STATE OF NEW YORK

6728

2017-2018 Regular Sessions

IN SENATE

June 15, 2017

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to provide a procedure for village incorporation in a certain town in Westchester

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding article 2 of the village law, in the town of Greenburgh, in the county of Westchester, the incorporation of a new village shall be pursuant to the provisions of this act. For the purposes of this act "town" shall mean the town of Greenburgh. A new village may be incorporated only on the majority vote of those qualified voters who cast their ballot in an election held on a valid petition and after the town board's finding of no significant adverse impact pursuant to the provisions of this act.

§ 2. Population and area requirements. 1. A territory may be incorporated as a village under this act providing it meets the following conditions:

a. The territory contains a population of at least one thousand persons, who are regular inhabitants thereof, as hereinafter defined;

b. The territory does not include a part of a city or village and further provided the limits of such territory:

(1) do not contain more than five square miles; or,

(2) are coterminous with:

(i) the entire boundaries of one school, fire, fire protection, fire alarm, town special or town improvement district; and/or

(ii) parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within the town; and/or

(iii) the entire boundaries of the town; and/or

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

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(iv) the entire boundaries of the territory of the town outside of the incorporated villages.

2. The words "regular inhabitants" as used herein and for the purpose of this act shall include all persons residing in the territory proposed to be incorporated except such persons who themselves, or who are persons under the age of eighteen years residing with persons who, maintain a residence outside such territory which is used as their address for purposes of voting.

§ 3. Community Impact Statement. 1. A two-part community impact statement shall be prepared and filed with the town clerk. Such community impact statement shall be written in plain language in a concise manner capable of being read and understood by the public.

2. Before a petition for incorporation may be circulated pursuant to section four of this act, "Part A" of the community impact statement shall be prepared and filed on behalf of the petitioners which shall include the following:

a. a proposed five year operating budget for the territory to be incorporated;

b. a proposed five year capital budget for the territory to be incorporated;

c. a description of the services that would be provided by the proposed village;

d. a description of any deficiency in services provided by the town and the manner in which the incorporation would remedy the deficiency;

e. the estimated real property tax impact for a five year period on the territory to be incorporated;

f. the population, demographic, socio-economic and environmental impacts on the territory to be incorporated; and

g. the impact of the anticipated land use and infrastructure needs within the territory to be incorporated.

3. Within thirty days after the supervisor files a decision that a petition is legally sufficient, the supervisor shall prepare and file "Part B" of the community impact statement which shall include the following:

a. a proposed five year operating budget for the area of the town remaining unincorporated;

b. a proposed five year capital budget for the area of the town remaining unincorporated;

c. a description of any change of services for the area of the town remaining unincorporated which change is resultant from the incorporation;

d. the estimated real property tax impact for a five year period on the area of the town remaining unincorporated;

e. the population, demographic, socio-economic and environmental impact on the area of the town remaining unincorporated;

f. the impact of anticipated land use and infrastructure needs within the area of the town remaining unincorporated;

4. The supervisor shall provide to the petitioner any and all information as the petitioner may reasonably require to prepare Part A of the community impact statement. The petitioners shall provide to the supervisor any and all information as he/she may reasonably require to prepare Part B of the community impact statement.

§ 4. Petition for incorporation. 1. A proceeding for the incorporation of such territory as a village shall commence with the filing of a petition with the supervisor.

2. The requirements for such petition are as follows:

a. Either one or both of the following two groups of persons may petition for such incorporation:

(1) At least twenty percent of the residents of such territory qualified to vote for town officers in the town.

(2) The owners of more than fifty percent in assessed valuation of the real property in such territory assessed upon the last completed assessment roll of the town. Full valuation shall be determined by applying the appropriate equalization rate to such assessed valuations. If real property in such territory is owned by tenants in common, joint tenants or tenants by the entirety, each such tenant, as assigner of such petition shall, for the purpose of ascertaining the percentage of the assessed valuation upon which the petition is based, be considered as the owner of an interest in such real property equal to the result reached by dividing the assessed valuation by the number of owners thereof and shall be credited to that extent with part of the total assessed valuation thereof. In the event such real property is part of a parcel of land partially situated within such territory, the town assessor or assessors shall, for the purposes of this section make an apportionment of the assessed value of such part as is in such territory. In such a case, only the apportioned value attributed to such part shall be considered.

b. Contents of petition. The petition shall contain the following information:

(1) An allegation of the basis on which the petition is signed.

(2) The name of the proposed village.

