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

3250

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

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:

Section 1. Legislative findings. The legislature finds that the provisions of article IX of the state constitution relating to local governments which became effective on January 1, 1964 and the municipal 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) of section 2 of article IX of the state constitution provides that "... the legislature:... Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law" only in certain circumstances when requested by the local legislative body. The legislature does further find that certain provisions of the town law relating to the creation of fire, water and sewer districts which were adopted prior to such article IX are inconsistent with the constitution and should be repealed. The legislature does further find that provisions of the town law requiring the approval of the state comptroller prior to the creation of a fire, water or sewer district creates an unnecessary burden and "mandate" on local government that increases the cost of formation of such districts, the time to create such districts and is an unwarranted intrusion on the ability of local governments to manage their own affairs.

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

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

(a) At any time prior to the completion of an improvement, the maximum amount proposed to be expended for such improvement, as stated in the notice of public hearing pursuant to subdivision three or four [hereof] OF THIS SECTION, may be increased by an order of the town board provided that the town board shall, after a public hearing held in the manner prescribed in subdivision three [hereof] OF THIS SECTION, determine that it is in the public interest to authorize the increase in such maximum amount. [If it is proposed or required that the town shall finance the increase in the maximum amount proposed to be expended for the improvement by the issuance of bonds, notes, certificates or other evidences of indebtedness and the total estimated expense of such improvement including the increase in the maximum amount shall exceed one-tenth of one per centum of the full valuation of the taxable real property in the area of the town outside of villages, the town board may not make an order pursuant to this subdivision unless the comptroller of the state of New York shall have made, subsequent to the public hearing required by this subdivision, an order approving the increase in such maximum amount as stated in the notice of hearing required by this subdivision. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town.] If the original authorization of the improvement was subject to a permissive referendum pursuant to paragraph (a) of subdivision eleven of this section or made subject to a mandatory or permissive referendum pursuant to paragraph (b) of subdivision eleven of this section, any order of the town board increasing the maximum amount to be expended shall be subject to the same type of referendum.

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

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

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

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

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

2. Upon its own motion and without a petition, the town board of any town or, if the district as proposed or proposed to be extended includes territory in more than one town, the town boards of each of the towns acting jointly by a majority vote of the members of each of such boards may establish or extend fire districts or fire protection districts in such town or towns outside of any incorporated village or city or existing fire, fire alarm or fire protection district therein, after a public hearing thereon. The notice of such hearing shall be published and posted and such hearing shall be held in the manner provided in this article for a hearing upon the establishment of a fire district or fire protection district upon petition. After such hearing and upon the evidence given thereat, the town board or boards shall determine by resolution whether it be in the public interest to establish the proposed fire district or fire protection district or extend the existing fire district or fire protection district, as the case may be. If it be determined that the establishment or extension of such district be in the public interest, the town board or boards shall determine whether all the property, property owners and interested persons within the proposed district are benefited thereby and whether all property or property owners benefited are included therein and such town board or boards shall so alter the boundaries of the proposed district or extension, so that all property and property owners and only such property and property owners as are benefited shall be included within its limits. In the event, however, that it is found that any property, property owners or any interested persons not included in the district, as originally proposed, will be benefited thereby, a further notice shall be posted and published and another hearing held as provided herein, unless all said additional property owners or interested persons execute and file written consents to be included in such district or extension. When the boundaries of such FIRE DISTRICT, fire protection district or extension shall have been finally determined, the town board or boards shall adopt a resolution establishing or extending the district and shall comply with the provisions of subdivision one of section one hundred seventy-three of this [chapter] ARTICLE. [When the boundaries of such fire district or extension shall have been finally determined the town board or boards shall adopt a resolution approving the establishment or extension of the district, and shall comply with the provisions of subdivisions two and four of section one hundred seventy-three of this chapter, other than filing a certified copy of a petition as provided in such subdivision two.] A fire district shall not be extended pursuant to the provisions of this subdivision except upon the consent in writing of a majority of the commissioners of such fire district. Such consent shall be acknowledged or proved in the same manner as a deed to be recorded.

