

STATE OF NEW YORK

2109

2023-2024 Regular Sessions

IN SENATE

January 18, 2023

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

AN ACT to amend the county law, in relation to establishing a procedure for the creation of new counties

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

Section 1. Legislative findings. It is hereby found by the legislature that section 2 of article 9 of the state constitution provides that the legislature shall provide for the creation and organization of local governments in the state of New York. The state has established procedures for the creation of villages, towns, and for municipal annexation. However, it has not established procedures for the creation of counties.

The legislature is committed to the establishment of local government that is more cost effective, more efficient, and more responsive to the needs and desires of those residents being served. Therefore, the legislature finds that it is in the best interests of the state of New York to establish a procedure for the creation of new counties where it is feasible and in the best interest of the governed. This legislation would create such a procedure.

§ 2. The county law is amended by adding a new article 1-A to read as follows:

ARTICLE 1-A

CREATION OF NEW COUNTIES

Section 10. Population and area requirements.

11. Feasibility study.

12. Petition.

13. Filing petition and objections; determination.

14. Decision of the state comptroller.

15. Referendum.

16. Effective date; transition period.

17. Disposition of property.

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

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1 18. Assumption of debt.

2 19. Miscellaneous provisions.

3 § 10. Population and area requirements. 1. A territory containing a
4 population of at least one hundred thousand inhabitants, as determined
5 by the most recent federal census, may be established as a county under
6 this article. Such territory shall also have an area of at least one
7 hundred square miles.

8 2. Such territory shall be contiguous and all counties affected by a
9 petition pursuant to this article shall have contiguous boundaries.

10 3. Such territory shall not divide the territory of any existing
11 cities, towns or villages.

12 § 11. Feasibility study. Before a petition to become a county may be
13 filed under section twelve of this article, a feasibility study shall
14 first be prepared. Such feasibility study shall include the following:

15 1. A proposed operating budget for the territory to be the proposed
16 county;

17 2. A proposed capital budget for the territory to be the proposed
18 county;

19 3. A proposal for the division of assets and liabilities between the
20 affected counties;

21 4. The property tax impact on the proposed county and the remaining
22 county over at least a five year period; and

23 5. An executive summary of such financial impact statement, including
24 the estimated real property tax impact for the territory to be the
25 proposed county and the remaining area of the remaining county.

26 § 12. Petition. 1. A proceeding to create a new county shall commence
27 with a petition.

28 2. A petition to create a new county shall be signed by a number equal
29 to at least ten per centum of the total vote cast for governor in the
30 territory proposed to become a county in the last gubernatorial
31 election.

32 3. Only qualified electors for a general election in such territory
33 shall be eligible to sign the petition.

34 4. The petition to create a new county shall contain the following
35 information:

36 (a) The name of the proposed county;

37 (b) The county seat of the proposed county;

38 (c) A statement that the territory proposed to be the new county
39 contains at least one hundred thousand inhabitants and at least one
40 hundred square miles;

41 (d) A map showing the boundaries of the proposed county; and

42 (e) A designation of at least one but not more than three persons,
43 giving full names and addresses, on whom and at which addresses all
44 papers required to be served in connection with the proceeding to create
45 the new county, shall be served.

46 5. The signatures to the petition shall be subscribed on a separate
47 page or pages following the information outlined in subdivision four of
48 this section.

49 6. Each signature page shall be prefaced by a statement of the peti-
50 tioners' familiarity with the contents and purpose of the petition, and
51 the boundaries of the territory to be included in the new county.

52 7. Following each signature, there shall be set forth, not necessarily
53 by the signer, the signer's address, including street name and number,
54 if any, and town.

55 8. The petition must also be authenticated as to all the signatures
56 upon each separate sheet by appending at the bottom of each sheet, an

1 affidavit of a witness as to the subscription thereof, substantially as
2 follows: STATE OF NEW YORK

3 ss.: COUNTY OF(name of witness) being duly sworn,
4 says: I reside at, in the of
5 (fill in residence) in the state of New York; I know
6 each of the persons whose names are subscribed to the above sheet having
7 (fill in number) signatures; and each of them subscribed
8 the same in my presence.

