



ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

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S.5661 Introduced by Stewart-Cousins (MS)
A.8501 Introduced by Silver (MS)

Memorandum in Opposition

An act to amend the general municipal law, the municipal home rule law, the town law, the village law and the local finance law, in relation to the requirements for consolidating or dissolving certain local government entities, and to repeal certain provisions of the town law and the village law relating thereto

This legislation does not deal with the true costs of high real property taxes but instead purports to establish a one-stop shopping process to consolidate or dissolve local government entities. This legislation establishes a new way to dissolve or consolidate fire districts, villages, towns and town special improvement districts but does not provide similar authority to the residents of cities, counties, county improvement districts or school districts. There is no substantial proof that consolidation results in lower property taxes. The only realistic way in which consolidation could result in cost savings is to eliminate jobs, such as police, fire and highway, or reduce or eliminate services. Legislation changing the fundamental makeup of local government needs to be studied and debated in open with full participation from the public. No good policy is made under the cover of darkness. The manner in which this legislation was introduced and poised to be passed curtails public debate and constructive input.

Real property taxes are high in New York State for four primary reasons: Personnel Expense; Primary and Secondary Education; Social Welfare Services and Debt. ⁱ These four categories account for nearly all of the difference in per capita spending between New York and the average of the other 49 states. ⁱⁱ Despite the assertions in the memorandum in support of this legislation, generally speaking, property taxes are not high due the number of local government entities in New York State. Villages and special improvement districts are established to assign the cost of desired services to the people who will be receiving said services. In other words you should not have to pay for a service that you do not receive. Most local government entities have been sharing and/or consolidating services for decades and significant savings have resulted. Cooperation rather than consolidation is favored in many instances because it saves taxpayer resources while keeping local democracy in tact and government readily accessible to the people. ⁱⁱⁱ

To ensure that consolidation or dissolution occurs because the people who live and vote in a particular town, village or district want consolidation or dissolution this bill must be amended.

1. Increase the petition thresholds to place the initial question on the ballot regarding consolidation or dissolution. The bill calls for 10% it should be much higher. The current Village Law calls for 33.3% to dissolve a village. Many states have much higher petition thresholds for this purpose. (Alaska [25%]; California [25%]; Idaho [20%]; Louisiana [25%]; Maryland [20%]; Minnesota [25%]; Nebraska [20%]; Oklahoma [25%]; West Virginia [25%] and Wisconsin [20%]). Twenty-five percent (25%) is a good number; this is the number proposed in A.639(Hoyt)/S.265(Little). A higher threshold demonstrates that most of the people in the subject town, village or district are actually interested in consolidation or dissolution and that municipal resources should be expended for

this purpose. Allowing such a low threshold is akin to an unfunded mandate in that the legislation is allowing a small number of people to force the expenditure of municipal funds on an election and subsequent study. A higher threshold would ensure that the people are actually interested in this process before municipal resources are spent.

2. Make the proposed elector initiated consolidation or dissolution plan subject to either a mandatory referendum or lower the petition thresholds to get the question on the ballot. The bill requires a petition signed by 25% of the electors or 15,000 whichever is less, to get a vote on the actual plan and the voters only have 45 days to collect the signatures. The plan might actually demonstrate that property taxes will increase, or that services will be materially changed or that people will lose their jobs. The legislation appears to provide for an automatic implementation unless a petition based upon 25% of the electors or 15,000 is submitted within 45 days of the final plan adoption. The timeframe to collect signatures needs to be increased and the number of signatures needs to be decreased to 10%. Alternatively the plan should be subject to mandatory referendum as in the case of a board initiated consolidation or dissolution process under this legislation.

3. Include safeguards against voter fraud.

a. Stale Signatures

There must be a defined period of time within which an interested party has to collect signatures on a consolidation or dissolution petition; it should not be indefinite as provided for in this legislation. The Village Law, §19-1900(1) requires signatures to be collected within 120 days of filing with the village clerk unless the village board of trustees passes a resolution to give additional time to collect signatures. Similarly, another uniform local government consolidation/dissolution bill (A.639 (Hoyt)/S.265 (Little)) calls for signatures to become stale if collected more than 180 days prior to submitting the petition to the municipal clerk. If a timeframe does not exist to collect the signatures, years could potentially go by before the petition is submitted for consideration.

b. Include a Notice of Intent to File a Petition with the Town/Village Clerk requirement.

