

CONSOLIDATING LOCAL GOVERNMENT

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RATIONAL FOR THE STUDY

New York State continues to be faced with serious structural problems. Anemic economic growth, population losses and some of the highest taxes in the nation have been of serious concern for many years. Although the cost of New York State government threatens its effectiveness, the League has never studied, at a statewide level, whether it should encourage government consolidations/dissolutions or shared services in the interest of increasing efficiencies, and, if so, what criteria should be applied in evaluating various proposals.

The study of the question of increasing efficiency of local government through consolidation or dissolution of the entities themselves and/or of the services they provide is a complicated endeavor. The state is so diverse that the study committee believes it is unlikely that a consensus that proposes one course of action for the entire state can be reached.

Given the immediacy of these issues, the study committee has decided to devote the first portion of the study to exploration of consensus in the following areas: 1. Is there agreement on the standards that the League should apply in assessing changes to state law that would facilitate the consolidation/dissolution process and/or the expansion of shared services; 2. Is there agreement on standards that local Leagues should apply in assessing proposals for consolidation /dissolution/ shared services in their service areas.

Insofar as the Leagues wishes to extend the study to consider mandating specific types of consolidations/dissolutions or shared services, the second portion of the study will occur next year after the first portion has been completed.

OVERVIEW OF CURRENT GOVERNMENTAL STRUCTURE

New York has a complex layering of 1,607 general-purpose local governments made up of 57 counties, 932 towns, 62 cities, 556 villages, all of which have taxing power, can issue debt and are covered by home rule protections under the state constitution, and 14 Native American reservations. The cities and towns completely cover all of the territory of the counties, leaving no unincorporated areas. None of the cities or towns cross county borders and, with one exception, cities and towns do not overlap. With respect to the villages, all reside within towns and 76 of the villages cross town boundaries. New York City operates as both a city and a county (the five boroughs are technically counties but operate under city government).

This structure leads to a layering of local governments. Village residents have three layers of government- village, town and county. Town residents live within two layers- town and county. The state has only five co-terminus (same borders) town/villages. These residents would have two layers- town/village as one and county. City residents outside New York City also have two layers- city and county. New York City and Native American Reservation residents have one layer of government.

The vast majority of these general-purpose governments were established prior to 1920 when the state was primarily rural. Very little change has occurred since then. Only three cities have been

formed since 1920, the last being the City of Rye in 1942. The number of towns is unchanged since 1900 although there have been some changes within this total. Villages, the only form of municipal government that can be incorporated or dissolved solely by local action, have seen more change, with 125 villages having been created since 1925 and 37 dissolved as of 2007, with more changes occurring even today.

The state has seen tremendous changes in population size, economic activity, transportation systems, communication technology, and settlement patterns since 1920, and yet municipal classifications, boundaries and the laws under which these entities operate do not reflect this change. Historically cities and villages were created within the surrounding rural towns to respond to the needs of denser populations that required services not provided town-wide, the most obvious being water and sewer. These services were paid for by those within the cities and villages receiving that benefit. Today, while there are areas in upstate and in small portions of downstate that continue to reflect these stark distinctions, for the most part the services provided by towns no longer differ from those provided by their villages and cities.

The terms city, town and village bring a picture to mind that no longer holds true. Cities were traditionally the more populous and urban, towns more rural and villages small and somewhere between urban and rural. Ten towns in the state have populations greater than 100,000 whereas among the state's cities only the "Big Five" are that populous. Four of these towns have populations exceeding the population of the City of Buffalo-making them the largest municipalities outside of New York City.

Most of the state's cities (35 out of 62) have populations under 25,000 while 60 towns and six villages have populations greater than that level. The Villages of Port Chester, Mamaroneck, Ossining, Harrison (town/village) and Scarsdale (town/village) all have larger populations than the City of Rye in Westchester County. The Town of Hempstead is the largest municipality outside New York City in the state in terms of population.

