

STATE OF NEW YORK

7761

2023-2024 Regular Sessions

IN ASSEMBLY

June 7, 2023

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

AN ACT to amend the village law and the general municipal law, in relation to establishing the village incorporation commission

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

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

f. 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~~] the village incorporation commission established pursuant to section 2-259 of this article.

(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 commission, 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.

§ 2. Section 2-204 of the village law, as amended by section 25 of part X of chapter 62 of the laws of 2003, is amended to read as follows:

§ 2-204 Notice of hearing. Within twenty days after the filing of such petition or copies thereof, [~~each supervisor with whom same were filed~~] the village incorporation commission established pursuant to section 2-259 of this article shall cause to be posted in five public places [~~in that part of such territory located in his town~~] located in the territory where such village shall be incorporated and also to be published at least twice in the newspaper or newspapers designated pursuant to subdi-

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

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vision eleven of section sixty-four of the town law, a joint notice ~~[of all such supervisors]~~ issued by the commission: 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 each 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 such 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 such town or towns. In the absence of any other suitable place, such hearing shall be held in a school building, if any, located in such territory. If such territory is located in more than one town the hearing shall be noticed and publicized as a joint hearing of all such towns. For the purposes of this section, in the event that the town maintains a website, one of the posting requirements required by this section may be fulfilled by posting such information on the town's website.

§ 3. Section 2-206 of the village law, paragraph b of subdivision 1 as amended by chapter 167 of the laws of 1985, paragraph e of subdivision 1 as amended by chapter 561 of the laws of 1975 and subdivision 3 as amended by chapter 976 of the laws of 1973, is amended to read as follows:

§ 2-206 Proceeding on hearing. 1. ~~[The supervisor, or supervisors if a joint hearing, with whom the petition or copies thereof, were filed,]~~ The village incorporation commission established pursuant to section 2-259 of this article 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,~~

~~d.]~~ 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 boun-

1 daries of more than one school, fire, fire protection, fire alarm, town
2 special or town improvement district, all of which are wholly contained
3 within such limits and within one town;

4 ~~[f.]~~ e. That such territory does not contain a population of at least
5 ~~[five hundred]~~ two thousand regular inhabitants;

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

8 g. That a study has not been conducted on the fiscal, service, and
9 taxation interests of the population which would constitute the resi-
10 dents of such village or the population which constitutes the residents
11 of such town in which such village would be established; or

12 h. That the establishment of such village is not in the fiscal,
13 service, and taxation interests of the population which would constitute
14 the residents of such village or the population which constitutes the
15 residents of such town in which such village would be established.

16 2. The ~~[supervisor of the town in which the entire territory, or the~~
17 ~~greatest portion of such territory is located]~~ commission shall conduct
18 the hearing.

19 3. All objections must be in writing and signed by one or more resi-
20 dents qualified to vote for town offices a town in which all or part of
21 such territory of the proposed village is located. Testimony as to
22 objections may be taken at the hearing which shall be reduced to writing
23 and subscribed by those testifying. The burden of proof shall be on the
24 objectors. All written objections and signed testimony shall clearly
25 state the name and address of the objector.

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

28 § 3-a. Paragraph g of subdivision 1 of section 2-206 of the village
29 law is relettered paragraph h and a new paragraph g is added to read as
30 follows:

31 g. That a study has not been conducted on the fiscal, service, and
32 taxation interests of the population which would constitute the resi-
33 dents of such village or the population which constitutes the residents
34 of such town in which such village would be established; or

35 § 4. Section 2-208 of the village law is amended to read as follows:

36 § 2-208 Decision as to ~~[legal sufficiency of petition]~~ village estab-
37 lishment. 1. Within ten days after such hearing is concluded the
38 ~~[supervisor or supervisors jointly]~~ village incorporation commission
39 established pursuant to section 2-259 of this article shall determine
40 whether the petition complies with the requirements of this article and
41 ~~[jointly]~~ shall make and sign a decision ~~[accordingly]~~ as to whether a
42 village incorporation shall proceed to election pursuant to the criteria
43 established in section 2-259 of this article. ~~[If such supervisors~~
44 ~~cannot agree, the decision shall be deemed to be adverse to the peti-~~
45 ~~tion.]~~ If the decision be adverse to the petition, the decision shall
46 contain a brief statement of the reasons on which the adverse decision
47 is based ~~[or the reasons on which the supervisor or supervisors deciding~~
48 ~~adversely to the petition were unable to join in a unanimous decision~~
49 ~~sustaining the petition].~~

50 2. The original copy of the decision, copies of the notice of the
51 hearing together with affidavits of posting and publishing same, the
52 written objections and the minutes of proceedings taken on the hearing
53 including signed testimony shall be filed by ~~[such supervisor or super-~~
54 ~~visors]~~ the commission within fifteen days after the hearing is
55 concluded, with the town clerk of the same town in which the original
56 copy of the petition was filed. Duplicate copies of the said papers

1 shall be filed with the town clerks of all other towns in which any part
2 of such territory is located.

