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

9412

I N A S S E M B L Y

(PREFILED)

January 6, 2010

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

AN ACT to amend the general municipal law and the town law, in relation to establishing a petition process to change the elective offices of clerk, superintendent of highways and receiver of taxes

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

Section 1. The general municipal law is amended by adding a new article 17-B to read as follows:

ARTICLE 17-B

PETITION PROCESS TO ELIMINATE CERTAIN POSITIONS

SECTION 799-A. DEFINITIONS.
799-B. PROCESS UPON PETITION OR RESOLUTION.
799-C. PETITION TO START THE PROCESS TO CHANGE THE ELECTIVE OFFICES OF CLERK, SUPERINTENDENT OF HIGHWAYS AND RECEIVER OF TAXES.

S 799-A. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. THE TERM "QUALIFIED ELECTOR" SHALL MEAN A PERSON WHO IS REGISTERED TO VOTE IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW.

2. THE TERM "PARTICIPATING MUNICIPALITY" SHALL MEAN A TOWN OR VILLAGE THAT HAS STARTED THE PETITION PROCESS PURSUANT TO SECTION SEVEN HUNDRED NINETY-NINE-B OF THIS ARTICLE.

S 799-B. PROCESS UPON PETITION OR RESOLUTION. 1. THE PROCESS SHALL START IN A MUNICIPALITY ONCE A PETITION FROM THE RESIDENTS IS FILED WITH THE MUNICIPAL CLERK.

2. UPON RECEIVING A PETITION FROM THE RESIDENTS, THE PARTICIPATING MUNICIPALITY SHALL SUBMIT THE QUESTION OF THE CHANGE OF OFFICE OF THE CLERK, SUPERINTENDENT OF HIGHWAYS OR RECEIVER OF TAXES TO THE VOTERS.

3. A CERTIFICATE OF THE ELECTION SHALL BE FILED WITH THE SECRETARY OF STATE, WITH THE CLERKS OF EACH PARTICIPATING MUNICIPALITY, AND WITH THE CLERKS OF EACH COUNTY IN WHICH ANY PART OF THE PARTICIPATING MUNICIPALITY IS LOCATED.

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

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4. IF THE MAJORITY OF VOTES CAST ON THE REFERENDUM IN EACH PARTICIPATING MUNICIPALITY, ARE IN THE AFFIRMATIVE, THE MUNICIPALITY WITHIN THIRTY DAYS OF THE DATE OF THE REFERENDUM SHALL NOTIFY SUCH CLERK, SUPERINTENDENT OF HIGHWAYS OR RECEIVER OF TAXES THAT HE OR SHE SHALL SERVE OUT THEIR REMAINING TERM.

5. IF THE MAJORITY OF VOTES CAST ON THE REFERENDUM IN EACH PARTICIPATING MUNICIPALITY ARE IN THE NEGATIVE, THE REFERENDUM SHALL FAIL AND THE PETITION PROCESS MAY NOT BE INITIATED FOR THE SAME PURPOSE WITHIN TWO YEARS OF THE DATE OF SUCH REFERENDUM.

S 799-C. PETITION TO START THE PROCESS TO CHANGE THE ELECTIVE OFFICES OF CLERK, SUPERINTENDENT OF HIGHWAYS AND RECEIVER OF TAXES. 1. ELIGIBLE SIGNATURES. TO START THE PETITION PROCESS, A PETITION MUST HAVE SIGNATURES FROM RESIDENTS OF THE JURISDICTION, EQUAL TO AT LEAST TEN PERCENT OF THE RESIDENT ELECTORS QUALIFIED TO VOTE IN THE LAST GENERAL ELECTION. THOSE SIGNING THE PETITION MUST BE QUALIFIED TO VOTE AT THE TIME OF THE FILING OF THE PETITION WITH THE MUNICIPAL CLERK.

2. TIME LIMIT. A SIGNATURE SHALL BE INVALID IF IT IS SIGNED UPON THE PETITION MORE THAN ONE HUNDRED EIGHTY DAYS BEFORE THE PETITION IS FILED WITH THE MUNICIPAL CLERK, UNLESS THE GOVERNING BOARD PASSES A RESOLUTION TO GIVE ADDITIONAL TIME TO COLLECT SIGNATURES.