The group or person circulating the petition should have to notify the municipal clerk of the intent to file a petition for dissolution or consolidation. In California this is required – it simply makes for good government to notify the municipality that a petition to dissolve or consolidate it or a district within it will be filed (See cf California General Law §56700.4.(a)).

c. Opportunity to Withdraw Signature

This legislation should be amended to afford a person who signs a petition and subsequently desires to have his or her name removed from such petition the opportunity to withdraw his or her signature prior to the certification of the petition. This is afforded in California and makes good sense. Such request should be in writing and should clearly state the desire of the person to have his or her name removed from the petition currently in circulation and should bear the signature and address of the person making the request. Upon receipt of said petition, the municipal clerk would then remove such person's signature from the petition. In the Village of Johnson City several residents approached the village board of trustees seeking to withdraw their names from the village dissolution petition because they were told it was a petition to lower property taxes rather than a petition to dissolve the village. There was no mechanism for them to remove their signatures. This legislation could improve upon the current law by including an easy process to remove your name from a petition submitted in accordance with this article. This opportunity is afforded to individuals in California – we should not require a person to go to court to have his or her signature removed from a petition in New York (See cf California General Law (§§103, 11303).^{iv}

4. Increase the amount of time the town/village board(s) has to complete the consolidation or dissolution study and plan. The current legislation only affords seven months. The average study/plan takes at least 2 years to complete. To ensure a thoughtful and complete plan an amendment is needed to lengthen the timeframe within which to complete the study.^v

5. The language of the amendments to the Municipal Home Rule Law, 33-a must be changed. This legislation purports to make section 33-a of the Municipal Home Rule Law consistent with Art. IX, §1, subd. (h), par. (1) of the New York State Constitution but this proposed amendment is flawed. Article IX, §1, subd. (h), par. (1) of the New York State Constitution authorizes alternative forms of county government. Article IX does not include the

authority for counties to abolish towns, cities and villages. Therefore local governments (cities, towns and villages) must be excluded from this amendment. The simplest way to effectuate the constitutional intent would be to eliminate this amendment; if, however, the Legislature finds some utility in its inclusion, the amendment must be changed. Simply amend the bill to exclude, cites, towns and villages by adding this language “other than local governments”.

This amendment is necessary because it is, at best, an open question of constitutional construction regarding a county’s authority via Article IX of the State Constitution to abolish towns, cities and villages. The Legislature implemented Article IX, 1(h) (1) by adopting Article 4 of the Municipal Home Rule Law, referred to as the “County Charter Law.” The Legislature expressly prohibited counties, via a county charter law, from abolishing towns, cities, villages and school districts (Municipal Home Rule Law, §34 (2) (d)). Moreover, the legislation authorizing counties to adopt county charters expressly references Art. IX, §1, subd. (h), par. (1) of the State Constitution and limits a county’s authority via a county charter to the abolition of a “one or more offices, departments or agencies of such units of government when all of their functions or duties are so transferred.” (Municipal Home Rule Law, §33(4) (c) was expressly enacted in accordance with Article IX, 1(h) (1)). Municipal Home Rule Law, §33-a was added to Article 4 to grant to any county the powers of charter counties to transfer or abolish functions or duties. The language of section 33-a therefore tracks the language of Article IX, 1(h)(1) and its corresponding limitations on the authority of a county to abolish a town, city or village via Article 4 of the Municipal Home Rule Law. Therefore, the amendment, as proposed by this legislation, would call into question the express limitations placed upon a county when constructing an alternative form of county government as provided for via county charter in Article 4 of the Municipal Home Rule Law. Our suggested revision to this proposal would keep in tact the statutory restriction set forth in the Municipal Home Rule Law, §34(2)(d) and avoid construction conflict between sections 33-a and 34 and the proposed amendment to section 33-a.

The Association of Towns is vehemently opposed to the passage of this legislation in its current form.

ⁱ Cox, “Government Efficiency: The Case for Local Control,” (2008).

ⁱⁱ Cox, “Government Efficiency: The Case for Local Control,” (2008).

ⁱⁱⁱ Is Municipal Consolidation the Answer? Is Bigger Always Better?” Municipal Research and Services Center of Washington, Summer 2003, pp. 1-5; Eva C. Galambos, "Sandy Springs: A Case Study on Centralization of Local Government," Georgia Public Policy Foundation, November 1999; Alan Altshuler, William Morrill, Harold Wolman, and Faith Mitchell, eds. “The Committee on Improving the Future of U.S. Cities, Governance, and Opportunity in Metropolitan America”, National Academy Press: Washington, D.C. (1999), p. 106; Wisconsin Policy Research Institute “Cooperation Not Consolidation the Answer for Milwaukee Governance” (November 2002).

^{iv} Minutes of a Regular Meeting of the Board of Trustees of the Village of Johnson City, New York, held at 7:30PM in the George Korutz Public Safety Building on February 6, 2007

^v Over 2 years to complete a consolidation study for the Village of Albion, Town of Albion and Town of Gaines – performed by CGR [Consolidation Study for the Village of Albion, Town of Albion and Town of Gaines 3/1/2009, by Charles Zettek, Vicki Brown CGR]; The consolidation report for the City and Town of Ithaca together with the Village of Cayuga Heights took approximately two years complete [Gashler, “Group endorses 'Greater Ithaca' proposal Plan would consolidate city, town, village” Ithaca Journal Web posting May 11, 2009]; The Village of Speculator Dissolution plan took over 2 years [Village of Speculator Dissolution Plan and Options for Shared Services: Findings and Alternatives 2/1/2008, by Charles Zettek, Scott Sittig of CGR].