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

8 § 5. Subdivision 1 of section 2-210 of the village law is amended to
9 read as follows:

10 1. The decision of [~~the supervisor or supervisors~~] the village incor-
11 poration commission established pursuant to section 2-259 of this arti-
12 cle as to [~~the legal sufficiency of the petition~~] whether a village
13 incorporation shall proceed to election shall be subject to judicial
14 review in the manner provided in article seventy-eight of the civil
15 practice law and rules. Such proceeding may be brought on the ground or
16 grounds that said decision is illegal, based on insufficient evidence,
17 or contrary to the weight of evidence. If the court determines that
18 additional testimony or evidence is necessary for the proper disposition
19 of the matter it may take such evidence or testimony or appoint a refer-
20 ee to take such evidence or testimony as it may direct and report the
21 same to the court with his findings of fact and conclusions of law which
22 shall constitute a part of the proceeding upon which the determination
23 of the court shall be made. The court may reverse or affirm on the basis
24 of law and fact as determined by the court.

25 § 6. Section 2-236 of the village law, as amended by chapter 181 of
26 the laws of 2004, is amended to read as follows:

27 § 2-236 Payment of expenses incurred in proceedings for incorporation
28 if village not incorporated. If the incorporation of the proposed
29 village be not effected by the proceedings authorized in this article,
30 the expenses incurred by the towns in which any part of such territory
31 is located for payment of cost of posting, publishing and serving
32 required notices, stenographic services and services of inspectors of
33 election shall be paid from the fund deposited with the [~~supervisor~~]
34 village incorporation commission established pursuant to section 2-259
35 of this article. If such fund so deposited is not sufficient to pay all
36 of such expenses, the costs in excess of such fund shall be a general
37 town charge. Any unexpended balance of such fund shall become a part of
38 the general fund of the town.

39 § 7. The village law is amended by adding a new section 2-259 to read
40 as follows:

41 § 2-259 Village incorporation commission. 1. a. There is hereby estab-
42 lished within the department of state a village incorporation commis-
43 sion. The commission shall consist of three members appointed as
44 follows:

45 (1) one member appointed by the secretary of state;

46 (2) one member appointed by the comptroller; and

47 (3) one member appointed by the attorney general.

48 b. Each member of the commission shall serve a term of four years.
49 The members shall be eligible for reappointment and shall serve until
50 their successors are appointed and qualified, and the term of the
51 successor of any incumbent shall be calculated from the expiration of
52 the term of that incumbent. A vacancy occurring other than by expiration
53 of term shall be filled in the same manner as the original appointment,
54 but for the unexpired term only.

1 c. A majority of the members of the commission shall constitute a
2 quorum for the purpose of conducting the business thereof and a majority
3 vote of all the members in office shall be necessary for action.

4 2. The commission shall:

5 a. accept petitions filed pursuant to this article;

6 b. hold hearings as required by this article;

7 c. accept and deposit with the state comptroller all such monies
8 required to be paid by those seeking to incorporate a village pursuant
9 to this article; and

10 d. evaluate petitions filed pursuant to this article and make deci-
11 sions with regard to whether a village incorporation election shall
12 proceed based upon the commission's judgment of the criteria established
13 in sections 2-200 and 2-206 of this article and any other requirements
14 established in this article.

15 3. Prior to issuing its decision with regard to whether a village
16 incorporation election shall proceed, the commission shall complete two
17 studies after receiving a petition for village incorporation, which
18 shall take the following form:

19 a. The first study shall consist of a feasibility assessment, which
20 shall examine the proposed village's ability to provide services to its
21 population in an efficient manner. The feasibility study shall also
22 evaluate the proposed village's fiscal capacity to provide these
23 services; and

24 b. The second study shall consist of an impact assessment that shall
25 evaluate the fiscal and operational effects of incorporation on the
26 surrounding town and the rest of the local area. These impacts shall
27 include fiscal, service, political, environmental, and land use impacts.

