

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

1922

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

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

AN ACT to amend the town law and the local finance law, in relation to certain actions which may not be taken without the prior review, approval, permission or consent of the state comptroller; and to repeal subdivision 13 of section 54, subdivisions 3, 4, 5 and 6 of section 194, section 209-f and subdivision 13 of section 209-q of the town law relating thereto

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

1 Section 1. Legislative findings. The legislature finds that the
2 provisions of article IX of the state constitution relating to local
3 governments which became effective on January 1, 1964 and the municipal
4 home rule law enacted by chapter 843 of the laws of 1963 gave a constitutional grant of home rule powers to local governments. Subdivision (b)
5 of section 2 of article IX of the state constitution provides that "...
6 the legislature:... Shall have the power to act in relation to the property, affairs or government of any local government only by general law,
7 or by special law" only in certain circumstances when requested by the
8 local legislative body. The legislature does further find that certain
9 provisions of the town law relating to the creation of fire, water and
10 sewer districts which were adopted prior to such article IX are inconsistent with the constitution and should be repealed. The legislature
11 does further find that provisions of the town law requiring the approval
12 of the state comptroller prior to the creation of a fire, water or sewer
13 district creates an unnecessary burden and "mandate" on local government
14 that increases the cost of formation of such districts, the time to
15 create such districts and is an unwarranted intrusion on the ability of
16 local governments to manage their own affairs.
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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD04256-01-9

1 S 2. Paragraph (a) of subdivision 5 of section 54 of the town law, as
2 amended by chapter 521 of the laws of 1974, is amended to read as
3 follows:

4 (a) At any time prior to the completion of an improvement, the maxi-
5 mum amount proposed to be expended for such improvement, as stated in
6 the notice of public hearing pursuant to subdivision three or four
7 [hereof] OF THIS SECTION, may be increased by an order of the town board
8 provided that the town board shall, after a public hearing held in the
9 manner prescribed in subdivision three [hereof] OF THIS SECTION, deter-
10 mine that it is in the public interest to authorize the increase in such
11 maximum amount. [If it is proposed or required that the town shall
12 finance the increase in the maximum amount proposed to be expended for
13 the improvement by the issuance of bonds, notes, certificates or other
14 evidences of indebtedness and the total estimated expense of such
15 improvement including the increase in the maximum amount shall exceed
16 one-tenth of one per centum of the full valuation of the taxable real
17 property in the area of the town outside of villages, the town board may
18 not make an order pursuant to this subdivision unless the comptroller of
19 the state of New York shall have made, subsequent to the public hearing
20 required by this subdivision, an order approving the increase in such
21 maximum amount as stated in the notice of hearing required by this
22 subdivision. The order of the comptroller shall be prepared in dupli-
23 cate and one copy thereof filed in the office of the department of audit
24 and control and the other copy in the office of the town clerk of the
25 town.] If the original authorization of the improvement was subject to
26 a permissive referendum pursuant to paragraph (a) of subdivision eleven
27 of this section or made subject to a mandatory or permissive referendum
28 pursuant to paragraph (b) of subdivision eleven of this section, any
29 order of the town board increasing the maximum amount to be expended
30 shall be subject to the same type of referendum.

31 S 3. Paragraphs (c) and (d) of subdivision 6 of section 54 of the town
32 law, as amended by chapter 938 of the laws of 1963, are amended to read
33 as follows:

34 (c) If the town board shall determine that it is in the public inter-
35 est, the board may adopt a resolution authorizing such improvement[,
36 subject to the approval of the state comptroller where such approval is
37 required by subdivision thirteen of this section]. Such resolution
38 shall contain a statement of the manner in which the costs of the
39 improvement are to be apportioned, and a description of the boundaries
40 of the benefited area, if any, as finally determined by the town board
41 where any part of the cost is to be raised by special assessments upon
42 benefited property.

43 (d) The town clerk shall cause a certified copy of any resolution or
44 order adopted pursuant to this subdivision, subdivision five or para-
45 graph (c) of subdivision eight of this section, or section fifty-seven
46 of this [chapter] ARTICLE to be duly recorded in the office of the clerk
47 of the county in which the town is located within ten days after the
48 adoption of such resolution[, or within ten days of the receipt of
49 notification of the approval of the state comptroller where such
50 approval is required by subdivision five or subdivision thirteen of this
51 section]. When so recorded, such resolution shall be presumptive
52 evidence of the regularity of the proceedings and actions taken by the
53 town board in relation thereto.

