

# 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:

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

4 f. Filing and deposit. (1) Filing. The original petition shall be  
5 filed with [~~a supervisor of the town in which all or the greatest part~~  
6 ~~of such territory is located. Duplicate originals, photocopies or other~~  
7 ~~similar reproductions of the original petition shall be filed with a~~  
8 ~~supervisor of each other town in which any portion of such territory is~~  
9 ~~located]~~ the village incorporation commission established pursuant to  
10 section 2-259 of this article.

11 (2) Deposit. At the time of filing of the petition there shall be  
12 deposited with [~~each supervisor with whom the original or a copy of the~~  
13 ~~original is filed]~~ the commission, the sum of six thousand dollars to  
14 pay the cost of posting, publishing and serving required notices, steno-  
15 graphic services and services of inspectors of election in the event  
16 incorporation is not effected.

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

19 § 2-204 Notice of hearing. Within twenty days after the filing of such  
20 petition or copies thereof, [~~each supervisor with whom same were filed]~~  
21 the village incorporation commission established pursuant to section  
22 2-259 of this article shall cause to be posted in five public places [~~in~~  
23 ~~that part of such territory located in his town]~~ located in the territo-  
24 ry where such village shall be incorporated and also to be published at  
25 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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1 vision eleven of section sixty-four of the town law, a joint notice [~~of~~  
2 ~~all such supervisors~~] issued by the commission: that a petition for the  
3 incorporation of the village of (naming it) has been received; that at a  
4 place in such territory and on a day, not less than twenty nor more than  
5 thirty days after the date of the posting and first publication of such  
6 notice, which date and place shall be specified therein, a hearing will  
7 be had upon such petition; that such petition will be available for  
8 public inspection in the office of each town clerk until the date of  
9 such hearing; that the purpose of the hearing is to consider the legal  
10 sufficiency of the petition; that objections to the legal sufficiency of  
11 the petition must be in writing and signed by one or more of the resi-  
12 dents of such town; and that any group of persons having one or more  
13 objections in common may make designation in writing and signed by them  
14 of at least one but no more than three persons giving the full names and  
15 addresses on whom and at which addresses all papers required to be  
16 served in connection with the proceeding for incorporation shall be  
17 served. A majority of such designees must reside in such town or towns.  
18 In the absence of any other suitable place, such hearing shall be held  
19 in a school building, if any, located in such territory. If such terri-  
20 tory is located in more than one town the hearing shall be noticed and  
21 publicized as a joint hearing of all such towns. For the purposes of  
22 this section, in the event that the town maintains a website, one of the  
23 posting requirements required by this section may be fulfilled by post-  
24 ing such information on the town's website.

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

30 § 2-206 Proceeding on hearing. 1. [~~The supervisor, or supervisors if a~~  
31 ~~joint hearing, with whom the petition or copies thereof, were filed,~~  
32 The village incorporation commission established pursuant to section  
33 2-259 of this article shall meet at the time and place specified in such  
34 notice and shall hear objections which may be presented as to the [~~legal~~  
35 ~~sufficiency of the petition for~~] incorporation based upon any of the  
36 following grounds:

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

38 b. If it is alleged that the petition is submitted on the basis that  
39 the persons signing such petition constitute twenty per cent of the  
40 residents in such territory qualified to vote for officers of a town in  
41 which all or part of such territory is located, that such allegation is  
42 false;

43 c. [~~If it is alleged that the petition is submitted on the basis that~~  
44 ~~the persons signing such petition are the owners of more than fifty~~  
45 ~~percent in assessed valuation of the real property in such territory or~~  
46 ~~in full valuation of the real property in each part of each town in such~~  
47 ~~territory and computed separately for each such part, as the case may~~  
48 ~~be, assessed upon the last completed assessment roll or rolls of the~~  
49 ~~town or towns in which all or part of such territory is located, that~~  
50 ~~such allegation is false,~~

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

52 [~~e.~~] d. That if such territory is less than an entire town, it  
53 contains more than five square miles and the limits of such territory  
54 are not coterminous with the entire boundaries of one school, fire, fire  
55 protection, fire alarm, town special or town improvement district and  
56 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.