STATE OF NEW YORK

9939

IN ASSEMBLY

February 27, 2020

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

AN ACT to amend the village law, in relation to the incorporation of villages; and to repeal section 2-212 of such law relating thereto

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

Section 1. Section 2-200 of the village law, subdivision 2 as amended by chapter 932 of the laws of 1974, is amended to read as follows:

§ 2-200 Population and area requirements. 1. A territory containing a population of at least [~~five~~] twenty-five hundred persons [~~who are regular inhabitants thereof, as hereinafter defined,~~] may be incorporated as a village under this chapter provided such territory does not include a part of a city or village and further provided the limits of such territory:

a. do not contain more than five square miles; or

b. are coterminous with the entire boundaries of a school, fire, fire protection, fire alarm, town special or town improvement district; or

c. are 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 one town; or

d. are coterminous with the entire boundaries of a town.

2. The [~~words "regular inhabitants" as used herein and for the purpose of this article 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~~] population of a territory shall be determined on the basis of the most recent decennial federal census.

§ 2. Section 2-202 of the village law, subparagraph 2 of paragraph f of subdivision 1 as amended by chapter 181 of the laws of 2004, is amended to read as follows:

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

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§ 2-202 Petition for incorporation. 1. A proceeding for the incorporation of such territory as a village shall commence with a petition. The requirements for such petition are as follows:

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

~~(1)~~] At least twenty [~~per cent~~] **percent** of the residents of such territory qualified to vote for town officers in a town in which all or part of such territory is located **shall sign such petition**.

[~~(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 in which such territory is located. However, if such territory is located in more than one town it shall be required in computing such percentage to equalize the assessed valuations for each town; furthermore, in such case, the petition must be signed by the owners of more than fifty percent in full valuation of the real property in each part of each town in such territory and computed separately for each such part, and assessed upon the last completed assessment rolls of the towns in which any part of such territory is located. 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 a signer 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~~] **that at least twenty percent of the residents qualified to vote for town officers have signed such petition**.

(2) The name of the proposed village.

(3) An allegation that such territory contains a population of at least [~~five~~] **twenty-five** hundred [~~regular inhabitants~~] **persons according to the most recent decennial census**.

(4) The manner in which the area requirements of section 2-200 of this article are satisfied.

(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.

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; (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 one or more districts of an entire town.

(2) A [~~list of the names and address of the regular inhabitants of such territory~~] copy of a financial impact statement. Such financial impact statement shall include the following: (a) a proposed operating budget for the territory to be incorporated; (b) a proposed capital budget for the territory to be incorporated; (c) a description of the services that would be provided by the proposed village and how such services would be delivered; (d) the estimated property tax impact for a five year period on the territory to be incorporated and the remaining area of the town or towns; and (e) an executive summary of such financial impact statement, including the estimated real property tax impact on the territory to be incorporated and the remaining area of the town or towns.

d. [~~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 or affidavits certifying as follows:~~

~~(1) If such territory is located entirely in one town, a certification by an assessor thereof certifying to the total assessed valuation of such territory and the correct total amount thereof owned by the signers of the petition, or~~

~~(2) If such territory is located in more than one town, separate certifications by an assessor of each town certifying to the total full valuation of that portion of such territory located in such town and the correct total amount of full valuation of real property in such territory and town owned by the signers of the petition, as specified in subparagraph two of paragraph a of subdivision one of this section.~~

~~e.~~] Execution of petition. (1) 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~~] that the petitioners are residents of the territory to be incorporated qualified to vote for town officers in such territory and that the petitioners' [~~familiarity~~] are familiar with the contents and purpose [~~thereof~~] of such petition 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 per cent 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 in accordance with subparagraph two of paragraph a of subdivision one 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)

[~~f~~] **e**. Filing and deposit. (1) Filing. The original petition shall be filed with a supervisor of the town in which all or the greatest part of such territory is located. Duplicate originals, photocopies or other similar reproductions of the original petition shall be filed with a supervisor of each other town in which any portion of such territory is located.

(2) Deposit. At the time of filing of the petition there shall be deposited with each supervisor with whom the original or a copy of the original is filed, 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.