54 S 4. Subdivision 13 of section 54 of the town law is REPEALED and
55 subdivision 14 is renumbered subdivision 13.

1 S 5. Subdivision 2 of section 170 of the town law, as amended by chap-
2 ter 273 of the laws of 1960, is amended to read as follows:

3 2. Upon its own motion and without a petition, the town board of any
4 town or, if the district as proposed or proposed to be extended includes
5 territory in more than one town, the town boards of each of the towns
6 acting jointly by a majority vote of the members of each of such boards
7 may establish or extend fire districts or fire protection districts in
8 such town or towns outside of any incorporated village or city or exist-
9 ing fire, fire alarm or fire protection district therein, after a public
10 hearing thereon. The notice of such hearing shall be published and
11 posted and such hearing shall be held in the manner provided in this
12 article for a hearing upon the establishment of a fire district or fire
13 protection district upon petition. After such hearing and upon the
14 evidence given thereat, the town board or boards shall determine by
15 resolution whether it be in the public interest to establish the
16 proposed fire district or fire protection district or extend the exist-
17 ing fire district or fire protection district, as the case may be. If
18 it be determined that the establishment or extension of such district be
19 in the public interest, the town board or boards shall determine whether
20 all the property, property owners and interested persons within the
21 proposed district are benefited thereby and whether all property or
22 property owners benefited are included therein and such town board or
23 boards shall so alter the boundaries of the proposed district or exten-
24 sion, so that all property and property owners and only such property
25 and property owners as are benefited shall be included within its
26 limits. In the event, however, that it is found that any property,
27 property owners or any interested persons not included in the district,
28 as originally proposed, will be benefited thereby, a further notice
29 shall be posted and published and another hearing held as provided here-
30 in, unless all said additional property owners or interested persons
31 execute and file written consents to be included in such district or
32 extension. When the boundaries of such FIRE DISTRICT, fire protection
33 district or extension shall have been finally determined, the town board
34 or boards shall adopt a resolution establishing or extending the
35 district and shall comply with the provisions of subdivision one of
36 section one hundred seventy-three of this [chapter] ARTICLE. [When the
37 boundaries of such fire district or extension shall have been finally
38 determined the town board or boards shall adopt a resolution approving
39 the establishment or extension of the district, and shall comply with
40 the provisions of subdivisions two and four of section one hundred
41 seventy-three of this chapter, other than filing a certified copy of a
42 petition as provided in such subdivision two.] A fire district shall
43 not be extended pursuant to the provisions of this subdivision except
44 upon the consent in writing of a majority of the commissioners of such
45 fire district. Such consent shall be acknowledged or proved in the same
46 manner as a deed to be recorded.

47 S 6. Subdivision 2 of section 171 of the town law, as amended by chap-
48 ter 397 of the laws of 1995, paragraph a as amended by chapter 631 of
49 the laws of 2004, is amended to read as follows:

50 2. [a.] The town board or town boards shall hold a public hearing
51 upon such petition and shall cause a notice thereof to be published at
52 least once in a newspaper having general circulation in the territory
53 affected, the first publication thereof to be not less than ten days nor
54 more than twenty days before the day designated therein for the hearing,
55 and the town clerk or town clerks shall cause copies of such notice to
56 be posted on the sign-board of the town maintained pursuant to subdivi-

1 sion six of section thirty of this chapter, and conspicuously in such
2 other places within or without the territory affected as the town board
3 or town boards may direct, not less than ten nor more than twenty days
4 before the day designated for the hearing as aforesaid. In the event
5 that the town maintains a website, such information may also be provided
6 on the website. Such notice shall contain a description of the proposed
7 district or extension, state the estimated rate per thousand dollars of
8 assessed valuation, based on the aggregate assessed valuation of taxable
9 real property of the proposed district or extension district shown in
10 the latest completed final assessment roll, projected to be assessed,
11 levied and collected for purposes of the proposed district or extended
12 district for the fiscal year of its operation and specify the time when
13 and the place where the town board or boards will meet to consider such
14 petition and to hear all persons interested in the subject concerning
15 the same. If the petition shall provide for the dissolution of an exist-
16 ing water supply district upon the establishment of the fire district,
17 the notice of hearing shall so specify. If, upon the establishment or
18 extension of a fire district, the fire district would become the sponsor
19 of a service award program pursuant to section two hundred sixteen-b of
20 the general municipal law, the notice of hearing shall so specify and
21 contain a statement of the estimated annual cost of the service award
22 program to the fire district; provided, however, that if, upon the
23 establishment or extension of a fire district, the ensuing fire district
24 would become the sponsor of a service award program pursuant to section
25 two hundred sixteen-b of the general municipal law, the resolutions
26 establishing the districts shall be submitted in each such town in the
27 manner provided by article seven of this chapter. Prior to the publica-
28 tion of the notice, the board or boards shall cause to be prepared, and
29 file for public inspection with the town clerk, a detailed explanation
30 of how the estimated rate of assessment for the proposed district or
31 extended district was computed.

32 [b. (1) If the permission of the state comptroller is not required
33 pursuant to section one hundred seventy-three of this article because it
34 is not proposed to finance an expenditure for the district or extension
35 by the issuance of bonds, notes, certificates or other evidences of
36 indebtedness of the fire district, a certified copy of the notice shall
37 be filed with the state comptroller on or about the date of the publica-
38 tion of such notice.

