§ 12. Optional change of classification. 1. Any town of the second class, including towns in Suffolk and Broome counties and the town of Ulster in Ulster county, having a population of five thousand or more as shown by the latest federal census or in which the assessed valuation of the taxable real property as shown by the latest completed assessment role exceeds ten million dollars or adjoining a city having a population of three hundred thousand or more as shown by the latest federal census, may become a town of the first class, by either of the following methods:

(a) By the adoption by the town board of a resolution therefor, subject to a permissive referendum; or

(b) By the adoption of a proposition therefor, by the affirmative vote of a majority of the qualified electors of the town voting thereon at a special or biennial town election, pursuant to subdivision three of section eighty-one of this chapter.

2. (a) If any such town shall determine, pursuant to the method specified in paragraph (a) of subdivision one of this section, to become a town of the first class, the town board shall cause certified copies of the resolution to be filed in the offices of the department of state and the department of audit and control.

There shall also be filed therewith the affidavit of the town clerk that no petition requiring the submission to the qualified electors of the town of a proposition approving such resolution was filed with said town clerk, if such resolution was not so submitted.

If a proposition approving a resolution changing the classification of a town was submitted to the electors, pursuant to the filing of a petition therefor or upon the motion of the town board, there shall be filed in the office of each of such state departments copies of the certificate of the election inspectors at such election, duly certified by the town clerk.

(b) If any such town shall determine, pursuant to the method specified in paragraph (b) of subdivision one of this section, to become a town of the first class, the town board shall cause copies of the certificate of the election inspectors or board of canvassers of the town election at

which the proposition for the change of classification was adopted, duly certified by the town clerk or board of canvassers, to be filed in the offices of the department of state and the department of audit and control.

3. (a) If a town shall determine, pursuant to the method specified in paragraph (a) of subdivision one of this section, to become a town of the first class, such change of classification shall become effective on the first day of January next succeeding the first biennial town election held at least one hundred fifty days after the date of the adoption of the resolution determining, subject to a permissive referendum, to become a town of the first class. On and after said first day of January, such town shall be a town of the first class.

(b) If a town shall determine, pursuant to the method specified in paragraph (b) of subdivision one of this section, to become a town of the first class, such change of classification shall become effective on the first day of January next succeeding the first biennial town election held at least ninety days after the date of adoption of the proposition changing the classification of the town to that of a town of the first class, pursuant to article six of this chapter. On and after said first day of January, such town shall be a town of the first class.

4. (a) Any town which shall have determined, pursuant to either method specified in subdivision one of this section, to become a town of the first class, shall elect, at the biennial town election immediately preceding the effective date of the change of classification, the following town officers: a supervisor for a term of two years, and, except as otherwise provided herein, a town clerk and a town superintendent of highways for terms of two years each and a receiver of taxes and assessments for a term of four years.

(b) In addition to the officers specified in the preceding paragraph, there shall also be elected at such biennial town election in a town which has four or more justices of the peace but no town council member on the first day of July immediately preceding such election: one justice of the peace for a term of four years, two town council members for terms of four years each, and two town council members for terms of two years each.

Any such town which on the first day of July preceding said biennial town election has three justices of the peace and one town council member, shall elect at said biennial town election one justice of the peace for a term of four years, two town council members for terms of four years each and one town council member for a term of two years, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of one of such justices of the peace and of one of such town council members expires on December thirty-first following such election, shall elect at such election one justice of the peace for a term of four years, two town council members for terms of four years each and one town council member for a term of two years, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of office of both such justices of the peace expires on December thirty-first following such election, shall elect at such election two justices of the peace for terms of four years each and two town council members for terms of four years each, in addition to the officers specified in paragraph (a) of this subdivision.

Any such town which on the first day of July preceding said biennial town election has two justices of the peace and two town council members and the term of office of both such town council members expires on December thirty-first following such election, shall elect at such election two town council members for terms of four years each and two town council members for terms of two years each, in addition to the officers specified in paragraph (a) of this subdivision.

(c) The term of office of each of the officers elected at said biennial town election shall begin on the first day of January next succeeding said election.

(d) Party nominations for the offices to be filled at said biennial town election shall be made and designating petitions may be filed and

such officers shall be elected in the manner provided by law for the nomination, designation and election of town officers in such town.

(e) This section shall not be construed to require the election of a town clerk or a town superintendent of highways if such office shall be an appointive office in such town on the effective date of such change of classification.

(f) Not less than ninety days before the biennial town election immediately preceding the effective date of the change of classification, the town board may adopt a resolution, subject to a permissive referendum, determining that the office of receiver of taxes and assessments shall be an appointive office in such town. Every elector of the town shall be entitled to vote at any referendum held thereon pursuant to the provisions of article seven of this chapter. If the town board shall have adopted such a resolution and no petition for a referendum thereon shall have been filed within the time specified in article seven of this chapter, or if the majority of the votes cast on a proposition to approve such a resolution submitted pursuant to the provisions of said article seven shall be in the affirmative, the office of receiver of taxes and assessments shall thereafter be an appointive office in such town and no receiver of taxes and assessments shall be elected at the biennial town election immediately preceding the effective date of such change of classification, and on and after the effective date of such change of classification, the town board shall appoint a receiver of taxes and assessments who shall take and hold office for the term provided by this chapter. In any town in which the office of receiver of taxes and assessments shall be appointive, the town board may appoint the town clerk of said town as the receiver of taxes and assessments thereof.

(g) This section shall not be construed to require the election of a town superintendent of highways for a two year term in any town in which such term has been increased to four years pursuant to the provisions of section twenty-four of this chapter; and nothing contained in this section shall be construed to abridge the term of office of a town superintendent of highways elected for a term of four years prior to change of classification.

5. Nothing contained in this section shall be construed to abridge the

term of office of a justice of the peace elected prior to the adoption of the resolution or proposition for the change of classification, but on and after the effective date of such change of classification, any such justice of the peace shall exercise only such powers and shall be subject to only such duties, responsibilities and liabilities as shall be prescribed by law with respect to a justice of the peace in a town of the first class.

6. Town collectors and school district collectors. In any town which shall have determined, pursuant to either method specified in subdivision one of this section, to become a town of the first class, the collector shall continue in office until the effective date of such change of classification. On and after such date, the office of collector and the office of school district collector shall be abolished in such town and no collector or school district collector shall be chosen at any time to succeed the incumbents of the offices so abolished.

7. (a) Assessors. If on the first day of July immediately preceding the effective date of the change of classification any such town shall have three elective assessors, no successors thereto shall be elected at the biennial town election immediately preceding the effective date of such change of classification and the terms of office of all such elective assessors whose term would extend beyond the effective date of such change of classification shall terminate on the effective date of such change of classification. On or after the effective date of such change of classification, the town board of said town shall appoint an assessor in the manner and for the term prescribed by section three hundred ten of the real property tax law.

(b) If on the first day of July immediately preceding the effective date of the change of classification any such town shall have one appointive assessor who shall have been appointed in the manner and for the term prescribed by section three hundred ten of the real property tax law, such assessor shall continue in office for the balance of his unexpired term, or for an indefinite term if the term of office of such assessor shall have been for an indefinite term immediately preceding the effective date of such change of classification.

8. Town board. On and after the effective date of the change of classification of such town, the supervisor and the town council members shall constitute the town board thereof. Such town board shall have all the powers and be subject to all the duties of a town board of a town of the first class.