(3) An allegation that such territory contains a population of at least one thousand regular inhabitants.

(4) The manner in which the area requirements of section two of this act are satisfied along with a land survey prepared by a surveyor or engineer licensed in the state of New York.

(5) A designation of at least one but no more than three persons, giving full names and addresses, on whom and at which addresses all papers required to be served in connection with the proceeding for incorporation, shall be served. A majority of such designees must reside in such territory.

(6) Each page of the petition and all exhibits and certifications shall be securely fastened together dated and numbered.

c. Exhibits and certifications. Each copy of the petition shall have attached thereto prior to the signature pages:

(1) A description of such territory sufficient to identify the location and extent of such territory with common certainty and which shall be in one of the following forms or a combination thereof: (a) a metes and bounds description certified by a surveyor or engineer licensed in the state of New York; (b) a description made with reference to existing streets and navigable waters or a combination of same; or (c) a map showing existing streets and navigable waters or a combination of same forming boundaries or metes and bounds or the entire boundaries of the town.

(2) A list of the names and address of the regular inhabitants of such territory.

(3) If the petition is alleged to be signed by the owners of more than fifty per cent in assessed or full valuation, as the case may be, of the real property in such territory, there shall be attached to the petition following the signatures of the petitioners an affidavit by an assessor certifying the total assessed valuation of such territory and the correct total amount thereof owned by the signers of the petition.

d. Execution of petition. (1) Signature pages. The signatures to a petition shall be subscribed on a separate page or pages following the exhibits.

(2) Prefatory statement. Each signature page shall be prefaced by a statement of the basis on which the petition is signed and of the petitioners' familiarity with the contents and purpose thereof and the boundaries of the territory sought to be incorporated.

(3) Additional information. Following each signature there shall be set forth, not necessarily by the signer, the signer's address consisting of street name and number, if any, and town; and, if the petition is based on the ownership of more than fifty percent in assessed or full valuation, as the case may be, of the real property located in such territory, the amount of assessed valuation of real property owned by the signer as credited to him or her in accordance with subparagraph two of paragraph a of subdivision two of this section.

(4) Authentication. There shall be set forth at the bottom of each page of signatures an authenticating affidavit of a witness to the signing thereof which shall be in substantially the following form:

STATE OF NEW YORK
COUNTY OF ss.:

..... being duly sworn,
(name of witness)
says:

I reside at ..... in the
(street name and number)
.....of .....
(town, city or village) (name of municipality)
.....in the State of New York:

I know each of the persons whose names are subscribed to the above sheet having ..... signatures; and each of them
(number)
subscribed the same in my presence.

.....
(signature of witness)

Sworn to before me
This ..... day of .....,.....
(day)(month) (year)

.....
(official title of officer)

3. Filing and deposit. a. Filing. The original petition, including all exhibits and certifications, shall be filed with the supervisor and duplicate originals, photocopies or other similar reproductions of the original petition shall be filed with the town board.

b. Deposit. At the time of filing of the petition there shall be deposited with the supervisor the sum of six thousand dollars to pay the cost of posting, publishing and serving required notices, stenographic services and services of inspectors of election in the event incorporation is not effected.

§ 5. Notice of hearing on legal sufficiency of the petition. Within twenty days after the filing of such petition, the supervisor shall cause to be posted on the town's website, in five public places in that territory and also to be published at least twice in the newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of the town law: that a petition for the incorporation of the village of (naming it) has been received; that at a place in such territory and on a day, not less than twenty nor more than thirty days after the date of the posting and first publication of such notice, which date and place shall be specified therein, a hearing will be had upon such petition; that such petition will be available for public inspection in the office of the town clerk until the date of such hearing; that the purpose of the hearing is to consider the legal sufficiency of the petition; that objections to the legal sufficiency of the petition must be in writing and signed by one or more of the residents of the town; and that any group of persons having one or more objections in common may make designation in writing and signed by them of at least one but no more than three persons giving the full names and addresses on whom and at which addresses all papers required to be served in connection with the proceeding for incorporation shall be served. A majority of such designees must reside in the town. In the absence of any other suitable place, such hearing shall be held in a school building, if any, located in such territory.

