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

S. 7205 A. 9522

S E N A T E - A S S E M B L Y

May 6, 2014

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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

AN ACT to amend the town law and the public authorities law, in relation to the establishment, extension, powers and expenses of underground utility improvement districts

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

Section 1. Section 190 of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

S 190. Establishment or extension of improvement districts. Upon a petition as hereinafter provided, the town board of any town may establish or extend in said town a sewer, drainage, water, water quality treatment, park, public parking, lighting, snow removal, water supply, sidewalk, a fallout shelter district or refuse and garbage district, aquatic plant growth control district, ambulance district, watershed protection improvement district, UNDERGROUND UTILITY IMPROVEMENT DISTRICT, and in any town bordering upon or containing within its boundaries any navigable waters of this state, a harbor improvement district, a public dock district, or beach erosion control district, and provide improvements or services, or both, in any such district, wholly at the expense of the district; but no water supply district shall be established or extended to include lands situate within the boundaries of a water district. No such district shall be established or extended in a city or in an incorporated village provided, however, that such a district may be established or extended wholly or partly within an incorporated village on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article nine of the village law, as the case may be, and except, in the case of a water quality treatment district, on

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

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consent of a village expressed in a local law or by resolution of the board of trustees and not subject to any referendum.

S 2. Paragraph a of subdivision 1 of section 193 of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

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, UNDERGROUND UTILITY 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.

S 3. Section 198 of the town law is amended by adding a new subdivision 10-h to read as follows:

10-H. UNDERGROUND UTILITY IMPROVEMENT DISTRICT. AFTER AN UNDERGROUND UTILITY IMPROVEMENT DISTRICT HAS BEEN ESTABLISHED, THE TOWN BOARD MAY TAKE SUCH ACTION AS MAY BE REQUIRED TO ADOPT PLANS AND SPECIFICATIONS AND ENTER INTO A CONTRACT OR CONTRACTS, OR TAKE SUCH OTHER ACTIONS AS MAY BE REQUIRED WITH A PUBLIC UTILITY COMPANY, MUNICIPALITY, OR PUBLIC AUTHORITY IN ORDER TO CONSTRUCT UNDERGROUND NEW PUBLIC UTILITY FACILITIES OR CONVERT EXISTING OVERHEAD PUBLIC UTILITY FACILITIES TO UNDERGROUND FACILITIES. FOR THE PURPOSES OF THIS SUBDIVISION, "PUBLIC UTILITY FACILITIES" SHALL INCLUDE THE TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, TELEPHONE LINES, AND CABLE TELEVISION LINES, INCLUDING POLES, WIRES, AND ALL ASSOCIATED STRUCTURES.

S 4. Subdivision 3 of section 202 of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

3. The expense of the establishment of a park, public parking, water, lighting, snow removal, water supply, water, water storage and distribution, sidewalk, refuse and garbage, aquatic plant growth control

district, ambulance district, harbor improvement district, watershed protection improvement district, UNDERGROUND UTILITY IMPROVEMENT DISTRICT, public dock district, fallout shelter district, or beach erosion control district, and providing improvements or services, or both, therefor, and of constructing lateral water mains pursuant to paragraph (b) of subdivision one of section one hundred ninety-nine OF THIS ARTICLE, shall be assessed, levied and collected from the several lots and parcels of land within the district for each purpose in the same manner and at the same time as other town charges, except as otherwise provided by law. In the event that any order adopted pursuant to section two hundred nine-d of this chapter for the establishment of a water district, sidewalk district, a public parking district, a refuse and garbage district, an aquatic plant growth control district, lighting district, watershed protection improvement district, UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or beach erosion and control district or that any petition for the establishment of a water district, sidewalk district, a public parking district, a refuse and garbage district, an aquatic plant growth control district, lighting district, or beach erosion control district, shall contain a statement that the cost of constructing the water system, sidewalks, lighting system, or acquiring and improving lands for public parking or for refuse and garbage purposes or for beach erosion control, or for watershed protection improvement district, OR FOR UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or for aquatic plant growth control, 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, the amount to be raised for the payment of the principal and interest of the bonds issued for the construction of the water system, sidewalks, lighting system, or acquiring and improving lands for public parking or for refuse and garbage purposes or for beach erosion control, or for aquatic plant growth control, or for watershed protection improvement district, OR FOR UNDERGROUND UTILITY IMPROVEMENT DISTRICT, pursuant to such petition or order, shall be assessed on the lands within such district in the same manner as provided in the case of trunk sewers. The expense of constructing lateral water mains pursuant to paragraph (c) of subdivision one of section one hundred ninety-nine OF THIS ARTICLE shall be assessed, levied and collected from the several lots and parcels of land within the district in proportion to the area of such lot or parcel of land to the total area of the district.