Why is this important? It is important because cities, towns and villages have very different governing structures, revenue structures, tax and debt limits, access to revenue sharing and other forms of state aid and access to county and state services, grants and programs. Despite the many differences under state law for cities, towns and villages, the functions and services provided by the different classes have been converging, and as we have seen old designations no longer apply. Cities tend to receive more in aid from the state, yet many towns and some villages are larger than our cities with the same problems that population brings. A discussion of the different treatment of municipal classes and the impact on local governments can be found in a comptroller report "Outdated Municipal Structures" at www.osc.state.ny.us/localgov/ under Research reports.

It is important to keep in mind that what a municipality is called is an artifact of the past and not a true reflection of how large, populous and urbanized an area actually is today. This uncertainty is one factor in recommending that initiatives to consolidate local government entities remember that "one-size-does-not-fit-all" and that the analysis should not be influenced by terminology but should be evaluated on the facts.

Of course, New York State government does not end with the general-purpose governments but also includes districts and other special government entities.

In addition to the general purpose governments discussed above, there are 1,811 special-purpose districts in New York with elected boards and the ability to impose taxes and/or issue debt directly or through the local government. These districts include school districts, fire districts, library districts, and other commissioner run districts, such as parks, water, sewer and solid waste districts.

The boundaries of these districts often cross town, village, city and even county borders creating issues of administration and taxing and coordination with multiple local governments. Many of these special districts operate outside of citizen and local press oversight and have election days outside of the General, Village or School District elections, resulting in low voter interest and turn out.

In addition to these districts, the state has 1,302 local government entities with independent boards that are able to impose costs and/or issue debt with little local control. These entities tend to have appointed boards, although some are elected by a select group of people. These entities include BOCES, community colleges, consolidated health districts, joint activity districts, local development corporations, housing authorities, industrial development agencies, urban renewal agencies, water, sewer and utility authorities, parking and transportation authorities, among others. These entities range from local to regional in scope, and they vary in the degree to which they are independent of the local government's oversight.

Finally, in addition to the above, New York has thousands of other boards and councils without taxing authority, such as soil and water conservation districts, regional planning boards, stormwater-management districts, fire protection districts, health districts and vital records districts. Most of these operate within a town or county and are under the control of the local government.

Government in New York State is complicated, and the reasons for the lack of change in municipal boundaries – and/or classifications and rules – range from the lack of unincorporated land, which makes the expansion of cities extremely difficult; to state laws such as the “Selkirk Law” (1961), which requires: representatives of all affected areas (the city, the area to be annexed and the town as a whole) to agree to a city annexation of land, as well as a formal referendum of city and town residents and a special act of the legislature; extension of the Selkirk law to villages in 1963; home-rule protections for all local governments in the state constitution which limit the state legislature's ability to pass a law affecting a specific local government without a request from the local government itself; simple inertia; the sentimental attachment in local populations to existing government entities; the patterns of state aid to local governments based on traditional legal categories rather than more appropriate criteria; and the stake of local officials in the current structure. For those of you who are interested, you can find a summary of the local governmental entities in your county on the Attorney General's website, www.oag.ny.us.org.

THE LUNDINE COMMISSION REPORT

The most recent commission to address government efficiency issued its report in April, 2008 (the “Lundine Report”). The report includes both direct recommendations to consolidate entities and/or reduce costs, as well as recommendations for local governments to study areas where they might improve efficiency or lower costs depending upon the particular facts that a study would uncover. It thus recognizes that mandating change in all cases is inappropriate.