9
10 (Signature of witness.) Sworn to before me, this day of
11, 20.... (official title of officer)

12 9. The state board of elections shall prepare a form of petition meet-
13 ing the requirements of this section and shall make said form available
14 to the public. Any petition which is a copy of said form shall be deemed
15 to meet the requirements of this section relating to form.

16 § 13. Filing petition and objections; determination. 1. A petition
17 pursuant to this article shall be filed with the state board of
18 elections.

19 2. Any petition filed with the state board of elections shall be
20 presumptively valid if it is in the proper form and appears to bear the
21 requisite number of signatures authenticated in a manner prescribed by
22 this article.

23 3. Written objections to a petition pursuant to this article shall be
24 filed with the state board of elections within three days after the
25 filing of the petition. When an objection is filed, specifications of
26 the grounds of the objections shall be filed within six days thereafter
27 with such board of elections, and if specifications are not timely
28 filed, the objection shall be null and void. An objector must be quali-
29 fied to sign the petition.

30 4. Within twenty days of the filing of a petition pursuant to this
31 article, the state board of elections shall render a determination as to
32 the sufficiency of the petition. The state board of elections shall give
33 notice of the determination forthwith by mail to the individuals desig-
34 nated pursuant to paragraph (e) of subdivision four of section twelve of
35 this article, and if specified objections have been filed, the objectors
36 shall be also notified.

37 5. All provisions of the election law relating to the construal of the
38 sufficiency of petitions, not inconsistent with this article, shall
39 apply to this section.

40 6. A determination of the state board of elections shall be subject to
41 judicial review, as provided for in article seventy-eight of the civil
42 practice law and rules, except that it must be instituted within thirty
43 days after the filing of determination pursuant to this section. Such a
44 proceeding may only be instituted by a person qualified to sign the
45 petition. A proceeding under this section shall have preference over all
46 other civil actions and proceedings.

47 7. The successful party to the proceeding shall file a certified copy
48 of the decision and order with the state board of elections.

49 § 14. Decision of the state comptroller. 1. Within ten days after the
50 first occurring of either the expiration of thirty days from the filing
51 of the original decision sustaining the legal sufficiency of the peti-
52 tion and no proceeding having been instituted to review same, or the
53 filing of a final order sustaining the petition after such a proceeding
54 to review, the state board of elections shall file a copy of the peti-
55 tion with the office of the state department of audit and control

1 located in Albany for a review and decision by the state comptroller, as
2 provided for by this section.

3 2. The state comptroller shall examine the proposed operating budget
4 for the territory to be the proposed county, the proposed capital budget
5 for the area to be the proposed county, a description of the services
6 that would be provided by the proposed county and how such services
7 would be delivered and the estimated property tax impact for a five year
8 period on the territory to be the proposed county and the area of the
9 remaining county.

10 3. The state comptroller shall issue a decision on the financial
11 feasibility of the proposed county.

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

14 (a) that the overall public interest shall be served by the creation
15 of the proposed county;

16 (b) that the cost of the proposed county shall not be an undue burden
17 upon the proposed county or the remaining county;

18 (c) that the revenue estimates and appropriations, as set forth in
19 such financial impact statement, are adequate to deliver the services
20 proposed; and

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

24 5. Such decision shall be delivered to the state board of elections
25 within sixty days of submission to the state comptroller. Such decision
26 shall be available for public inspection. A copy of such decision shall
27 also be mailed to the petitioners designated pursuant to paragraph (e)
28 of subdivision four of section twelve of this article and all objectors
29 to the petition, pursuant to section thirteen of this article, by regu-
30 lar mail within five days of receipt.

31 6. A determination of the state comptroller shall be subject to judi-
32 cial review, as provided for in article seventy-eight of the civil prac-
33 tice law and rules, except that it must be instituted within thirty days
34 after the filing of determination pursuant to this section. A proceeding
35 under this section shall have preference over all other civil actions
36 and proceedings.

37 7. Where the determination of the state comptroller is not favorable
38 and no proceeding is instituted to review such decision, the decision
39 shall be final and conclusive. The state board of elections shall take
40 no further action on such petition. A new proceeding to create the
41 proposed county shall not be commenced for at least five years.