S 5. Subdivision 2 of section 202-b of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

2. The town board may, on behalf of a park, public parking, ambulance, lighting, snow removal, refuse and garbage, public dock, watershed protection improvement district, UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or beach erosion control district, and within the limitations of section one hundred ninety-eight of this chapter, acquire additional apparatus and equipment and replace obsolete, inadequate, damaged, destroyed or worn-out apparatus and equipment, and it may construct additional facilities and appurtenances thereto or reconstruct or replace obsolete, inadequate, damaged, destroyed or worn-out facilities and appurtenances thereto. Such expenditure shall be authorized in the manner provided in subdivision one of this section, except that the map and plan described by said subdivision one shall not be required. However, nothing herein contained shall be construed to limit or supersede the provisions of section seventy-two hundred three of the education law.

S 6. Subdivision 1 of section 209-a of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

1. the term "improvement district" shall include only a sewer, waste-water disposal, drainage, water, park, public parking, lighting, snow removal, water supply, sidewalk, refuse and garbage, aquatic plant growth control, or watershed protection improvement district, OR UNDERGROUND UTILITY IMPROVEMENT DISTRICT, or ambulance district in any town, and, in any town bordering upon or containing within its boundaries any navigable water of this state a public dock or beach erosion control district;

S 7. Subdivision 1 of section 209-d of the town law, as amended by chapter 378 of the laws of 2012, is amended to read as follows:

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, UNDERGROUND UTILITY 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, OR FOR UNDERGROUND UTILITY 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.

S 8. Section 1020-g of the public authorities law is amended by adding a new subdivision (o) to read as follows:

(O) (I) WHERE A TOWN IN THE SERVICE AREA OF THE AUTHORITY HAS ESTABLISHED AN UNDERGROUND UTILITY IMPROVEMENT DISTRICT IN ORDER TO UNDERGROUND THE AUTHORITY'S PUBLIC UTILITY FACILITIES, PURSUANT TO ARTICLE TWELVE OR TWELVE-A OF THE TOWN LAW, SUCH TOWN MAY PETITION THE AUTHORITY TO CONTRIBUTE TO THE DISTRICT AT LEAST FIFTY PERCENT (50%) OF THE NET INCREMENTAL COST OF IMPROVEMENTS FOR THE DISTRICT PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION. "NET INCREMENTAL COST" SHALL BE THE DIFFERENCE BETWEEN THE TOTAL COST OF CONSTRUCTING PUBLIC UTILITY FACILITIES UNDERGROUND AND THE TOTAL COST OF CONSTRUCTING SUCH FACILITIES OVERHEAD. THE TERM "PUBLIC UTILITY FACILITIES" SHALL HAVE THE SAME MEANING AS IN SUBDIVISION TEN-H OF SECTION ONE HUNDRED NINETY-EIGHT OF THE TOWN LAW. ANY STATE OR FEDERAL AID TO CONSTRUCT SUCH PUBLIC UTILITY FACILITIES SHALL ALSO BE SUBTRACTED FROM NET INCREMENTAL COST.

(II) THE AUTHORITY AND THE TOWN SHALL HOLD A JOINT PUBLIC HEARING ON THE PETITION OF THE TOWN.

(III) THE AUTHORITY AND THE TOWN SHALL DETERMINE WHETHER OR NOT FUNDING BY THE AUTHORITY IS IN THE GENERAL PUBLIC INTEREST.

(IV) IN DETERMINING GENERAL PUBLIC INTEREST, THE TOWN AND THE AUTHORITY SHALL CONSIDER: (A) WHETHER THE PROJECT WILL AVOID OR ELIMINATE AN UNUSUALLY HEAVY CONCENTRATION OF OVERHEAD ELECTRIC PUBLIC UTILITY FACILITIES, OR (B) WHETHER THE STREET OR ROADWAY IS EXTENSIVELY USED BY THE GENERAL PUBLIC AND CARRIES A HEAVY VOLUME OF PEDESTRIAN OR VEHICLE TRAFFIC, OR (C) THE STREET OR ROADWAY PASSES THROUGH AN AREA WHICH IS OF GENERAL PUBLIC INTEREST BASED UPON OPEN SPACE RESOURCES, FARMLAND PRESERVATION RESOURCES, HISTORIC PRESERVATION RESOURCES, PARK AND RECREATION RESOURCES, OR SCENIC OR AESTHETIC RESOURCES.

(V) THE AUTHORITY SHALL COMMIT TO PAY AT LEAST FIFTY PERCENT (50%) OF THE NET INCREMENTAL COST OF THE IMPROVEMENTS OF THE DISTRICT, IF THE AUTHORITY AND THE TOWN EACH FIND THAT ANY OF THE THREE STANDARDS IN PARAGRAPH (IV) OF THIS SUBDIVISION ARE MET.

(VI) ANY DETERMINATION UNDER THIS SUBDIVISION SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 9. This act shall take effect immediately.