39 (2) Notwithstanding the provisions of subparagraph one of this para-
40 graph the state comptroller shall not be precluded from requiring the
41 submission of additional information or data in such form and detail as
42 the state comptroller shall deem sufficient or from causing an investi-
43 gation to be made with respect to the establishment or extension of a
44 district or an increase in the maximum amount to be expended.]

45 S 7. The third undesignated paragraph of section 172-d of the town
46 law, as added by chapter 926 of the laws of 1957, is amended to read as
47 follows:

48 For the purposes of this section, such fire protection district shall
49 be deemed dissolved, or its boundaries altered, and the territory
50 described added to the fire district upon the adoption by the town board
51 or boards of [an order] A RESOLUTION providing therefor, pursuant to
52 [subdivision four of] section one hundred seventy-three of this [chap-
53 ter] ARTICLE, unless such [order] RESOLUTION shall specify some other
54 date for such purpose, in which case the dissolution or alteration shall
55 become effective on the date specified. If the [order] RESOLUTION
56 provides for the dissolution of the fire protection district, the fire

1 district shall be liable for all the obligations under the then existing
2 contracts for the supply of fire protection to such fire protection
3 district unless the contract is amended or terminated in the manner
4 provided in section one hundred eighty-four of this [chapter] ARTICLE.
5 If the [order] RESOLUTION provides for the alteration of the boundaries
6 of the fire protection district any existing contracts for the supplying
7 of fire protection to the fire protection district so altered shall be
8 carried out in the same manner as if such alteration had not taken place
9 unless the contract is amended or terminated in the manner provided in
10 section one hundred eighty-four of this [chapter] ARTICLE.

11 S 8. Section 173 of the town law, as amended by chapter 191 of the
12 laws of 1946, subdivision 1 as amended by chapter 310 of the laws of
13 1962, the opening paragraph and paragraph (a) of subdivision 2 and
14 subdivision 4 as amended by chapter 397 of the laws of 1995, subpara-
15 graph 1 of paragraph (a) of subdivision 2 as amended by chapter 37 of
16 the laws of 2000 and paragraph (b) of subdivision 2 as amended by chap-
17 ter 156 of the laws of 1956, is amended to read as follows:

18 S 173. Filing of determination. 1. Whenever the town board or boards
19 shall adopt a resolution establishing or extending a FIRE DISTRICT, fire
20 alarm district or [a] fire protection district, or consolidating two or
21 more adjoining fire districts or fire protection districts, or altering
22 the boundaries of a fire district or fire protection district, or
23 dissolving a fire district, a fire alarm district or fire protection
24 district, the town clerk or clerks shall cause a certified copy of such
25 resolution to be duly recorded in the office of the clerk of the county
26 or counties in which such fire district, fire alarm district, fire
27 protection district, or consolidated or altered fire districts, or
28 consolidated fire protection districts, are located, and shall, within
29 ten days cause a certified copy of such resolution to be filed in the
30 state department of audit and control at Albany, New York. When so
31 recorded, such resolution shall be presumptive evidence of the regulari-
32 ty of the establishment, extension, consolidation, dissolution or alter-
33 ation of such district or districts. The expense of such recording
34 shall be a charge against the district or districts. The said determi-
35 nation shall be final and conclusive unless a proceeding has been
36 commenced for review in the manner provided by article seventy-eight of
37 the civil practice law and rules within thirty days from the time of
38 recording thereof.

39 2. [Whenever the town board or boards shall adopt a resolution estab-
40 lishing or extending a fire district for which it is proposed that an
41 expenditure is to be financed by the issuance of bonds, notes, certifi-
42 cates or other evidences of indebtedness of the fire district, such
43 resolution or determination shall be submitted to the state comptroller
44 for approval in the following manner:

45 (a) Within ten days after the adoption of a resolution by a town
46 board approving the establishment or extension of such a district, the
47 town clerk of the town shall file a certified copy of such resolution,
48 in duplicate, in the office of the state department of audit and control
49 at Albany, New York, together with an application, in duplicate, for
50 permission to create or extend such district as the case may be. Such
51 application shall be executed and verified by the supervisor, or by such
52 other officer of the town as the town board shall determine, and shall
53 include the following:

54 (1) A certified copy of the petition, if there is one, omitting,
55 however, the signatures and acknowledgments or proofs, or authentica-
56 tions.

1 (2) An itemized statement of the existing indebtedness of the town,
2 both temporary and bonded, including the indebtedness of the town for
3 all special district purposes.

4 (3) A statement of the aggregate assessed valuation of the taxable
5 real property situated in the proposed district or extension thereof,
6 and, if there is a petition, of the portion thereof owned by resident
7 owners.

8 (b) Whenever such an application shall be filed in the office of the
9 department of audit and control, the state comptroller shall within five
10 days thereafter give notice thereof to the board of supervisors of the
11 county in which such proposed district or extension is located by filing
12 with the clerk of such board of supervisors one copy of such applica-
13 tion. At any time within fifteen days of the filing of the application,
14 said board of supervisors may file an objection, in writing, in the
15 office of said department of audit and control. In addition, the state
16 comptroller shall determine whether the public interest will be served
17 by the creation or extension of the district and also whether the cost
18 thereof will be an undue burden upon the property of the proposed
19 district or extension. The state comptroller may make such determi-
20 nations upon the original or any amended application, or in his
21 discretion may require the submission of additional information or data
22 in such form and detail as he shall deem sufficient, or may cause an
23 investigation to be made, to aid him in making the determinations above
24 mentioned.