42 § 15. Referendum. 1. A referendum to determine the question of creat-
43 ing a new county shall be held at the next general election occurring no
44 less than sixty days after the first occurring of either of the follow-
45 ing two events:

46 (a) The expiration of thirty days from a favorable decision of the
47 state comptroller and no proceeding having been instituted to review
48 same; or

49 (b) The filing of a final order which sustains the favorable decision
50 of the state comptroller.

51 2. The procedure for the referendum shall be pursuant to the election
52 law.

53 3. Each resident in the territory proposed to be the new county who is
54 a qualified elector in a general election may vote in the referendum.

55 4. The form of the proposition shall be as follows: "Shall the terri-
56 tory generally described as (describe territory) be

1 established as a new county to be called (name of
2 county)?"

3 5. If the majority of the votes cast on such referendum be in the
4 affirmative, the referendum shall be adopted, and the new county shall
5 be created.

6 6. If the majority of votes cast at such referendum shall be adverse
7 to the creation of the new county, no county shall be created and no
8 petition for the creation of such county from the same territory may be
9 filed for a period of five years from the date such referendum shall
10 have been defeated.

11 § 16. Effective date; transition period. 1. When a referendum has been
12 approved, pursuant to this article, the new county shall be deemed
13 created and effective upon the adoption of the referendum, certified by
14 the state board of elections, and shall have the authority to perform
15 all acts necessary to effect a transition of authority to the new coun-
16 ty.

17 2. For the purposes of exercising all governmental functions, the new
18 county shall be deemed effective on the first day of January next
19 succeeding the next general election at which county elective officers
20 are elected.

21 3. All county elective officers pursuant to this article shall be
22 elected at the next general election after the referendum is approved.

23 4. As provided by this article, the board of supervisors shall be the
24 legislative body of the new county. Nothing in this article shall
25 preclude the establishment of a legislative body other than a board of
26 supervisors, pursuant to law.

27 5. Nothing in this article shall preclude a new county from selecting
28 a charter or other alternative form of government as permitted by law.

29 6. During the transition period between the effective date of the
30 county and the effective date for the purpose of exercising all govern-
31 mental functions, the supervisors of each of the towns constituting the
32 new county shall be empowered to act as an interim board of supervisors.
33 Said board shall have all the rights, privileges, functions, and powers
34 conferred on counties and municipal corporations and shall take all
35 actions necessary to effect a transition to the new county government,
36 including but not limited to the transfer of real property, personal
37 property, books, records, employees, the authority to enter into agree-
38 ments, including the apportionment of liabilities, to adopt a budget,
39 hire employees, levy taxes, and borrow money. Any action by the interim
40 board of supervisors shall be approved by a unanimous vote.

41 7. Any taxes levied or collected and any other charges levied by the
42 existing county for the transition period on the territory which has
43 become a new county shall be utilized to continue services and functions
44 for which the existing county is still responsible and to fund the tran-
45 sition expenses of the new county, unless the affected counties other-
46 wise agree.

47 § 17. Disposition of property. 1. Except as may be provided in an
48 agreement between the affected counties, as authorized by subdivision
49 two of this section, all county owned real or personal property, and
50 rights in real and personal property, including but not limited to
51 streets, avenues, roads, highways, bridges, buildings, parks, open lands
52 located in the newly created county, shall become the property of said
53 new county.

54 2. At any time during the transition period defined in subdivision six
55 of section sixteen of this article, the governing boards of the affected
56 counties shall have the power to agree on the retention, division, or

1 other disposition, either with or without consideration, of real and
2 personal property and rights in real and personal property within the
3 affected counties. Any such agreement shall be in writing and shall be
4 approved by the affected counties. Such agreement may provide for the
5 execution of any deeds or instruments affecting retention, division, or
6 other disposition of such property, either with or without consider-
7 ation.