§ 3. Subdivision 1 of section 2-206 of the village law, paragraph b as amended by chapter 167 of the laws of 1985 and paragraph e as amended by chapter 561 of the laws of 1975, is amended to read as follows:

1. The supervisor, or supervisors if a joint hearing, with whom the petition or copies thereof, were filed, 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 a town in which all or part of such territory is located, 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 or in full valuation of the real property in each part of each town in such territory and computed separately for each such part, as the case may be, assessed upon the last completed assessment roll or rolls of the town or towns in which all or part of such territory is located, that~~

~~such allegation is false~~] That the allegation that the petition constitutes twenty percent of the residents of the territory qualified to vote for officers of a town in which all or part of such territory is located is false;

[~~d~~] c. That such territory is part of a city or village;

[~~e~~] d. That if such territory is less than an 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 one town;

[~~f~~] e. That such territory does not contain a population of at least [~~five~~] twenty-five hundred [~~regular inhabitants~~] persons;

[~~g~~] f. That the petition in any other specified respect does not conform to the requirements of this article.

§ 4. The section heading, subdivisions 1 and 4 of section 2-210 of the village law are amended to read as follows:

Review of [~~decision~~] decisions. 1. The decision of the supervisor or supervisors as to the legal sufficiency of the petition pursuant to section 2-208 of this article and the decision of the state comptroller as to financial feasibility pursuant to section 2-211 of this article 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 or her 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.

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

a. Notice of such a proceeding shall be given to the town clerk of each town in which any part of such territory is located. [~~He~~] The town clerk shall cause same to be filed in [~~his~~] the clerk's office.

b. If the proceeding be brought to review [~~a~~] an adverse 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 2-204 of this article 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 village law is amended by adding a new section 2-211 to read as follows:

§ 2-211 Decision of the state comptroller. 1. Within ten days after the first occurring of either the expiration of thirty days from the filing of the original decision sustaining the legal sufficiency of the petition and no proceeding having been instituted to review same, or the filing of a final order sustaining the petition after such a proceeding to review, each supervisor with whom same were filed shall file a copy of the petition with the office of the state department of audit and control located in Albany for a review and decision by the state comptroller, as provided for by this section.

2. The state comptroller shall examine the proposed operating budget for the territory to be incorporated, the proposed capital budget for the area to be incorporated, a description of the services that would be provided by the proposed village and how such services would be delivered and the estimated property tax impact for a five year period on the territory to be incorporated and the remaining area of the town or towns.

3. The state comptroller shall issue a decision to each supervisor on the financial feasibility of the proposed village incorporation.

4. In order to make a favorable decision of financial feasibility, the state comptroller shall make the following findings:

a. that the overall public interest shall be served by the incorporation of the territory into a village;

b. that the cost of the village shall not be an undue burden upon the territory to be incorporated or the remainder of the town;

c. that the revenue estimates and appropriations, as set forth in such financial impact statement, are adequate to deliver the services proposed; and

d. that in all regards, such financial impact statement provides an accurate, valid and transparent presentation of information to the public.

5. Said decision shall be delivered to each supervisor within sixty days of submission to the state comptroller. Each supervisor shall file a copy of the decision of the state comptroller with the town clerk within five days of receipt. Said decision shall be available for public inspection. A copy of said decision shall also be mailed to the incorporators designated pursuant to subparagraph four of paragraph b of subdivision one of section 2-202 of this article and all objectors to the petition, pursuant to section 2-204 of this article, by regular mail within five days of receipt.

6. Where the determination of the state comptroller is not favorable and no proceeding is instituted to review such decision, the decision shall be final and conclusive. The town shall take no further action on such petition. A new proceeding for incorporation shall not be commenced for at least one year.

§ 6. Section 2-212 of the village law is REPEALED and a new section 2-212 is added to read as follows:

§ 2-212 Right to election. 1. An election to determine the question of incorporation shall be held no later than forty days after the first occurring of either of the following events:

a. the expiration of thirty days from the filing of a favorable decision of the state comptroller with the town clerk and no proceeding having been instituted to review the same;

b. the filing of a final order sustaining a favorable decision of the state comptroller after such a proceeding to review; or

c. the filing of a final order otherwise directing an election to be held on the question of incorporation.

2. The provisions of the election law not inconsistent herewith shall apply to such election so far as the same are practicable.

§ 7. Subdivision 5 of section 2-220 of the village law is renumbered subdivision 6 and a new subdivision 5 is added to read as follows:

5. Absentee ballots shall be provided for such election in the same manner as a special town election pursuant to section eighty-four-a of the town law, provided that the applicant for an absentee ballot shall be a resident of such territory qualified to vote for town officers.

§ 8. Subdivision d of section 2-232 of the village law is amended to read as follows:

d. A statement of the population of the territory as it appears [~~by the exhibit attached to~~] **in the contents of** the petition for incorporation.

§ 9. Applicability. This act shall apply to any proceeding for the incorporation of a village where the right to election has not yet accrued pursuant to the former section 2-212 of the village law.

§ 10. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 11. This act shall take effect immediately.