3. FORM. THE PETITION SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

PETITION

WE, THE UNDERSIGNED, ELECTORS OF THE (INSERT TYPE OF MUNICIPALITY - TOWN OR VILLAGE) OF (INSERT NAME OF MUNICIPALITY), NEW YORK, QUALIFIED TO VOTE AT THE NEXT GENERAL OR SPECIAL ELECTION, DO HEREBY PETITION THAT THERE BE SUBMITTED TO THE VOTERS OF (INSERT NAME OF MUNICIPALITY), PURSUANT TO LAW, A PROPOSITION AS FOLLOWS: (INSERT PROPOSITION SOUGHT TO BE SUBMITTED) THE UNDERSIGNED QUALIFIED ELECTORS HEREBY REQUEST THAT A REFERENDUM VOTE UPON THE ABOVE PROPOSITION BE TAKEN AS PROVIDED BY LAW. IN WITNESS WHEREOF, WE HAVE SIGNED OUR NAMES ON THE DATES INDICATED NEXT TO OUR SIGNATURES.

	DATE	NAME - PRINT NAME UNDER SIGNATURE	HOME ADDRESS
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

(ON THE BOTTOM OF EACH PAGE, AFTER ALL THE NUMBERED SIGNATURES, INSERT A WITNESS STATEMENT OR A STATEMENT BY A NOTARY PUBLIC OR COMMISSIONER OF DEEDS, IN SUBSTANTIALLY THE FOLLOWING FORM:)

I, (NAME OF WITNESS), STATE THAT I AM A REGISTERED VOTER OF THE STATE OF NEW YORK. I AM A RESIDENT OF THE (TOWN OR VILLAGE) OF (NAME OF TOWN OR VILLAGE). THE PERSONS THAT HAVE SIGNED THIS PETITION SHEET CONTAINING (FILL IN NUMBER) SIGNATURES, HAVE SIGNED THEIR NAMES IN MY PRESENCE ON THE DATES INDICATED ABOVE AND IDENTIFIED THEMSELVES TO BE THE SAME PERSONS WHO SIGNED THE SHEET. I UNDERSTAND THAT THIS STATEMENT WILL BE ACCEPTED FOR ALL PURPOSES AS THE EQUIVALENT OF AN AFFIDAVIT, AND IF IT CONTAINS A MATERIALLY FALSE STATEMENT, SHALL SUBJECT ME TO THE PENALTIES OF PERJURY.

_____ _____

DATE SIGNATURE OF WITNESS

(IN LIEU OF THE SIGNED STATEMENT OF A WITNESS WHO IS A DULY QUALIFIED VOTER OF THE STATE, QUALIFIED TO SIGN THE PETITION AS A RESIDENT OF THE TOWN OR VILLAGE, THE FOLLOWING STATEMENT SIGNED BY A NOTARY PUBLIC OR A COMMISSIONER OF DEEDS SHALL BE ACCEPTED.) ON THE DATE ABOVE INDICATED BEFORE ME PERSONALLY CAME EACH OF THE VOTERS WHOSE SIGNATURES APPEAR ON THIS PETITION SHEET CONTAINING (FILL IN NUMBER) SIGNATURES, WHO SIGNED SAME IN MY PRESENCE AND WHO, BEING BY ME DULY SWORN, EACH FOR HIMSELF OR

HERSELF, SAID THAT THE FOREGOING STATEMENT MADE AND SUBSCRIBED BY HIM OR HER, WAS TRUE.

_____ _____

DATE NOTARY PUBLIC OR COMMISSIONER OF DEEDS

4. LIBERAL CONSTRUCTION. IN MATTERS OF FORM, THIS SECTION SHALL BE GIVEN A LIBERAL CONSTRUCTION, AND PRECISE COMPLIANCE IS NOT REQUIRED.

S 2. Subdivision 6 of section 20 of the town law, as added by chapter 792 of the laws of 1934, paragraph (c) as added by chapter 343 of the laws of 1940, paragraphs (a), (b) and (c) as relettered by chapter 302 of the laws of 1974, is amended to read as follows:

6. (a) (I) At least one hundred fifty days prior to any biennial town election, the town board of any town in which the appointive office of town clerk shall exist, may adopt a resolution, subject to a permissive referendum, that the office of town clerk shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven OF THIS CHAPTER for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven OF THIS CHAPTER be in the affirmative the office of town clerk shall thereafter be an elective office in such town, and a town clerk shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and the term of office of the appointive town clerk for whom such successor shall be elected shall expire on said first day of January.