8 § 18. Assumption of debt. 1. Except as may be provided in an agreement
9 between the affected counties, as authorized by subdivision two of this
10 section, any indebtedness, or liabilities, or interest thereon attri-
11 buted to the pre-existing county, shall be a charge upon and shall be
12 paid by each county as the same shall become due and payable, in the
13 same proportion to the whole of any such indebtedness, liability, or
14 interest as each affected county's tax contribution. Nothing herein
15 shall preclude the new county from paying in full its proportion of
16 indebtedness and liabilities. In the case of liabilities relating to
17 employee collective bargaining agreements and retirement obligations,
18 the new county shall not be bound by said agreements and shall only be
19 responsible for liabilities such as accumulated vacation, sick leave,
20 and retirement costs for those employees actually transferred to the new
21 county. The new county shall not have responsibility for the liabilities
22 and indebtedness for any existing special district or special fund where
23 the new county is not part of said special district or benefitted by
24 said special fund. A new county shall not have any other contribution
25 for indebtedness or liabilities except as provided by this section.

26 2. At any time during the transition period defined in subdivision six
27 of section fifteen of this article, the governing boards of the affected
28 counties shall have the power to agree to the proportions, if any, of
29 the various types of indebtedness, contract, or other liabilities, and
30 interest thereon, if any, the affected counties will assume and agree to
31 pay. Such proportions may be based on any equitable basis.

32 3. (a) The term "tax contribution" shall mean each county's contrib-
33 ution to the general fund of the pre-existing county based upon its
34 contribution of sales tax, if any, and real property tax. Such propor-
35 tion shall initially be based upon the findings of the feasibility study
36 prepared pursuant to section eleven of this article. The final
37 proportions shall be adjusted after the new county's first complete year
38 of operation utilizing actual sales tax revenue collections for said
39 year, and the real property tax levy for the last full year of the undi-
40 vided existing county.

41 (b) The term "indebtedness" and "contract or other liabilities" shall
42 not include liabilities under collective bargaining agreements, indebt-
43 edness evidenced by (i) tax anticipation notes, revenue anticipation
44 notes, or budget notes, or (ii) evidenced by serial bonds or capital
45 notes having a maximum maturity of less than three years which were
46 issued or are to be issued to finance an object or purpose other than a
47 capital improvement, or other than the acquisition of equipment for
48 which the period of probable usefulness is provided in paragraph a of
49 section 11.00 of the local finance law.

50 § 19. Miscellaneous provisions. 1. All provisions of this chapter
51 shall govern the operation of counties created pursuant to this article,
52 provided however, that nothing therein shall preclude the election of
53 alternative forms or the charter form of county government as provided
54 by law.

55 2. All special acts and parts of special acts relating to the pre-ex-
56 isting county and in force therein on the date the new county is created

1 and not inconsistent with this article, shall continue in full force and
2 effect in the affected counties, as though the new county had been in
3 existence at the time of passage of said acts and as though the name of
4 the new county had appeared in said acts and parts of acts, except that
5 any charter law adopted by the state legislature shall not be applicable
6 to the new county.

7 3. Employees transferred when a county is created pursuant to this
8 article shall be transferred without further examination or qualifica-
9 tion and shall retain their respective civil service classification and
10 status. Any employee who at the time of such transfer has a temporary or
11 provisional appointment shall be transferred subject to the same right
12 of removal examination, or termination as though such transfer had not
13 been made.

14 4. The creation of a new county shall not affect the boundaries of any
15 congressional district, senate district, or assembly district.

16 5. Nothing herein shall be deemed to limit the authority of the legis-
17 lature to create counties or other local governments pursuant to the
18 state constitution.

19 6. During the transition period provided for in this article, all
20 local laws, ordinances, rules, or regulations of the pre-existing undi-
21 vided county shall remain in full force and effect. Said local laws,
22 ordinances, rules, and regulations may be further extended by the inter-
23 im board of supervisors for a period not to exceed one year after the
24 end of said transition period.

25 7. During the transition period, the existing county shall continue to
26 render to and perform all those functions and services which it rendered
27 and performed upon the date of the filing of the petition with the state
28 board of elections, unless otherwise agreed to by the affected counties.

29 § 3. Severability. If any clause, sentence, paragraph, section, or
30 part of this act shall be adjudged by a court of competent jurisdiction
31 to be invalid, such judgment shall not affect, impair, or invalidate the
32 remainder thereof, but shall be confined in its operation to the clause,
33 paragraph, section, or part thereof, directly involved in the controver-
34 sy in which such judgment shall have been rendered.

35 § 4. This act shall take effect immediately.