agreement or agreements with a county that plans to with-  
21 draw from the district to transfer and assign to such county all author-  
22 ity and subsidiary railroad facilities and operations, rights and obli-  
23 gations, and contract rights and obligations, including operating  
24 contract rights and obligations, which are owned, operated, maintained  
25 or used directly or by contract or which are otherwise involved in the  
26 provision of railroad services to such counties. Such agreement shall  
27 provide, in the event a facility, operation, right or obligation is  
28 necessary and material to the provision of rail passenger service in the  
29 district or is not assignable under applicable bond covenants or  
30 contracts or the parties agree that it should not be assigned, that the  
31 authority or subsidiary thereof shall continue to hold and be responsi-  
32 ble for such facility, operation, right or obligation and that such  
33 county shall reimburse to the authority that portion of the cost to the  
34 authority or subsidiary of its retention of such facility, operation,  
35 right or obligation that is allocable [to] WITHIN such county. If the  
36 parties agree that the authority or subsidiary thereof shall operate the  
37 railroad facilities in a county after the effective date of such coun-  
38 ty's withdrawal, the agreement also shall provide for the terms and  
39 conditions of the operation of such service.

40 3. Within forty-five days of the effective date of this section, the  
41 authority and any subsidiary corporation of the authority shall provide  
42 to the counties of Dutchess, Orange, PUTNAM and Rockland a written  
43 statement, including cost estimates and the useful life, if any, of all  
44 of its facilities, operations, rights and obligations relating to the  
45 provision of rail service in such counties.

46 4. The authority and any subsidiary corporation of the authority is  
47 authorized to enter into an agreement or agreements with a county that  
48 plans to withdraw from the district, pursuant to which the authority or  
49 subsidiary thereof will provide technical assistance to such county  
50 prior to, during and after the withdrawal, with respect to the transfer  
51 of ownership, operation, maintenance and use of railroad facilities  
52 within such county. Such agreement may provide that the county reimburse  
53 the authority or its subsidiary for the cost to the authority and its  
54 subsidiary for the provision of such technical assistance.

55 5. The authority shall have no obligation to undertake or continue any  
56 project or part thereof in a current or future capital program plan

1 which pertains to railroad facilities within or services to a county  
2 that withdraws from the district on or after such date of withdrawal nor  
3 shall the authority enter into any contract for a project or part there-  
4 of which would increase liabilities pursuant to subdivision [six] SIX-A  
5 of this section in a county after such county notifies the authority of  
6 its intent to withdraw as provided in subdivision one of this section,  
7 provided, however, that if the authority has executed a contract for the  
8 effectuation of a project or part thereof in a capital program plan in  
9 such county, it shall be assigned to such county in accordance with  
10 subdivision two of this section, unless the parties agree that it shall  
11 not be assigned and that the authority or its subsidiary shall continue  
12 to be responsible therefor, in which event the county shall reimburse  
13 the authority or its subsidiary in accordance with the provisions of  
14 subdivision two of this section.

15 6. SHOULD THE COUNTIES OF DUTCHESS, ORANGE, PUTNAM OR ROCKLAND SEEK TO  
16 WITHDRAW FROM THE DISTRICT PURSUANT TO THIS SECTION, ANY SUCH COUNTY AND  
17 THE AUTHORITY, AND/OR, IF APPROPRIATE ANY SUBSIDIARY CORPORATION OF THE  
18 AUTHORITY SHALL NEGOTIATE IN GOOD FAITH ANY AGREEMENT REQUIRED BY THIS  
19 SECTION FOR WITHDRAWAL FROM THE DISTRICT. SUCH NEGOTIATIONS SHALL  
20 COMMENCE NOT LATER THAN FIFTEEN DAYS AFTER THE PUBLIC TRANSPORTATION  
21 PLAN PREPARED BY ANY SUCH COUNTY HAS BEEN SUBMITTED BY SUCH COUNTY TO  
22 THE AUTHORITY, AND/OR, IF APPROPRIATE, A SUBSIDIARY AUTHORITY. IN NO  
23 EVENT SHALL A COUNTY BE REQUIRED TO NEGOTIATE WITH BOTH THE AUTHORITY  
24 AND A SUBSIDIARY AUTHORITY. THE NEGOTIATIONS CONDUCTED BY AND THE  
25 ACTIONS OF THE AUTHORITY OR SUBSIDIARY AUTHORITY SHALL BE BINDING. IF  
26 AFTER SIXTY DAYS FROM THE COMMENCEMENT OF SUCH NEGOTIATIONS OR AT ANY  
27 TIME THEREAFTER THE AUTHORITY OR ANY SUBSIDIARY CORPORATION OF THE  
28 AUTHORITY AND A COUNTY ARE UNABLE TO REACH AN AGREEMENT REQUIRED BY THIS  
29 SECTION FOR SUCH WITHDRAWAL, EITHER PARTY MAY MAKE APPLICATION TO A  
30 JUSTICE OF THE SUPREME COURT PRESIDING IN THE COUNTIES OF DUTCHESS,  
31 ORANGE, PUTNAM OR ROCKLAND FOR APPOINTMENT OF A SPECIAL REFEREE. EACH  
32 PARTY SHALL SUBMIT TO THE JUSTICE A LIST CONTAINING THE NAMES AND QUALI-  
33 FICATIONS OF FIVE PERSONS TO SERVE AS SPECIAL REFEREE. THE JUSTICE SHALL  
34 SELECT ONE PERSON FROM AMONG THE NAMES SUBMITTED BY THE PARTIES TO SERVE  
35 AS SPECIAL REFEREE. THE SPECIAL REFEREE SHALL MEDIATE THE NEGOTIATIONS  
36 FOR WITHDRAWAL FOR A PERIOD OF NO LONGER THAN SIXTY DAYS. IF, AT THE END  
37 OF SAID SIXTY DAY PERIOD, THE PARTIES ARE NOT ABLE TO REACH AGREEMENT,  
38 THE SPECIAL REFEREE SHALL, WITHIN THIRTY DAYS THEREAFTER, RECOMMEND THE  
39 TERMS OF THE WITHDRAWAL TO THE JUSTICE. THE JUSTICE SHALL REVIEW THE  
40 RECOMMENDATIONS OF THE REFEREE AND THE POSITIONS OF THE PARTIES THEREON  
41 AND SHALL ISSUE AN ORDER SETTING FORTH THE TERMS OF THE WITHDRAWAL.  
42 NOTWITHSTANDING THE ENTRY OF SUCH ORDER, A COUNTY SHALL HAVE FIFTEEN  
43 DAYS FROM THE ENTRY OF SUCH ORDER TO TERMINATE SUCH PROCEEDING. UPON THE  
44 TIMELY EXERCISE OF SUCH RIGHT TO TERMINATE, SUCH PROCEEDING SHALL BE  
45 DEEMED NULL AND VOID AND OF NO FURTHER EFFECT. IF A COUNTY HAS NOT EXER-  
46 CISED ITS RIGHT TO TERMINATE, SAID ORDER SHALL BE SUBJECT TO APPELLATE  
47 REVIEW IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES, PROVIDED  
48 THAT ANY APPEAL FROM THE ORDER SHALL BE GRANTED EXPEDITED STATUS.