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

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

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

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

(2) Notwithstanding the provisions of subparagraph one of this paragraph the state comptroller shall not be precluded from requiring the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.]

S 7. Section 173 of the town law, as amended by chapter 191 of the laws of 1946, subdivision 1 as amended by chapter 310 of the laws of 1962, the opening paragraph and paragraph (a) of subdivision 2 and subdivision 4 as amended by chapter 397 of the laws of 1995, subparagraph 1 of paragraph (a) of subdivision 2 as amended by chapter 37 of the laws of 2000 and paragraph (b) of subdivision 2 as amended by chapter 156 of the laws of 1956, is amended to read as follows:

S 173. Filing of determination. 1. Whenever the town board or boards shall adopt a resolution establishing or extending a FIRE DISTRICT, fire alarm district or [a] fire protection district, or consolidating two or more adjoining fire districts or fire protection districts, or altering the boundaries of a fire district or fire protection district, or

dissolving a fire district, a fire alarm district or fire protection district, the town clerk or clerks shall cause a certified copy of such resolution to be duly recorded in the office of the clerk of the county or counties in which such fire district, fire alarm district, fire protection district, or consolidated or altered fire districts, or consolidated fire protection districts, are located, and shall, within ten days cause a certified copy of such resolution to be filed in the state department of audit and control at Albany, New York. When so recorded, such resolution shall be presumptive evidence of the regularity of the establishment, extension, consolidation, dissolution or alteration of such district or districts. The expense of such recording shall be a charge against the district or districts. The said determination shall be final and conclusive unless a proceeding has been commenced for review in the manner provided by article seventy-eight of the civil practice law and rules within thirty days from the time of recording thereof.

2. [Whenever the town board or boards shall adopt a resolution establishing or extending a fire district for which it is proposed that an expenditure is to be financed by the issuance of bonds, notes, certificates or other evidences of indebtedness of the fire district, such resolution or determination shall be submitted to the state comptroller for approval in the following manner:

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

(1) A certified copy of the petition, if there is one, omitting, however, the signatures and acknowledgments or proofs, or authentications.

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

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

(b) Whenever such an application shall be filed in the office of the department of audit and control, the state comptroller shall within five days thereafter give notice thereof to the board of supervisors of the county in which such proposed district or extension is located by filing with the clerk of such board of supervisors one copy of such application. At any time within fifteen days of the filing of the application, said board of supervisors may file an objection, in writing, in the office of said department of audit and control. In addition, the state comptroller shall determine whether the public interest will be served by the creation or extension of the district and also whether the cost thereof will be an undue burden upon the property of the proposed district or extension. The state comptroller may make such determinations upon the original or any amended application, or in his discretion may require the submission of additional information or data in such form and detail as he shall deem sufficient, or may cause an

investigation to be made, to aid him in making the determinations above mentioned.

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

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

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

S 8. Subdivision 1 of section 193 of the town law, as amended by chapter 397 of the laws of 1995, paragraph a as amended by chapter 378 of the laws of 2012, is amended to read as follows:

1. [a.] Whenever a petition shall be presented to the town board pursuant to this article, for the establishment or extension of a sewer, wastewater disposal, drainage, water, water quality treatment, park, public parking, lighting, snow removal, water supply, sidewalk, refuse and garbage, aquatic plant growth control district, ambulance district, harbor improvement district, public dock district, beach erosion control district, watershed protection improvement district, or a fallout shelter district, the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition, the boundaries of the proposed district, the improvements proposed, the maximum amount proposed to be expended for the improvement as stated in the petition or the maximum amount to be expended for the performance or supplying of services if a maximum amount is stated in the petition, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, and specifying the time when and place where said board will meet to consider the petition and

to hear all persons interested in the subject thereof, concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the signboard of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. In the event that the town maintains a website, such information may also be provided on the website. Prior to the publication of a copy of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home was computed.