§ 6. Proceeding on hearing on the legal sufficiency of the petition. 1. The supervisor shall meet at the time and place specified in such notice and shall hear objections which may be presented as to the legal sufficiency of the petition for incorporation based upon any of the following grounds:

a. That a person signing such petition was not qualified therefor;

b. If it is alleged that the petition is submitted on the basis that the persons signing such petition constitute twenty per cent of the residents in such territory qualified to vote for officers of the town, that such allegation is false;

c. If it is alleged that the petition is submitted on the basis that the persons signing such petition are the owners of more than fifty percent in assessed valuation of the real property in such territory, assessed upon the last completed assessment roll of the town, that such allegation is false;

d. That such territory is part of a city or village;

e. That if such territory is less than the entire town, it contains more than five square miles and the limits of such territory are not coterminous with the entire boundaries of one school, fire, fire protection, fire alarm, town special or town improvement district and the limits of such territory are not coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within the town;

f. That such territory does not contain a population of at least one thousand regular inhabitants;

g. That the petition in any other specified respect does not conform to the requirements of this act.

2. The supervisor shall conduct the hearing.

3. All objections must be in writing and signed by one or more residents qualified to vote for town officers. Testimony as to objections may be taken at the hearing which shall be reduced to writing and subscribed by those testifying. The burden of proof shall be on the

objectors. All written objections and signed testimony shall clearly state the name and address of the objector.

4. The hearing may be adjourned but must be concluded within twenty days from the date fixed in the notice of hearing.

§ 7. Decision as to legal sufficiency of petition. 1. Within ten days after such hearing is concluded the supervisor shall determine whether the petition complies with the requirements of this act and shall make and sign a decision accordingly. If the decision be adverse to the petition, the decision shall contain a brief statement of the reasons on which the adverse decision is based.

2. The original of the decision, copies of the notice of the hearing together with affidavits of posting and publishing same, the written objections and the minutes of proceedings taken on the hearing including signed testimony shall be filed by the supervisor within fifteen days after the hearing is concluded, with the town clerk.

3. If no proceeding be instituted to review such decision within thirty days after such filing of the original copy thereof, the decision shall be final and conclusive. In the event that the decision is adverse to the petition, a new proceeding for incorporation may be commenced immediately.

§ 8. Review of decision as to legal sufficiency of petition. 1. The decision of the supervisor as to the legal sufficiency of the petition shall be subject to judicial review in the manner provided in article seventy-eight of the civil practice law and rules. Such proceeding may be brought on the ground or grounds that said decision is illegal, based on insufficient evidence, or contrary to the weight of evidence. If the court determines that additional testimony or evidence is necessary for the proper disposition of the matter it may take such evidence or testimony or appoint a referee to take such evidence or testimony as it may direct and report the same to the court with his findings of fact and conclusions of law which shall constitute a part of the proceeding upon which the determination of the court shall be made. The court may reverse or affirm on the basis of law and fact as determined by the court.

2. Such proceeding must be instituted within thirty days after the filing of the original copy of such decision as required by section seven of this act.

3. The proceeding may only be instituted by a resident of the town.

4. In addition to the requirements of said article seventy-eight:

a. Notice of such a proceeding shall be given to the town clerk. He or she shall cause same to be filed in their office.

b. If the proceeding be brought to review a decision adverse to the petition, copies of all papers in connection therewith shall be served on all persons designated by objectors to the petition pursuant to section five of this act and on all other objectors who have made no such designations and whose objections were submitted in writing and signed. Service shall be sufficient if made either personally or by certified mail with a return receipt.

c. If the proceeding be brought to review a decision sustaining the petition, copies of all papers in connection therewith shall be served on all persons designated in the petition to receive same.

d. All persons served pursuant to paragraphs b and c of this subdivision shall be parties to such proceeding under said article seventy-eight.

e. All issues in any proceeding hereunder shall have preference over all other civil actions and proceedings.

5. The successful party to any such proceeding shall file a certified copy of the decision and order in the office of the town clerk.

§ 9. Consideration of the community impact statement and significant adverse impact. 1. Within twenty days of the filing of Part B of the community impact statement, the town board shall cause to be posted on the town website, in five public places in that territory and also to be published at least twice in the newspaper or newspapers designated pursuant to subdivision eleven of section sixty-four of the town law: that a petition for the incorporation of the village of (naming it) has been received; that at a place in such territory and on a day, not less than twenty nor more than thirty days after the date of posting and first publication of such notice, which date and place shall be specified therein, a hearing will be had upon the Community Impact Statement of such petition; that such community impact statement will be available for public inspection in the office of the town clerk until the date of such hearing; and that the purpose of the hearing is to consider the legal sufficiency of Part A of the community impact statement and whether there would be a significant adverse impact on the territory to be incorporated and/or on the remaining area of the town based on the community impact statement and testimony presented at such hearing.

