

751

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. RABBITT -- read once and referred to the Committee on Corporations, Authorities and Commissions

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 counties of Orange and Rockland 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 and Rockland shall have an option to withdraw from the metropolitan
9 commuter transportation district and have such withdrawal take effect on
10 either: (a) [January] APRIL first, [nineteen hundred eighty-seven] TWO
11 THOUSAND TWELVE. If any such county plans to withdraw from the district
12 on [January] APRIL first, [nineteen hundred eighty-seven] TWO THOUSAND
13 TWELVE, it shall (i) no later than seventy-five days after the effective
14 date of this section, furnish the commissioner of transportation, and
15 chairman of the authority and the other counties which have an option to
16 withdraw, a resolution adopted by the county legislature providing
17 notice of intent to withdraw, (ii) on or before [October] JANUARY first,
18 [nineteen hundred eighty-six] TWO THOUSAND ELEVEN, furnish to the
19 commissioner of transportation, the chairman of the authority and other
20 counties which have an option to withdraw, a resolution adopted by the
21 county legislature providing for a public transportation plan. For the
22 purposes of this section, a "public transportation plan" shall mean a

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

LBD03892-01-1

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

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

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

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

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

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

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

53 5. The authority shall have no obligation to undertake or continue any
54 project or part thereof in a current or future capital program plan
55 which pertains to railroad facilities within or services to a county
56 that withdraws from the district on or after such date of withdrawal nor

1 shall the authority enter into any contract for a project or part there-
2 of which would increase liabilities pursuant to subdivision [six] SIX-A
3 of this section in a county after such county notifies the authority of
4 its intent to withdraw as provided in subdivision one of this section,
5 provided, however, that if the authority has executed a contract for the
6 effectuation of a project or part thereof in a capital program plan in
7 such county, it shall be assigned to such county in accordance with
8 subdivision two of this section, unless the parties agree that it shall
9 not be assigned and that the authority or its subsidiary shall continue
10 to be responsible therefor, in which event the county shall reimburse
11 the authority or its subsidiary in accordance with the provisions of
12 subdivision two of this section.

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

47 6-A. Any county which withdraws from the district shall reimburse to
48 the authority or its subsidiary, within the time period agreed to by the
49 parties, any capital expenditures heretofore undertaken by the authority
50 or its subsidiary for railroad facilities only within such county which
51 were financed by commuter railroad revenue bonds issued by the metropol-
52 itan transportation authority pursuant to section twelve hundred sixty-
53 nine of this [article] TITLE and are assigned to such county in accord-
54 ance with the provisions of subdivision two of this section.

55 [7.] 6-B. The obligations of a county that withdraws from the district
56 to reimburse the authority and any subsidiary corporation of the author-

ity for the costs of operation, maintenance and use of passenger stations pursuant to section twelve hundred seventy-seven of this [article] TITLE, shall continue for any such costs incurred up to the effective date of the county's withdrawal from the district and for costs incurred thereafter that result from acts preceding such withdrawal, and the applicability of the payment provisions and procedures of such section twelve hundred seventy-seven to such county shall continue thereafter with respect to the aforesaid costs.

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

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

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

S 2. This act shall take effect immediately.