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

(2) Notwithstanding the provisions of subparagraph one of this paragraph, the state comptroller shall not be precluded from requiring the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.]

S 9. Paragraph (b) of subdivision 2 of section 194 of the town law, as amended by chapter 37 of the laws of 2000, is amended to read as follows:

(b) If the town board shall determine that the petition is signed, and acknowledged or proved, or authenticated, as required by law and is otherwise sufficient and that it is in the public interest to grant the relief sought, either in whole or in part, but shall find that any part or portion of the property or property owners within the proposed district or extension are not benefited thereby or that certain property or property owners benefited thereby have not been included therein, the town board shall specify the necessary changes of the boundaries of the proposed district or extension to be made in order that all of the property and property owners and only such property and property owners as are benefited shall be included within such proposed district or extension, and the board shall call a further hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be posted and published in the manner provided in section one hundred ninety-three [hereof] OF THIS ARTICLE except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed district or extension. Such further hearing shall be conducted in the same manner as an original hearing upon a petition. If and when the town board shall determine in the affirmative all of the questions set forth

in subdivision one of this section, the board may adopt [a resolution approving the establishment] AN ORDER ESTABLISHING THE DISTRICT or extension of the district as the boundaries shall be finally determined and the construction of the improvement or providing of the service therein, but no such [resolution so approving] ORDER shall be adopted unless the petition shall comply with the requirements of section one hundred ninety-one OF THIS ARTICLE as to sufficiency of signers as the boundaries of the proposed district or extension shall be finally determined.

S 10. Subdivisions 3, 4, 5 and 6 of section 194 of the town law are REPEALED.

S 11. Section 202-d of the town law, as amended by chapter 76 of the laws of 1952, subdivision 1 as amended by chapter 456 of the laws of 2004 and subdivision 2 as amended by chapter 543 of the laws of 1954, is amended to read as follows:

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

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

S 12. Section 202-e of the town law, as added by chapter 702 of the laws of 1940 and subdivision 1 as amended by chapter 37 of the laws of 2000, is amended to read as follows:

S 202-e. Acquisition and improvement of additional property in park districts. 1. Petition. After the establishment of a park district and the acquisition for park purposes of the property described in the petition for the establishment of the district, the town board upon a petition therefor may acquire additional property for the purposes of such park district, in the manner [herein] provided IN THIS SECTION. Such

petition shall be signed, and acknowledged or proved, or authenticated, in the manner specified in section one hundred ninety-one OF THIS ARTICLE for petitions for the establishment of a park district and shall be subject to the requirements of such section as to sufficiency of signers. The petition shall also describe the additional property proposed to be acquired for park purposes and shall state the maximum amount proposed to be expended for the acquisition and improvement thereof.

2. Hearing. Whenever such a petition containing the required signatures shall have been presented to the town board, the board shall adopt an order providing for a meeting to consider such petition and to hear all interested persons and shall cause notice of such hearing to be given in the manner provided in section one hundred [and] ninety-three OF THIS ARTICLE. After such hearing and upon the evidence given thereat, the town board shall make the determinations specified in subdivision one of section one hundred [and] ninety-four OF THIS ARTICLE.

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

4.] Powers of town board. If the [state comptroller shall deny permission for the acquisition and improvement of such property, the town board shall forthwith adopt an order denying the petition. If the state comptroller shall grant permission therefor] TOWN BOARD SHALL DETERMINE IN THE AFFIRMATIVE ALL THE QUESTIONS SET FORTH IN SUCH SUBDIVISION AND SHALL APPROVE SAID PETITION, the town board may acquire by purchase or condemnation the property described in the petition; provided, however, that no property situated within an incorporated village or city shall be acquired unless the permission and consent of the legislative body thereof, is first obtained.