(II) EVERY ELECTOR OF THE TOWN SHALL BE ENTITLED TO VOTE AT ANY REFERENDUM HELD THEREON PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THIS CHAPTER. IF THE TOWN BOARD SHALL HAVE ADOPTED SUCH A RESOLUTION AND NO PETITION SHALL HAVE BEEN FILED WITHIN THE TIME SPECIFIED IN ARTICLE SEVEN OF THIS CHAPTER FOR A REFERENDUM THEREON, OR, IF A MAJORITY OF THE VOTES CAST ON ANY SUCH PROPOSITION SUBMITTED PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THIS CHAPTER BE IN THE AFFIRMATIVE, THE OFFICE OF TOWN CLERK SHALL THEREAFTER BE AN APPOINTIVE OFFICE IN SUCH TOWN, AND THE TOWN BOARD SHALL APPOINT A TOWN CLERK FOR THE TERM PROVIDED BY THIS CHAPTER, BEGINNING ON THE FIRST DAY OF JANUARY NEXT SUCCEEDING SUCH BIENNIAL TOWN ELECTION AND THE TERM OF OFFICE OF THE ELECTIVE TOWN CLERK FOR WHOM SUCH SUCCESSOR SHALL BE APPOINTED SHALL EXPIRE ON SAID FIRST DAY OF JANUARY.

(b) (I) At least one hundred fifty days prior to any biennial town election the town board of any town in which the appointive office of town superintendent of highways shall exist, may adopt a resolution, subject to a permissive referendum that the office of town superintendent of highways shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven OF THIS CHAPTER for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven OF THIS CHAPTER be in the affirmative the office of town superintendent of highways shall thereafter be an elective office in such town, and a town superintendent of highways shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and

the term of office of the appointive town superintendent of highways for whom such successor shall be elected shall expire on said first day of January.

(II) EVERY ELECTOR OF THE TOWN SHALL BE ENTITLED TO VOTE AT ANY REFERENDUM HELD THEREON PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THIS CHAPTER. IF THE TOWN BOARD SHALL HAVE ADOPTED SUCH A RESOLUTION AND NO PETITION SHALL HAVE BEEN FILED WITHIN THE TIME SPECIFIED IN ARTICLE SEVEN OF THIS CHAPTER FOR A REFERENDUM THEREON, OR, IF A MAJORITY OF THE VOTES CAST ON ANY SUCH PROPOSITION SUBMITTED PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THIS CHAPTER BE IN THE AFFIRMATIVE, THE OFFICE OF TOWN SUPERINTENDENT OF HIGHWAYS SHALL THEREAFTER BE AN APPOINTIVE OFFICE IN SUCH TOWN, AND THE TOWN BOARD SHALL APPOINT A TOWN SUPERINTENDENT OF HIGHWAYS FOR THE TERM PROVIDED BY THIS CHAPTER, BEGINNING ON THE FIRST DAY OF JANUARY NEXT SUCCEEDING SUCH BIENNIAL TOWN ELECTION AND THE TERM OF OFFICE OF THE ELECTIVE TOWN SUPERINTENDENT OF HIGHWAYS FOR WHOM SUCH SUCCESSOR SHALL BE APPOINTED SHALL EXPIRE ON SAID FIRST DAY OF JANUARY.

(c) (I) At least one hundred fifty days prior to any biennial town election, the town board of any town of the first class in which the appointive office of receiver of taxes and assessments shall exist, may adopt a resolution, subject to a permissive referendum, that the office of receiver of taxes and assessments shall be an elective office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition shall have been filed within the time specified in article seven OF THIS CHAPTER for a referendum thereon, or, if a majority of the votes cast on any such proposition submitted pursuant to the provisions of article seven OF THIS CHAPTER be in the affirmative the office of receiver of taxes and assessments shall thereafter be an elective office in such town, and a receiver of taxes and assessments shall be elected at the succeeding biennial town election for the term provided by this chapter, beginning on the first day of January next succeeding such biennial town election and the term of office of the appointive receiver of taxes and assessments for whom such successor shall be elected shall expire on said first day of January.