49 6-A. Any county which withdraws from the district shall reimburse to  
50 the authority or its subsidiary, within the time period agreed to by the  
51 parties, any capital expenditures heretofore undertaken by the authority  
52 or its subsidiary for railroad facilities only within such county which  
53 were financed by commuter railroad revenue bonds issued by the metropol-  
54 itan transportation authority pursuant to section twelve hundred sixty-  
55 nine of this [article] TITLE and are assigned to such county in accord-  
56 ance with the provisions of subdivision two of this section.

1 [7.] 6-B. The obligations of a county that withdraws from the district  
2 to reimburse the authority and any subsidiary corporation of the author-  
3 ity for the costs of operation, maintenance and use of passenger  
4 stations pursuant to section twelve hundred seventy-seven of this [arti-  
5 cle] TITLE, shall continue for any such costs incurred up to the effec-  
6 tive date of the county's withdrawal from the district and for costs  
7 incurred thereafter that result from acts preceding such withdrawal, and  
8 the applicability of the payment provisions and procedures of such  
9 section twelve hundred seventy-seven to such county shall continue ther-  
10 eafter with respect to the aforesaid costs.

11 [8.] 7. In the event of a county's failure to make payment of any  
12 monies determined by the authority to be owed and due it or any subsid-  
13 iary corporation of the authority pursuant to the terms of any agreement  
14 entered into pursuant to this section, the authority is authorized to  
15 recover such payments in the same manner as in section twelve hundred  
16 seventy-seven of this [article] TITLE and the state comptroller shall  
17 withhold and pay monies to the authority in accordance with the proce-  
18 dures set forth in that section.

19 8. THE AUTHORITY SHALL MAKE PAYMENT TO THE COUNTY THAT WITHDRAWS FOR  
20 THE DIFFERENCE IN THE AMOUNT OF SERVICES RECEIVED FROM THE AUTHORITY AND  
21 MONIES PAID BY THE COUNTY TO THE AUTHORITY, THIS PAYMENT SHALL BE  
22 EXTRAPOLATED OVER THE PREVIOUS FIVE YEARS FROM THE DATE OF WITHDRAWAL.  
23 IF THE AUTHORITY FAILS TO MAKE SUCH PAYMENT TO THE COUNTY, THE AMOUNT  
24 OWED SHALL BE WITHHELD BY THE STATE COMPTROLLER FROM THE AUTHORITY AND  
25 THE MONIES SHALL BE PAID TO THE COUNTY.

26 9. The term of office of any resident of a county that withdraws from  
27 the district under this section, as a member of the board of the author-  
28 ity, the Metro-North rail commuter council or the management advisory  
29 board, which is based upon residence in such county, shall terminate  
30 upon the county's withdrawal and the office shall be deemed vacant and  
31 filled in the manner provided by law.

32 10. The provisions of this section and all agreements undertaken in  
33 accordance herewith shall be subject to the rights of the holders of any  
34 outstanding bonds or notes issued by the authority.

35 S 2. This act shall take effect immediately.