25 3. Upon the expiration of fifteen days from the date of the filing of
26 such application with the clerk of the board of supervisors and upon
27 reaching a determination, the comptroller shall make an order, in dupli-
28 cate, granting or denying permission for the creation or extension of
29 the district and shall file one copy of such order in the office of the
30 state department of audit and control at Albany, New York, and the other
31 in the office of the town clerk of the town in which the proposed
32 district or extension is located. The town clerk shall present such
33 order to the town board of the town at the next meeting thereof.

34 4. If the state comptroller shall deny permission for the creation or
35 extension of the district, the town board shall forthwith adopt an order
36 denying the petition. If the state comptroller shall grant permission
37 therefor or if permission of the state comptroller is not required, the
38 town board may adopt an order establishing the district or extension as
39 the boundaries shall be finally determined. The town clerk shall cause
40 certified copies of its resolution and such order to be duly recorded in
41 the office of the clerk of the county or counties in which such fire
42 district is located. When so recorded such resolution and order shall
43 be presumptive evidence of the regularity of the establishment or exten-
44 sion of such district. The expense of such recording shall be a charge
45 against the district. The said determination shall be final and conclu-
46 sive unless a proceeding for review in the manner provided by article
47 seventy-eight of the civil practice law and rules has been commenced
48 within thirty days from the time of the recording thereof. Within ten
49 days after the adoption of such order by the town board, establishing
50 the district or extension, the town clerk shall cause a certified copy
51 of such order to be filed in the office of the state department of audit
52 and control at Albany, New York.

53 5.] If the petition for the establishment of a fire district shall
54 provide for the dissolution of an existing coterminous water supply
55 district having no bonded indebtedness, then upon the establishment of
56 the fire district the district so established shall assume and pay all

1 the liabilities and indebtedness of the water supply district so
2 dissolved.

3 S 9. Subdivision 1 of section 193 of the town law, as amended by chap-
4 ter 397 of the laws of 1995, paragraph a as amended by section 18 of
5 part X of chapter 62 of the laws of 2003, is amended to read as follows:

6 1. [a.] Whenever a petition shall be presented to the town board
7 pursuant to this article, for the establishment or extension of a sewer,
8 wastewater disposal, drainage, water, water quality treatment, park,
9 public parking, lighting, snow removal, water supply, sidewalk, refuse
10 and garbage, aquatic plant growth control district, ambulance district,
11 harbor improvement district, public dock district, beach erosion control
12 district, or a fallout shelter district, the board shall adopt an order
13 and enter the same in the minutes of its proceedings, reciting in gener-
14 al terms the filing of such petition, the boundaries of the proposed
15 district, the improvements proposed, the maximum amount proposed to be
16 expended for the improvement as stated in the petition or the maximum
17 amount to be expended for the performance or supplying of services if a
18 maximum amount is stated in the petition, the estimated cost of hook-up
19 fees, if any, to, and the cost of the district or extension to, the
20 typical property and, if different, the typical one or two family home,
21 and specifying the time when and place where said board will meet to
22 consider the petition and to hear all persons interested in the subject
23 thereof, concerning the same. The board shall cause a copy of such
24 order, certified by the town clerk, to be published at least once in the
25 official paper, the first publication thereof to be not less than ten
26 nor more than twenty days before the day set therein for the hearing as
27 aforesaid, and shall also cause a copy thereof to be posted on the sign-
28 board of the town maintained pursuant to subdivision six of section
29 thirty of this chapter, not less than ten nor more than twenty days
30 before the day designated for the hearing as aforesaid. In the event
31 that the town maintains a website, such information may also be provided
32 on the website. Prior to the publication of a copy of the order, the
33 board shall cause to be prepared, and file for public inspection with
34 the town clerk, a detailed explanation of how the estimated cost of
35 hook-up fees, if any, to, and the cost of the district or extension to,
36 the typical property and, if different, the typical one or two family
37 home was computed.

38 [b. (1) If the permission of the state comptroller is not required
39 pursuant to section one hundred ninety-four of this article because it
40 is proposed or required that the town in which the district or extension
41 is located shall finance the cost thereof by the issuance of bonds,
42 notes, certificates or other evidences of indebtedness of the town
43 therefor or debt service as proposed to be assumed pursuant to subdivi-
44 sion twelve of section one hundred ninety-eight of this article but the
45 cost to the typical property or, if different, the cost to the typical
46 one or two family home is not above the average cost threshold described
47 in that section, a certified copy of the order of the town board adopted
48 pursuant to this section shall also be filed with the state comptroller
49 on or about the date of the publication of a copy of such order.

