

1197--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ZEBROWSKI, GUNTHER, JAFFEE -- 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 SIXTEEN. If any such county plans to withdraw from
12 the district on [January] APRIL first, [nineteen hundred eighty-seven]
13 TWO THOUSAND SIXTEEN, 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 FIFTEEN,

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

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

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

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

1 THE COMMISSIONER OF TRANSPORTATION SHALL NOT BE REQUIRED AND THE AGREE-
2 MENT OR ORDER SET FORTH IN SUCH SUBDIVISION SIX SHALL DETERMINE THE
3 TERMS AND CONDITIONS OF SUCH WITHDRAWAL.

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

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

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

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

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

1 5. The authority shall have no obligation to undertake or continue any
2 project or part thereof in a current or future capital program plan
3 which pertains to railroad facilities within or services to a county
4 that withdraws from the district on or after such date of withdrawal nor
5 shall the authority enter into any contract for a project or part there-
6 of which would increase liabilities pursuant to subdivision [six] SIX-A
7 of this section in a county after such county notifies the authority of
8 its intent to withdraw as provided in subdivision one of this section,
9 provided, however, that if the authority has executed a contract for the
10 effectuation of a project or part thereof in a capital program plan in
11 such county, it shall be assigned to such county in accordance with
12 subdivision two of this section, unless the parties agree that it shall
13 not be assigned and that the authority or its subsidiary shall continue
14 to be responsible therefor, in which event the county shall reimburse
15 the authority or its subsidiary in accordance with the provisions of
16 subdivision two of this section.

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

51 6-A. Any county which withdraws from the district shall reimburse to
52 the authority or its subsidiary, within the time period agreed to by the
53 parties, any capital expenditures heretofore undertaken by the authority
54 or its subsidiary for railroad facilities only within such county which
55 were financed by commuter railroad revenue bonds issued by the metropol-
56 itan transportation authority pursuant to section twelve hundred sixty-

1 nine of this [article] TITLE and are assigned to such county in accord-
2 ance with the provisions of subdivision two of this section.

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

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

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

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

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

37 S 2. This act shall take effect immediately.