

# STATE OF NEW YORK

5669

2023-2024 Regular Sessions

## IN ASSEMBLY

March 20, 2023

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:

- 1 Section 1. Section 2-200 of the village law, subdivision 2 as amended  
2 by chapter 932 of the laws of 1974, is amended to read as follows:  
3 § 2-200 Population and area requirements. 1. A territory containing a  
4 population of at least [~~five~~] twenty-five hundred persons [~~who are regu-~~  
5 ~~lar inhabitants thereof, as hereinafter defined,~~] may be incorporated as  
6 a village under this chapter provided such territory does not include a  
7 part of a city or village and further provided the limits of such terri-  
8 tory:  
9 a. do not contain more than five square miles; or  
10 b. are coterminous with the entire boundaries of a school, fire, fire  
11 protection, fire alarm, town special or town improvement district; or  
12 c. are coterminous with parts of the boundaries of more than one  
13 school, fire, fire protection, fire alarm, town special or town improve-  
14 ment district, all of which are wholly contained within such limits and  
15 within one town; or  
16 d. are coterminous with the entire boundaries of a town.  
17 2. The [~~words "regular inhabitants" as used herein and for the purpose~~  
18 ~~of this article shall include all persons residing in the territory~~  
19 ~~proposed to be incorporated except such persons who themselves, or who~~  
20 ~~are persons under the age of eighteen years residing with persons who,~~  
21 ~~maintain a residence outside such territory which is used as their~~  
22 ~~address for purposes of voting] population of a territory shall be  
23 determined on the basis of the most recent decennial federal census.~~

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

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

4 § 2-202 Petition for incorporation. 1. A proceeding for the incorpo-  
5 ration of such territory as a village shall commence with a petition.  
6 The requirements for such petition are as follows:

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

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

12 [~~(2) The owners of more than fifty percent in assessed valuation of~~  
13 ~~the real property in such territory assessed upon the last completed~~  
14 ~~assessment roll of the town in which such territory is located. However,~~  
15 ~~if such territory is located in more than one town it shall be required~~  
16 ~~in computing such percentage to equalize the assessed valuations for~~  
17 ~~each town; furthermore, in such case, the petition must be signed by the~~  
18 ~~owners of more than fifty percent in full valuation of the real property~~  
19 ~~in each part of each town in such territory and computed separately for~~  
20 ~~each such part, and assessed upon the last completed assessment rolls of~~  
21 ~~the towns in which any part of such territory is located. Full valuation~~  
22 ~~shall be determined by applying the appropriate equalization rate to~~  
23 ~~such assessed valuations. If real property in such territory is owned by~~  
24 ~~tenants in common, joint tenants or tenants by the entirety, each such~~  
25 ~~tenant, as a signer of such petition shall, for the purpose of ascer-~~  
26 ~~taining the percentage of the assessed valuation upon which the petition~~  
27 ~~is based, be considered as the owner of an interest in such real proper-~~  
28 ~~ty equal to the result reached by dividing the assessed valuation by the~~  
29 ~~number of owners thereof and shall be credited to that extent with part~~  
30 ~~of the total assessed valuation thereof. In the event such real property~~  
31 ~~is part of a parcel of land partially situated within such territory,~~  
32 ~~the town assessor or assessors shall, for the purposes of this section~~  
33 ~~make an apportionment of the assessed value of such part as is in such~~  
34 ~~territory. In such a case, only the apportioned value attributed to such~~  
35 ~~part shall be considered.]~~

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

38 (1) An allegation [~~of the basis on which the petition is signed~~] that  
39 at least twenty percent of the residents qualified to vote for town  
40 officers have signed such petition.

41 (2) The name of the proposed village.

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

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

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

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

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

1 (1) A description of such territory sufficient to identify the  
2 location and extent of such territory with common certainty and which  
3 shall be in one of the following forms or a combination thereof: (a) a  
4 metes and bounds description; (b) a description made with reference to  
5 existing streets and navigable waters or a combination of same; or (c) a  
6 map showing existing streets and navigable waters or a combination of  
7 same forming boundaries or metes and bounds or the entire boundaries of  
8 one or more districts of an entire town.