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

S 13. Section 209-d of the town law, as amended by chapter 397 of the laws of 1995 and subdivision 1 as amended by chapter 378 of the laws of 2012, is amended to read as follows:

S 209-d. Notice of hearing; cost to typical property. [1.] Subsequent to the date of the filing of the map, plans and report in the office of the town clerk as required in section two hundred nine-c of this article the town board may adopt an order and enter the same in the minutes of its proceedings reciting a description of the boundaries of the proposed district or extension in a manner sufficient to identify the lands included therein as in a deed of conveyance, the improvements proposed, the maximum amount proposed to be expended for the improvement, the estimated cost of hook-up fees, if any, to, and the cost of the district

or extension to, the typical property and, if different, the typical one or two family home, the proposed method of financing to be employed, the fact that a map, plan and report describing the same are on file in the town clerk's office for public inspection and specifying the time when and the place where said board will meet and hold a public hearing to hear all persons interested in the subject thereof, concerning the same. If such order proposes only the performance or supplying of certain services, it may state the maximum amount to be expended annually for such services. The board shall cause a copy of such order to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. Such order may further state such place other than the town clerk's office where the map, plan and report may be examined in advance of the hearing, if the town board determines that, in the public interest, some other additional place is necessary or desirable. If a water district, sidewalk district, a public parking district, a refuse and garbage district, aquatic plant growth control district, watershed protection improvement district or beach erosion control district is proposed, such order may contain a statement that the cost of constructing the water system, sidewalks or acquiring lands for public parking or for refuse and garbage purposes, or aquatic plant growth control purposes or for beach erosion control or for watershed protection improvement purposes shall be assessed by the town board in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom. Prior to the publication of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, was computed.

[2. (a) If the permission of the state comptroller is not required pursuant to section two hundred nine-f of this article because it is proposed or required that the town in which the district or extension is located shall finance the cost thereof by the issuance of bonds, notes, certificates or other evidences of indebtedness of the town therefor or debt service is proposed to be assumed pursuant to subdivision twelve of section one hundred ninety-eight of this chapter but the cost to the typical property or, if different, the cost to the typical one or two family home is not above the average cost threshold described in such section, a certified copy of the order of the town board adopted pursuant to this section shall also be filed with the state comptroller on or about the date of the publication of a copy of such order.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the state comptroller shall not be precluded from requiring the submission of additional information or data in such form and detail as the state comptroller shall deem sufficient or from causing an investigation to be made with respect to the establishment or extension of a district or an increase in the maximum amount to be expended.]

S 14. Subdivision 4 of section 209-e of the town law, as added by chapter 30 of the laws of 1959, is amended to read as follows:

4. (a) If after the expiration of the time for filing a petition requesting that the matter be submitted to a referendum of the property owners of the proposed district or proposed extended district, no such

petition has been filed with the town clerk, he shall file a certificate stating such fact in the office of the county clerk [and, where the permission of the state comptroller is required for the establishment or extension of a district and the construction of an improvement or the providing of a service therein, in the office of the department of audit and control at Albany, New York].

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

S 15. Section 209-e of the town law is amended by adding a new subdivision 5 to read as follows:

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

S 16. Section 209-f of the town law is REPEALED.

S 17. Section 209-h of the town law, as added by chapter 598 of the laws of 1960 and subdivision 1 as amended by chapter 456 of the laws of 2004, is amended to read as follows:

S 209-h. Increase of maximum amount to be expended. 1. At any time after the establishment of an improvement district or of an extension thereof pursuant to the provisions of this article or any other applicable provision of law, the maximum amount proposed to be expended for the improvement in such district, as stated in the notice of public hearing on the establishment or extension of such district, may be increased by an order of the town board provided that the town board shall, after a public hearing is held in the manner prescribed by section two hundred nine-d of this article, determine that it is in the public interest to authorize the increase of such maximum amount [, and provided the comptroller of the state of New York shall have made as may be required pursuant to subdivision one of section two hundred nine-f of this article, after such public hearing, an order approving the increase of such maximum amount as stated in the said notice of hearing. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town]. The order of the town board increasing the maximum amount to be expended shall be subject to a permissive referendum in the manner provided in subdivision three of section two hundred nine-e of this article. [The comptroller may not make an order approving the increase in such maximum amount until after the expiration of the time for filing a petition requesting that the matter be submitted to referendum or, if such a petition is filed, unless the vote on the proposition submitted at referendum was affirmative.]