50 (2) Notwithstanding the provisions of subparagraph one of this para-
51 graph, the state comptroller shall not be precluded from requiring the
52 submission of additional information or data in such form and detail as
53 the state comptroller shall deem sufficient or from causing an investi-
54 gation to be made with respect to the establishment or extension of a
55 district or an increase in the maximum amount to be expended.]

1 S 10. Paragraph (b) of subdivision 2 of section 194 of the town law,
2 as amended by chapter 37 of the laws of 2000, is amended to read as
3 follows:

4 (b) If the town board shall determine that the petition is signed, and
5 acknowledged or proved, or authenticated, as required by law and is
6 otherwise sufficient and that it is in the public interest to grant the
7 relief sought, either in whole or in part, but shall find that any part
8 or portion of the property or property owners within the proposed
9 district or extension are not benefited thereby or that certain property
10 or property owners benefited thereby have not been included therein, the
11 town board shall specify the necessary changes of the boundaries of the
12 proposed district or extension to be made in order that all of the prop-
13 erty and property owners and only such property and property owners as
14 are benefited shall be included within such proposed district or exten-
15 sion, and the board shall call a further hearing at a definite place and
16 time not less than fifteen nor more than twenty-five days after such
17 determination. Notice of such further hearing shall be posted and
18 published in the manner provided in section one hundred ninety-three
19 [hereof] OF THIS ARTICLE except that such notice shall also specify the
20 manner in which it is proposed to alter the boundaries of the proposed
21 district or extension. Such further hearing shall be conducted in the
22 same manner as an original hearing upon a petition. If and when the town
23 board shall determine in the affirmative all of the questions set forth
24 in subdivision one of this section, the board may adopt [a resolution
25 approving the establishment] AN ORDER ESTABLISHING THE DISTRICT or
26 extension of the district as the boundaries shall be finally determined
27 and the construction of the improvement or providing of the service
28 therein, but no such [resolution so approving] ORDER shall be adopted
29 unless the petition shall comply with the requirements of section one
30 hundred ninety-one OF THIS ARTICLE as to sufficiency of signers as the
31 boundaries of the proposed district or extension shall be finally deter-
32 mined.

33 S 11. Subdivisions 3, 4, 5 and 6 of section 194 of the town law are
34 REPEALED.

35 S 12. Section 202-d of the town law, as amended by chapter 76 of the
36 laws of 1952, subdivision 1 as amended by chapter 456 of the laws of
37 2004 and subdivision 2 as amended by chapter 543 of the laws of 1954, is
38 amended to read as follows:

39 S 202-d. Increase of maximum amount to be expended. 1. At any time
40 after the establishment of an improvement district the maximum amount
41 proposed to be expended for the improvement in such district, as stated
42 in the petition for the establishment of such district, may be increased
43 by an order of the town board provided a petition requesting such
44 increase signed as required by section one hundred ninety-one of this
45 article is presented to the town board and provided the town board
46 shall, after a public hearing ordered and held in the manner prescribed
47 by sections one hundred ninety-three and one hundred ninety-four of this
48 article, determine that it is in the public interest to authorize the
49 increase of such maximum amount[, and provided the comptroller of the
50 state of New York shall have made as may be required pursuant to subdi-
51 vision six of section one hundred ninety-four of this article, after
52 such public hearing, an order approving the increase of such maximum
53 amount as stated in the petition. The order of the comptroller shall be
54 prepared in duplicate and one copy thereof filed in the office of the
55 department of audit and control and the other copy in the office of the
56 town clerk of the town].

1 2. If the petition for establishment of the district proposes only
2 the performance or supplying of certain services, and states the maximum
3 amount to be expended annually for such services, the maximum amount to
4 be expended annually may be increased by an order of the town board
5 provided the town board shall, after a public hearing, determine that it
6 is in the public interest to authorize the increase of such maximum
7 amount. The town board shall give notice of such hearing by publication
8 of a notice in at least one newspaper having general circulation in the
9 district specifying the time when and the place where such hearing will
10 be held and stating the increase proposed in the maximum amount to be
11 expended annually. Such notice shall be published once at least ten
12 days prior to the date specified for such hearing. [The approval of the
13 state comptroller to such increase in the maximum amount to be expended
14 annually shall not be required.]

15 S 13. Section 202-e of the town law, as added by chapter 702 of the
16 laws of 1940 and subdivision 1 as amended by chapter 37 of the laws of
17 2000, is amended to read as follows:

18 S 202-e. Acquisition and improvement of additional property in park
19 districts. 1. Petition. After the establishment of a park district and
20 the acquisition for park purposes of the property described in the peti-
21 tion for the establishment of the district, the town board upon a peti-
22 tion therefor may acquire additional property for the purposes of such
23 park district, in the manner [herein] provided IN THIS SECTION. Such
24 petition shall be signed, and acknowledged or proved, or authenticated,
25 in the manner specified in section one hundred ninety-one OF THIS ARTI-
26 CLE for petitions for the establishment of a park district and shall be
27 subject to the requirements of such section as to sufficiency of sign-
28 ers. The petition shall also describe the additional property proposed
29 to be acquired for park purposes and shall state the maximum amount
30 proposed to be expended for the acquisition and improvement thereof.