(II) NO PETITION SHALL HAVE BEEN FILED WITHIN THE TIME SPECIFIED IN ARTICLE SEVEN OF THIS CHAPTER FOR A REFERENDUM THEREON, OR, IF A MAJORITY OF THE VOTES CAST ON ANY SUCH PROPOSITION SUBMITTED PURSUANT TO THE PROVISIONS OF ARTICLE SEVEN OF THIS CHAPTER BE IN THE AFFIRMATIVE THE OFFICE OF RECEIVER OF TAXES AND ASSESSMENTS SHALL THEREAFTER BE AN APPOINTIVE OFFICE IN SUCH TOWN, AND THE TOWN BOARD SHALL APPOINT A RECEIVER OF TAXES AND ASSESSMENTS FOR THE TERM PROVIDED BY THIS CHAPTER, BEGINNING ON THE FIRST DAY OF JANUARY NEXT SUCCEEDING SUCH BIENNIAL TOWN ELECTION AND THE TERM OF OFFICE OF THE ELECTIVE RECEIVER OF TAXES AND ASSESSMENTS FOR WHOM SUCH SUCCESSOR SHALL BE APPOINTED SHALL EXPIRE ON SAID FIRST DAY OF JANUARY.

S 3. Subdivision 1 of section 36 of the town law, as amended by chapter 437 of the laws of 1963, is amended to read as follows:

1. In any town [of the second class] in which the office of tax collector or receiver of taxes AND ASSESSMENTS exists, the town board thereof may by resolution duly adopted at least one hundred fifty days prior to any biennial town election, determine that said office be abolished, same to take effect at the expiration of the term of office to which the incumbent was elected or appointed; and no such tax collector or town receiver of taxes AND ASSESSMENTS shall be elected at any biennial town election held not less than one hundred fifty days thereafter.

Upon the expiration of the term of office of such tax collector or town receiver of taxes AND ASSESSMENTS as provided [herein] IN THIS CHAPTER, he OR SHE shall surrender and deliver to the town clerk of said town all assessment rolls, books, papers, writings and all other documents and property in his OR HER possession as such officer. In all towns where the office of tax collector or receiver of taxes AND ASSESSMENTS has been abolished, it shall be the duty of such town clerk to collect and receive all state, county and town taxes and assessments that may be levied in such town and the town clerk shall have all the powers and be subject to all the duties of a collector IN A TOWN OF THE SECOND CLASS, OR OF A RECEIVER OF TAXES AND ASSESSMENTS IN A TOWN OF THE FIRST CLASS with respect to the collection of such taxes, the deposit of receipts and the return of unpaid taxes, as provided by subdivision one of section thirty-five OR SECTION THIRTY-SEVEN of this [chapter] ARTICLE, AS THE CASE MAY BE.

S 4. Paragraph 5 of subdivision 21-a of section 64 of the town law is renumbered paragraph 6 and a new paragraph 5 is added to read as follows:

5. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW TO THE CONTRARY, EVERY TOWN WHICH HAS ESTABLISHED A DEPARTMENT OF PUBLIC WORKS PURSUANT TO THIS SECTION MAY ADOPT A RESOLUTION, SUBJECT TO PERMISSIVE REFERENDUM AS PROVIDED BY ARTICLE SEVEN OF THIS CHAPTER, THAT THE OFFICE OF THE TOWN SUPERINTENDENT OF HIGHWAYS SHALL BE ABOLISHED. THE COMMISSIONER OF PUBLIC WORKS SHALL THEREAFTER BE THE HEAD OF THE DEPARTMENT OF PUBLIC WORKS AND THE HIGHWAY DEPARTMENT, AND HE OR SHE SHALL HAVE ALL THE POWERS AND DUTIES CONFERRED UPON THE SUPERINTENDENT OF HIGHWAYS WITHIN THIS CHAPTER, THE HIGHWAY LAW, AND ANY OTHER GENERAL, SPECIAL, OR LOCAL LAW, RULE, REGULATION OR CODE.

S 5. This act shall take effect immediately.