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

21 d. ~~[If the petition is alleged to be signed by the owners of more than~~  
22 ~~fifty per cent in assessed or full valuation, as the case may be, of the~~  
23 ~~real property in such territory, there shall be attached to the petition~~  
24 ~~following the signatures of the petitioners an affidavit or affidavits~~  
25 ~~certifying as follows:~~

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

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

36 e.] Execution of petition. (1) The signatures to a petition shall be  
37 subscribed on a separate page or pages following the exhibits.

38 (2) Prefatory statement. Each signature page shall be prefaced by a  
39 statement ~~[of the basis on which the petition is signed and of the]~~ that  
40 the petitioners are residents of the territory to be incorporated quali-  
41 fied to vote for town officers in such territory and that the petition-  
42 ers' [familiarity] are familiar with the contents and purpose ~~[thereof]~~  
43 of such petition and the boundaries of the territory sought to be incor-  
44 porated.

45 (3) Additional information. Following each signature there shall be  
46 set forth, not necessarily by the signer, the signer's address consist-  
47 ing of street name and number, if any, and town~~], and, if the petition~~  
48 ~~is based on the ownership of more than fifty per cent in assessed or~~  
49 ~~full valuation, as the case may be, of the real property located in such~~  
50 ~~territory, the amount of assessed valuation of real property owned by~~  
51 ~~the signer as credited to him in accordance with subparagraph two of~~  
52 ~~paragraph a of subdivision one of this section].~~

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

1 STATE OF NEW YORK  
2 COUNTY OF ss.:

3 ..... being duly sworn,  
4 (name of witness)

5 says:

6 I reside at ..... in the  
7 (street name and number)

8 ..... of .....  
9 (town, city or village) (name of municipality)

10 ..... in the State of New York:

11 I know each of the persons whose names are subscribed to the above sheet  
12 having ..... signatures; and each of them  
13 (number)

14 subscribed the same in my presence.

15 .....  
16 (signature of witness)

17 Sworn to before me

18 This ..... day of .....  
19 (day) (month) (year)

20 .....  
21 (official title of officer)

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

28 (2) Deposit. At the time of filing of the petition there shall be  
29 deposited with each supervisor with whom the original or a copy of the  
30 original is filed, the sum of six thousand dollars to pay the cost of  
31 posting, publishing and serving required notices, stenographic services  
32 and services of inspectors of election in the event incorporation is not  
33 effected.

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

37 1. The supervisor, or supervisors if a joint hearing, with whom the  
38 petition or copies thereof, were filed, shall meet at the time and place  
39 specified in such notice and shall hear objections which may be  
40 presented as to the legal sufficiency of the petition for incorporation  
41 based upon any of the following grounds:

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

43 b. ~~If it is alleged that the petition is submitted on the basis that~~  
44 ~~the persons signing such petition constitute twenty per cent of the~~  
45 ~~residents in such territory qualified to vote for officers of a town in~~  
46 ~~which all or part of such territory is located, that such allegation is~~  
47 ~~false,~~

48 ~~c. If it is alleged that the petition is submitted on the basis that~~  
49 ~~the persons signing such petition are the owners of more than fifty~~  
50 ~~percent in assessed valuation of the real property in such territory or~~  
51 ~~in full valuation of the real property in each part of each town in such~~

1 ~~territory and computed separately for each such part, as the case may~~  
 2 ~~be, assessed upon the last completed assessment roll or rolls of the~~  
 3 ~~town or towns in which all or part of such territory is located, that~~  
 4 ~~such allegation is false] That the allegation that the petition consti-~~  
 5 ~~tutes twenty percent of the residents of the territory qualified to vote~~  
 6 ~~for officers of a town in which all or part of such territory is located~~  
 7 ~~is false;~~

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

9 [e] d. That if such territory is less than an entire town, it contains  
 10 more than five square miles and the limits of such territory are not  
 11 coterminous with the entire boundaries of one school, fire, fire  
 12 protection, fire alarm, town special or town improvement district and  
 13 the limits of such territory are not coterminous with parts of the boun-  
 14 daries of more than one school, fire, fire protection, fire alarm, town  
 15 special or town improvement district, all of which are wholly contained  
 16 within such limits and within one town;

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

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

21 § 4. Subdivisions 1 and 4 of section 2-210 of the village law are  
 22 amended to read as follows:

23 1. The decision of the supervisor or supervisors as to the legal  
 24 sufficiency of the petition pursuant to section 2-208 of this article  
 25 shall be subject to judicial review in the manner provided in article  
 26 seventy-eight of the civil practice law and rules. Such proceeding may  
 27 be brought on the ground or grounds that said decision is illegal, based  
 28 on insufficient evidence, or contrary to the weight of evidence. If the  
 29 court determines that additional testimony or evidence is necessary for  
 30 the proper disposition of the matter it may take such evidence or testi-  
 31 mony or appoint a referee to take such evidence or testimony as it may  
 32 direct and report the same to the court with his or her findings of fact  
 33 and conclusions of law which shall constitute a part of the proceeding  
 34 upon which the determination of the court shall be made. The court may  
 35 reverse or affirm on the basis of law and fact as determined by the  
 36 court.

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

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

41 b. If the proceeding be brought to review [~~a~~] an adverse decision  
 42 [~~adverse to the petition~~], copies of all papers in connection therewith  
 43 shall be served on all persons designated by objectors to the petition  
 44 pursuant to section 2-204 of this article and on all other objectors who  
 45 have made no such designations and whose objections were submitted in  
 46 writing and signed. Service shall be sufficient if made either  
 47 personally or by certified mail with a return receipt.

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

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

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

1 § 5. The village law is amended by adding a new section 2-211 to read  
2 as follows:

3 § 2-211 Review of the state comptroller. 1. Within ten days after the  
4 first occurring of either the expiration of thirty days from the filing  
5 of the original decision sustaining the legal sufficiency of the peti-  
6 tion and no proceeding having been instituted to review same, or the  
7 filing of a final order sustaining the petition after such a proceeding  
8 to review, each supervisor with whom same were filed shall file a copy  
9 of the petition with the office of the state department of audit and  
10 control located in Albany.

11 2. The state comptroller shall review the financial impact statement,  
12 including the proposed operating budget, the proposed capital budget,  
13 the description of the services that would be provided by the proposed  
14 village and how such services would be delivered, and the estimated  
15 property tax impact for a five-year period on the territory to be incor-  
16 porated and the remaining area of the town or towns. The state comp-  
17 troller shall make such review upon the original financial impact state-  
18 ment as filed by the supervisor or supervisors, and may request  
19 additional information or data in such form and detail as he or she  
20 deems sufficient to aid in reviewing such financial impact statement.

21 3. The state comptroller shall issue a letter to each supervisor  
22 reviewing the financial impact statement for the proposed village incor-  
23 poration.

24 4. In reviewing the financial impact statement, the state comptroller  
25 shall review whether:

26 a. the significant revenue and expenditure projections in the proposed  
27 operating budget are reasonable in light of the services that would be  
28 provided;

29 b. the proposed capital budget clearly identifies future capital  
30 needs and provides reasonable estimates of each project's budgetary  
31 impact, including debt service costs, impact on capital reserve funds  
32 and fund balance, and future operating expenditures; and

33 c. the estimated property tax impact for a five-year period on the  
34 territory to be incorporated and the remaining area of the town or towns  
35 is reasonable in light of the proposed operating and capital budgets.

36 5. Said letter shall be delivered to each supervisor within sixty days  
37 of submission to the state comptroller. Each supervisor shall file a  
38 copy of the letter of the state comptroller with the town clerk within  
39 five days of receipt. Said letter shall be available for public  
40 inspection. A copy of said letter shall also be mailed to the incorpora-  
41 tors designated pursuant to subparagraph four of paragraph b of subdivi-  
42 sion one of section 2-202 of this article and all objectors to the peti-  
43 tion, pursuant to section 2-204 of this article, by regular mail within  
44 five days of receipt.

45 § 6. Section 2-212 of the village law is REPEALED and a new section  
46 2-212 is added to read as follows:

47 § 2-212 Right to election. 1. An election to determine the question of  
48 incorporation shall be held no later than forty days after the filing of  
49 the letter of the state comptroller with the town clerk.

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

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

54 5. Absentee ballots shall be provided for such election in the same  
55 manner as a special town election pursuant to section eighty-four-a of

1 the town law, provided that the applicant for an absentee ballot shall  
2 be a resident of such territory qualified to vote for town officers.

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

5 d. A statement of the population of the territory as it appears [~~by~~  
6 ~~the exhibit attached to~~] in the contents of the petition for incorpo-  
7 ration.

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

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

17 § 11. This act shall take effect immediately.