28 c. In addition to the studies required pursuant to each petition for
29 village incorporation, the village incorporation commission shall also
30 produce a report on its recommendations with regard to the village
31 incorporation process pursuant to this article. Such report shall
32 provide the commission's analysis and recommendations on the following:

33 (i) The number of petitions required for a village incorporation peti-
34 tion;

35 (ii) The population required to incorporate a village;

36 (iii) Whether the signatures of the residents of such territory quali-
37 fied to vote for town officers in the unincorporated part of such town
38 that is not part of such territory where such village would be incorpo-
39 rated nor part of another village should be required in order to
40 commence a proceeding for the incorporation of such territory as a
41 village;

42 (iv) Whether the residents of such territory qualified to vote for
43 town officers in the unincorporated part of such town that is not part
44 of such territory where such village would be incorporated nor part of
45 another village would be entitled to vote in village incorporation
46 elections;

47 (v) Whether population density should be considered in the village
48 incorporation process;

49 (vi) Whether the requirements of this article are adequate to protect
50 the fiscal, service, and taxation interests of the residents of the
51 proposed village and those residents of the surrounding areas; and

52 (vii) Any other information and recommendations the village incorpo-
53 ration commission deems relevant.

54 d. The report required pursuant to paragraph c of this subdivision
55 shall be published on the public facing portion of the department of
56 state's website, and the secretary of state or his or her designee shall

1 transmit the commission's findings and recommendations to the speaker of
2 the assembly, the temporary president of the senate, and the governor on
3 or before two years from the effective date of this section.

4 4. The studies required pursuant to this section shall be paid by
5 funds appropriated pursuant to section two hundred thirty-nine-bb of the
6 general municipal law.

7 5. The commission's decision with regard to whether a village incorpo-
8 ration shall proceed shall be by majority vote, and the commission shall
9 post a notice of its decision on the public-facing portion of the
10 department of state's website. No village incorporation election shall
11 proceed in the event the commission rules adversely to such incorpo-
12 ration, except pursuant to the provisions of section 2-210 of this arti-
13 cle.

14 6. No village incorporation election shall proceed until January
15 first, two thousand twenty-four.

16 § 8. Section 239-bb of the general municipal law is amended by adding
17 a new subdivision 12 to read as follows:

18 12. Notwithstanding any other provision of law to the contrary, monies
19 constituting the funds of the village incorporation commission estab-
20 lished pursuant to section 2-259 of the village law shall be deposited
21 with the state comptroller and held for the purposes of the village
22 incorporation commission established in article two of the village law;
23 provided, however, that such monies shall be derived from the appropri-
24 ation dedicated to the matching funds program pursuant to subdivision
25 eight of this section and provided further, that such funding for such
26 entity shall not be subject to the requirements of subdivision eight of
27 this section related to savings.

28 § 9. Subdivision 1 of section 2-200 of the village law is
29 amended to read as follows:

30 1. A territory containing a population of at least [~~five hundred~~ two
31 thousand] persons who are regular inhabitants thereof, as hereinafter
32 defined, may be incorporated as a village under this chapter provided
33 such territory does not include a part of a city or village and further
34 provided the limits of such territory:

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

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

38 c. are coterminous with parts of the boundaries of more than one
39 school, fire, fire protection, fire alarm, town special or town improve-
40 ment district, all of which are wholly contained within such limits and
41 within one town; or

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

43 § 10. This act shall take effect on January 1, 2024; provided however,
44 that section three-a of this act shall take effect immediately and
45 shall expire and be deemed repealed on the same date and in the same
46 manner as section three of this act takes effect; and provided further,
47 that for village incorporation petitions that have collected signatures
48 prior to the effective date of this act, nothing in this act shall deem
49 such petition signatures invalid; and provided further, that the
50 provisions of this act shall apply to all existing village incorporation
51 petitions that have collected signatures prior to January 1, 2024,
52 except as hereinafter provided; and provided further, that for village
53 incorporation petitions that have collected signatures prior to January
54 1, 2024, the commission review process established pursuant to section
55 2-259 of the village law, as added by section seven of this act, shall
56 not apply, and such village incorporation petitions shall continue to be

1 subject to the supervisor approval process; and provided further, that
2 for village incorporation petitions that have collected signatures prior
3 to January 1, 2024, paragraph h of subdivision 1 of section 2-206 of the
4 village law as added by section three of this act shall not apply.