2. If the notice of public hearing for the establishment or extension of the district proposes only the performance or supplying of certain services, and states the maximum amount to be expended annually for such services, the maximum amount to be expended annually may be increased by

an order of the town board provided the town board shall, after a public hearing, determine that it is in the public interest to authorize the increase of such maximum amount. The town board shall give notice of such hearing by publication of a notice in at least one newspaper having general circulation in the district specifying the time when and the place where such hearing will be held and stating the increase proposed in the maximum amount to be expended annually. Such notice shall be published once at least ten days prior to the date specified for such hearing. [The approval of the state comptroller to such increase in the maximum amount to be expended annually shall not be required.]

S 18. Subdivision 5 of section 209-q of the town law, as amended by chapter 521 of the laws of 1974, is amended to read as follows:

5. Increase in maximum amount. At any time prior to the completion of a sewer, drainage or water improvement, the maximum amount proposed to be expended for such sewer, drainage or water improvement, as stated in the notice of public hearing pursuant to subdivision three or four [hereof] OF THIS SECTION, may be increased by an order of the town board provided that the town board shall, after a public hearing held in the manner prescribed in subdivision three [hereof] OF THIS SECTION, determine that it is in the public interest to authorize the increase in such maximum amount. [If it is proposed or required that the town shall finance the increase in the maximum amount proposed to be expended for the sewer, drainage or water improvement by the issuance of bonds, notes, certificates or other evidences of indebtedness and the total estimated expense of such improvement including the increase in the maximum amount shall exceed one-tenth of one per centum of the full valuation of the taxable real property in the area of the town outside of villages, the town board may not make an order pursuant to this subdivision unless the comptroller of the state of New York shall have made, subsequent to the public hearing required by this subdivision, an order approving the increase at such maximum amount as stated in the notice of hearing required by this subdivision. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town.] If the original authorization of the sewer, drainage or water improvement was subject to a permissive referendum pursuant to paragraph (a) of subdivision eleven of this section or made subject to a mandatory or permissive referendum pursuant to paragraph (b) of subdivision eleven of this section, any order of the town board increasing the maximum amount to be expended shall be subject to the same type of referendum. The provisions of this subdivision referring to a referendum[,] shall not be applicable to any order increasing the maximum amount to be expended for a sewer improvement adopted by the town board of any town which has been ordered by the state commissioner of health or water resources commission to provide sewage treatment facilities or directing compliance with standards or determinations or orders promulgated pursuant to article [twelve] SEVENTEEN of the [public health] ENVIRONMENTAL CONSERVATION law.

S 19. Paragraph (d) of subdivision 6 of section 209-q of the town law, as amended by chapter 74 of the laws of 2009, is amended to read as follows:

(d) The town clerk shall cause a certified copy of any resolution or order adopted pursuant to paragraph (c) of this subdivision, subdivision five or paragraph (c) of subdivision eight of this section to be duly recorded in the office of the clerk of the county in which the town is located within ten days after the adoption of such resolution[, or with-

in ten days of the receipt of notification of the approval of the state comptroller where such approval is required by subdivision five or subdivision thirteen of this section]. When so recorded, such resolution shall be presumptive evidence of the regularity of the proceedings and actions taken by the town board in relation thereto.

S 20. Subdivision 13 of section 209-q of the town law is REPEALED and subdivision 14 is renumbered subdivision 13.

S 21. The opening paragraph of paragraph 4 of section 104.10 of the local finance law, as amended by chapter 469 of the laws of 1998, is amended to read as follows:

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

S 22. This act shall take effect immediately and shall apply to any town or fire district which shall have filed an application with the state comptroller prior to, on or after the effective date of this act; provided, however that the amendments made to subdivision 2 of section 171 of the town law by section six of this act shall be deemed to have been in full force and effect on and after April 24, 2005.