31 2. Hearing. Whenever such a petition containing the required signa-
32 tures shall have been presented to the town board, the board shall adopt
33 an order providing for a meeting to consider such petition and to hear
34 all interested persons and shall cause notice of such hearing to be
35 given in the manner provided in section one hundred [and] ninety-three
36 OF THIS ARTICLE. After such hearing and upon the evidence given ther-
37 eat, the town board shall make the determinations specified in subdivi-
38 sion one of section one hundred [and] ninety-four OF THIS ARTICLE.

39 3. [Permission of comptroller. If such board shall determine in the
40 affirmative all the questions set forth in such subdivision and shall
41 approve said petition, an application shall be filed in the office of
42 the state department of audit and control for permission to acquire and
43 improve the additional property described in said petition. Such appli-
44 cation shall be executed and filed in the form and manner specified in
45 section one hundred and ninety-four for the execution and filing of an
46 application for permission to create or extend an improvement district
47 and the state comptroller shall make and file an order, in the manner
48 and subject to the restrictions specified in subdivisions three and four
49 of said section, granting or denying such permission. The town clerk
50 shall present the order of the comptroller to the town board at the next
51 meeting thereof.

52 4.] Powers of town board. If the [state comptroller shall deny
53 permission for the acquisition and improvement of such property, the
54 town board shall forthwith adopt an order denying the petition. If the
55 state comptroller shall grant permission therefor] TOWN BOARD SHALL
56 DETERMINE IN THE AFFIRMATIVE ALL THE QUESTIONS SET FORTH IN SUCH SUBDI-

1 VISION AND SHALL APPROVE SAID PETITION, the town board may acquire by
2 purchase or condemnation the property described in the petition;
3 provided, however, that no property situated within an incorporated
4 village or city shall be acquired unless the permission and consent of
5 the legislative body thereof, is first obtained.

6 After such additional property has been acquired, the town board shall
7 have such powers and shall be subject to such duties in relation thereto
8 as shall be prescribed in subdivision four of section one hundred [and]
9 ninety-eight OF THIS ARTICLE in relation to property acquired for park
10 purposes pursuant to the petition for the establishment of such
11 district.

12 S 14. Section 209-d of the town law, as amended by chapter 397 of the
13 laws of 1995, is amended to read as follows:

14 S 209-d. Notice of hearing; cost to typical property. [1.] Subsequent
15 to the date of the filing of the map, plans and report in the office of
16 the town clerk as required in section two hundred nine-c of this article
17 the town board may adopt an order and enter the same in the minutes of
18 its proceedings reciting a description of the boundaries of the proposed
19 district or extension in a manner sufficient to identify the lands
20 included therein as in a deed of conveyance, the improvements proposed,
21 the maximum amount proposed to be expended for the improvement, the
22 estimated cost of hook-up fees, if any, to, and the cost of the district
23 or extension to, the typical property and, if different, the typical one
24 or two family home, the proposed method of financing to be employed, the
25 fact that a map, plan and report describing the same are on file in the
26 town clerk's office for public inspection and specifying the time when
27 and the place where said board will meet and hold a public hearing to
28 hear all persons interested in the subject thereof, concerning the same.
29 If such order proposes only the performance or supplying of certain
30 services, it may state the maximum amount to be expended annually for
31 such services. The board shall cause a copy of such order to be
32 published at least once in the official paper, the first publication
33 thereof to be not less than ten nor more than twenty days before the day
34 set therein for the hearing as aforesaid, and shall also cause a copy
35 thereof to be posted on the sign-board of the town maintained pursuant
36 to subdivision six of section thirty of this chapter, not less than ten
37 nor more than twenty days before the day designated for the hearing as
38 aforesaid. Such order may further state such place other than the town
39 clerk's office where the map, plan and report may be examined in advance
40 of the hearing, if the town board determines that, in the public inter-
41 est, some other additional place is necessary or desirable. If a water
42 district, sidewalk district, a public parking district, a refuse and
43 garbage district, aquatic plant growth control district or beach
44 erosion control district is proposed, such order may contain a statement
45 that the cost of constructing the water system, sidewalks or acquiring
46 lands for public parking or for refuse and garbage purposes, or aquatic
47 plant growth control purposes or for beach erosion control shall be
48 assessed by the town board in proportion as nearly as may be to the
49 benefit which each lot or parcel will derive therefrom. Prior to the
50 publication of the order, the board shall cause to be prepared, and file
51 for public inspection with the town clerk, a detailed explanation of how
52 the estimated cost of hook-up fees, if any, to, and the cost of the
53 district or extension to, the typical property and, if different, the
54 typical one or two family home, was computed.