2. The town board shall hold a public hearing pursuant to this section; such board shall meet at the time and place specified in such notice and shall hear testimony which may be presented regarding the legal sufficiency of Part A of the community impact statement and whether there would be a significant adverse impact on the territory to be incorporated and/or on the remaining area of the town, based on the community impact statement and testimony presented at such hearing.

3. The supervisor shall conduct the hearing.

4. The hearing may be adjourned but must be concluded within twenty days from the date fixed in the notice of hearing.

§ 10. Determination on the community impact statement and significant adverse impact. 1. Within ten days after the hearing on the community impact statement is concluded, the town board shall determine the legal sufficiency of Part A of the community impact statement based on the community impact statement and testimony presented at such hearing. The town board shall adopt a resolution by majority vote setting forth a statement of the reasons for its determination. The original of the resolution, copies of the notice of the hearing together with affidavits of posting and publishing same, any written testimony and the minutes of proceedings taken on the hearing including signed testimony shall be filed by such town board within fifteen days after the hearing is concluded, with the town clerk.

2. If the town board determines that Part A of the community impact statement is not legally sufficient, it shall cease consideration of the incorporation matter. Within thirty days thereafter, the petitioners may file an amended Part A of the community impact statement. Within twenty days of the filing of an amended Part A of the community impact statement, the town board shall re-commence consideration of the incorporation matter beginning with holding another hearing pursuant to section nine of this act. If the town board determines that the amended Part A of the community impact statement is not legally sufficient, petitioners shall not be entitled to file an additional amended Part A of the community impact statement.

3. If the town board determines that Part A of the community impact statement is legally sufficient, within ten days after filing its decision with the clerk, the town board shall determine whether there would

be a significant adverse impact on the territory to be incorporated and/or on the remaining area of the town. The town board shall adopt a resolution by majority vote setting forth a statement of the reasons for its determination. The original of the resolution, copies of the notice of the hearing together with affidavits of posting and publishing same, any written testimony and the minutes of proceedings taken on the hearing including signed testimony shall be filed by such town board within fifteen days thereafter with the town clerk.

4. The final resolution shall be final and conclusive if no amended Part A of the community impact statement is filed or if the amended Part A of the community impact statement is found to be legally insufficient, or if no proceeding is instituted to review each such determination within thirty days after the filing of the town board's final determination either that: (i) Part A of the community impact statement is legally insufficient; (ii) there would be a significant adverse impact; or (iii) there would not be a significant adverse impact.

5. A town board determination that Part A of the community impact statement is not legally sufficient or there would be a significant adverse impact is to be considered adverse to the petition and no election may be held on the basis of that petition.

§ 11. Review of determination on the legal sufficiency of Part A of the community impact statement or significant adverse impact. 1. The determination of the town board that (i) Part A of the community impact statement is or is not legally sufficient; or (ii) there would or would not be a significant adverse impact on the area to be incorporated and/or the remaining area of the town shall be subject to judicial review in the manner provided in article seventy-eight of the civil practice law and rules. Such proceeding may be brought on the ground or grounds that said determination is illegal, based on insufficient evidence, or contrary to the weight of evidence. If the court determines that additional testimony or evidence is necessary for the proper disposition of the matter it may take such evidence or testimony or appoint a referee to take such evidence or testimony as it may direct and report the same to the court with his findings of fact and conclusions of law which shall constitute a part of the proceeding upon which the determination of the court shall be made. The court may reverse or affirm on the basis of law and fact as determined by the court.

2. Such proceeding must be instituted within thirty days after the filing of an original resolution as required by section ten of this act.

3. The proceeding may only be instituted by a resident of the town.

4. In addition to the requirements of said article seventy-eight:

a. Notice of such a proceeding shall be given to the town clerk. He or she shall cause same to be filed in their office.

b. Copies of all papers in connection with the determination of the town board therewith shall be served on all persons designated in the petition for incorporation to receive same.

c. All issues in any proceeding hereunder shall have preference over all other civil actions and proceedings.

5. The successful party to any such proceeding shall file a certified copy of the decision and order in the office of the town clerk.

§ 12. Right to election. 1. An election to determine the question of incorporation shall be held no later than forty days after the following, whichever is later:

a. The expiration of thirty days from the filing of the original town board decision finding no significant adverse impact and no proceeding having been instituted to review same, or

b. The filing of all final orders sustaining the petition after all proceedings to review pursuant to sections eight and eleven of this act.

2. The procedure for conducting said election shall be pursuant to the election law.

§ 13. This act shall take effect immediately.