55 [2. (a) If the permission of the state comptroller is not required
56 pursuant to section two hundred nine-f of this article because it is

1 proposed or required that the town in which the district or extension is
2 located shall finance the cost thereof by the issuance of bonds, notes,
3 certificates or other evidences of indebtedness of the town therefor or
4 debt service is proposed to be assumed pursuant to subdivision twelve of
5 section one hundred ninety-eight of this chapter but the cost to the
6 typical property or, if different, the cost to the typical one or two
7 family home is not above the average cost threshold described in such
8 section, a certified copy of the order of the town board adopted pursu-
9 ant to this section shall also be filed with the state comptroller on or
10 about the date of the publication of a copy of such order.

11 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
12 sion, the state comptroller shall not be precluded from requiring the
13 submission of additional information or data in such form and detail as
14 the state comptroller shall deem sufficient or from causing an investi-
15 gation to be made with respect to the establishment or extension of a
16 district or an increase in the maximum amount to be expended.]

17 S 15. Subdivision 4 of section 209-e of the town law, as added by
18 chapter 30 of the laws of 1959, is amended to read as follows:

19 4. (a) If after the expiration of the time for filing a petition
20 requesting that the matter be submitted to a referendum of the property
21 owners of the proposed district or proposed extended district, no such
22 petition has been filed with the town clerk, he shall file a certificate
23 stating such fact in the office of the county clerk [and, where the
24 permission of the state comptroller is required for the establishment or
25 extension of a district and the construction of an improvement or the
26 providing of a service therein, in the office of the department of audit
27 and control at Albany, New York].

28 (b) If such a petition was filed and after the referendum held pursu-
29 ant to this section, the town clerk shall prepare and file a certificate
30 stating that a petition was filed and a referendum was held pursuant to
31 the provisions of this section and certifying the result of the vote on
32 the proposition submitted at such referendum in the office of the county
33 clerk [and, where the permission of the state comptroller is required
34 for the establishment or extension of a district and the construction of
35 an improvement or the providing of a service therein, in the office of
36 the department of audit and control at Albany, New York].

37 S 16. Section 209-e of the town law is amended by adding a new subdivi-
38 sion 5 to read as follows:

39 5. IF THE CERTIFICATE OF THE TOWN CLERK REQUIRED TO BE FILED PURSUANT
40 TO SUBDIVISION FOUR OF THIS SECTION ESTABLISHES THAT NO PETITION WAS
41 FILED REQUESTING A REFERENDUM OR THAT SUCH PETITION WAS FILED AND THE
42 RESULT OF THE VOTE ON THE PROPOSITION SUBMITTED AT THE REFERENDUM HELD
43 PURSUANT THERETO WAS IN THE AFFIRMATIVE, THE TOWN BOARD SHALL ADOPT A
44 FINAL ORDER ESTABLISHING OR EXTENDING THE DISTRICT.

45 S 17. Section 209-f of the town law is REPEALED.

46 S 18. Section 209-h of the town law, as added by chapter 598 of the
47 laws of 1960, subdivision 1 as amended by chapter 456 of the laws of
48 2004, is amended to read as follows:

49 S 209-h. Increase of maximum amount to be expended. 1. At any time
50 after the establishment of an improvement district or of an extension
51 thereof pursuant to the provisions of this article or any other applica-
52 ble provision of law, the maximum amount proposed to be expended for the
53 improvement in such district, as stated in the notice of public hearing
54 on the establishment or extension of such district, may be increased by
55 an order of the town board provided that the town board shall, after a
56 public hearing is held in the manner prescribed by section two hundred

1 nine-d of this article, determine that it is in the public interest to
2 authorize the increase of such maximum amount [, and provided the comp-
3 troller of the state of New York shall have made as may be required
4 pursuant to subdivision one of section two hundred nine-f of this arti-
5 cle, after such public hearing, an order approving the increase of such
6 maximum amount as stated in the said notice of hearing. The order of the
7 comptroller shall be prepared in duplicate and one copy thereof filed in
8 the office of the department of audit and control and the other copy in
9 the office of the town clerk of the town]. The order of the town board
10 increasing the maximum amount to be expended shall be subject to a
11 permissive referendum in the manner provided in subdivision three of
12 section two hundred nine-e of this article. [The comptroller may not
13 make an order approving the increase in such maximum amount until after
14 the expiration of the time for filing a petition requesting that the
15 matter be submitted to referendum or, if such a petition is filed,
16 unless the vote on the proposition submitted at referendum was affirma-
17 tive.]

18 2. If the notice of public hearing for the establishment or extension
19 of the district proposes only the performance or supplying of certain
20 services, and states the maximum amount to be expended annually for such
21 services, the maximum amount to be expended annually may be increased by
22 an order of the town board provided the town board shall, after a public
23 hearing, determine that it is in the public interest to authorize the
24 increase of such maximum amount. The town board shall give notice of
25 such hearing by publication of a notice in at least one newspaper having
26 general circulation in the district specifying the time when and the
27 place where such hearing will be held and stating the increase proposed
28 in the maximum amount to be expended annually. Such notice shall be
29 published once at least ten days prior to the date specified for such
30 hearing. [The approval of the state comptroller to such increase in the
31 maximum amount to be expended annually shall not be required.]

32 S 19. Subdivision 5 of section 209-q of the town law, as amended by
33 chapter 521 of the laws of 1974, is amended to read as follows:

34 5. Increase in maximum amount. At any time prior to the completion of
35 a sewer, drainage or water improvement, the maximum amount proposed to
36 be expended for such sewer, drainage or water improvement, as stated in
37 the notice of public hearing pursuant to subdivision three or four
38 [hereof] OF THIS SECTION, may be increased by an order of the town board
39 provided that the town board shall, after a public hearing held in the
40 manner prescribed in subdivision three [hereof] OF THIS SECTION, deter-
41 mine that it is in the public interest to authorize the increase in such
42 maximum amount. [If it is proposed or required that the town shall
43 finance the increase in the maximum amount proposed to be expended for
44 the sewer, drainage or water improvement by the issuance of bonds,
45 notes, certificates or other evidences of indebtedness and the total
46 estimated expense of such improvement including the increase in the
47 maximum amount shall exceed one-tenth of one per centum of the full
48 valuation of the taxable real property in the area of the town outside
49 of villages, the town board may not make an order pursuant to this
50 subdivision unless the comptroller of the state of New York shall have
51 made, subsequent to the public hearing required by this subdivision, an
52 order approving the increase at such maximum amount as stated in the
53 notice of hearing required by this subdivision. The order of the comp-
54 troller shall be prepared in duplicate and one copy thereof filed in the
55 office of the department of audit and control and the other copy in the
56 office of the town clerk of the town.] If the original authorization of

1 the sewer, drainage or water improvement was subject to a permissive
2 referendum pursuant to paragraph (a) of subdivision eleven of this
3 section or made subject to a mandatory or permissive referendum pursuant
4 to paragraph (b) of subdivision eleven of this section, any order of the
5 town board increasing the maximum amount to be expended shall be subject
6 to the same type of referendum. The provisions of this subdivision
7 referring to a referendum[,] shall not be applicable to any order
8 increasing the maximum amount to be expended for a sewer improvement
9 adopted by the town board of any town which has been ordered by the
10 state commissioner of health or water resources commission to provide
11 sewage treatment facilities or directing compliance with standards or
12 determinations or orders promulgated pursuant to article [twelve] SEVEN-
13 TEEN of the [public health] ENVIRONMENTAL CONSERVATION law.

14 S 20. Paragraph (d) of subdivision 6 of section 209-q of the town law,
15 as added by chapter 567 of the laws of 1973, is amended to read as
16 follows:

17 (d) The town clerk shall cause a certified copy of any resolution or
18 order adopted pursuant to paragraph (c) of this subdivision, subdivision
19 five or paragraph (c) of subdivision eight of this section, or section
20 two hundred nine-r of this [chapter] ARTICLE to be duly recorded in the
21 office of the clerk of the county in which the town is located within
22 ten days after the adoption of such resolution[, or within ten days of
23 the receipt of notification of the approval of the state comptroller
24 where such approval is required by subdivision five or subdivision thir-
25 teen of this section]. When so recorded, such resolution shall be
26 presumptive evidence of the regularity of the proceedings and actions
27 taken by the town board in relation thereto.

28 S 21. Subdivision 13 of section 209-q of the town law is REPEALED and
29 subdivision 14 is renumbered subdivision 13.

30 S 22. The opening paragraph of paragraph 4 of section 104.10 of the
31 local finance law, as amended by chapter 469 of the laws of 1998, is
32 amended to read as follows:

33 Any town which, without first obtaining the permission of the state
34 comptroller, shall have established or extended an improvement district
35 prior to September first, nineteen hundred forty-five, or which shall
36 establish or extend any such district after August thirty-first, nine-
37 teen hundred forty-five, shall not issue its bonds, bond anticipation
38 notes or capital notes for the purposes of any such district or exten-
39 sion, except for improvements undertaken pursuant to sections one
40 hundred ninety-nine[,] AND two hundred two-b of the town law, and
41 section 222.5 of the Nassau county civil divisions act, and except when
42 the cost of the district or extension to the typical property [or, if
43 different, the cost to the typical one or two family home is not above
44 the average cost threshold as may be annually computed by the state
45 comptroller pursuant to section one hundred ninety-four or two hundred
46 nine-f of the town law], unless it secure the permission of the state
47 comptroller, granted upon a written application signed and verified by
48 the supervisor or such other officer of the town as the town board shall
49 determine. Any such application shall include:

50 S 23. This act shall take effect immediately and shall apply to any
51 town or fire district which shall have filed an application with the
52 state comptroller prior to, on or after the effective date of this act;
53 provided, however that the amendments made to paragraph a of subdivision
54 2 of section 171 of the town law by section six of this act shall be
55 deemed to have been in full force and effect on and after April 24,
56 2005.