Specific recommendations are:

- Centralize assessing, tax collection, emergency dispatch, civil service commissions and vital records at the county level.
- Provide flexibility for counties to share jail facilities, co-manage jail populations, health directors, weights and measures.
- Expand local governments' ability to share services
- Encourage justice court and IDA consolidations
- Allow renegotiation of collective bargaining contracts when consolidations occur.
- Require town-wide approval for a new village and reconsider small villages
- Ease procedures for consolidation, citizen petitions, and coterminous town-villages
- Require local consideration of county level management of fire protection
- Reconsider commissioner run special districts, end their compensation
- Allow local governments to make property tax sharing agreements
- Strengthen home rule by prohibiting the judicial doctrine of "implied preemption"
- Consider reclassifying some cities, towns and villages and the powers of each class
- Empower the Commissioner of Education to order school consolidations
- Set up school committees to explore shared services and consolidation
- Authorize regional collective bargaining contracts in school districts for new hires
- Facilitate consolidation of back office and regional high schools
- Hold all elections in November or May
- Reduce the number of elected offices (i.e., clerk, receiver of taxes, highway superintendent, etc.)
- Improve local financial data for better citizen review of government efficiency
- Make available grants and aid to pursue shared services and consolidations
- Increase aid to modernize assessing practices
- Encourage regional solutions, cooperative services and consolidation
- Require minimum employee contributions for health insurance
- Ease municipal cooperative health plan rules
- Consider a new pension tier for new employees
- Reform Wicks and other procurement laws
- Finally, maintain a long-term focus on local efficiency using existing state agencies that will support local initiatives, promote cost savings and follow through on the commission's recommendations.

See www.nyslocalgov.org for full report.

NEW YORK GOVERNMENT REORGANIZATION AND CITIZEN EMPOWERMENT ACT OF 2009

The "New York Government Reorganization and Citizen Empowerment Act" (the "2009 Reorganization Act"), proposed by the Attorney General, will become effective in March, 2010. It facilitates the consolidation of towns, villages or districts, including but not limited to special-improvement districts and library districts ("government entities") the dissolutions of villages and certain districts, and grants counties additional powers to

initiate dissolutions as well. The Act specifically excludes school districts, city districts or special-purpose districts created by counties under county law.

Several legislators and municipal organizations are studying it and proposing amendments, which may be considered next year. As local governments consider consolidations or sharing of services in the years ahead, it is also likely that various technical issues will arise that could best be resolved through statewide legislation.

The 2009 Act contains two sections: a new Article 17-A which sets forth procedures to consolidate or dissolve government entities by the local governing board or by citizens themselves by initiative; and an amendment to Section 33-a of the municipal home-rule law enabling counties to abolish “units of government,” something previously not allowed.

Consolidations can occur across county borders as long as at least one of the government entities, if a town or village, is contiguous to another and if together the entities would form a consolidated government entity of a kind or class that is authorized under state laws (i.e., town, village, certain districts). Consolidating districts do not have to be contiguous. Note: while the law does not preclude the formation of new towns from a consolidation of existing local government entities (villages, certain districts, towns), it is likely such an action would be decided in the court system.

Consolidations and dissolutions can be initiated by an approved joint resolution of the bodies of the government entities to be consolidated or dissolved, or by a citizen-initiated petition.

Under the 2009 Act, the dissolution of towns is not addressed, except to the extent that a county might dissolve a town under its new authority. It is likely that most dissolutions would involve villages and districts.

Governing Body- (Board) Initiated Consolidations

The joint resolution of the governing bodies must include a consolidation agreement that sets forth, among other items, the structure, rights, duties and obligations of the combined entity, the estimated cost savings from consolidation, a listing of each entity’s assets, liabilities and indebtedness and the fair value thereof, the terms of disposition of these assets, liabilities and indebtedness, the terms for the common administration and enforcement of local laws and ordinances during a transition period not to exceed two years (within two years the successor governing body must adopt new laws, ordinances, rules and regulations as necessary to redress conflicts and ambiguities that may arise among the then-existing laws, etc.), the effective date, the date of a public hearing, the publication of the joint consolidation agreement in a public place and on a website, and publication, in a newspaper of general circulation for four successive weeks, of a summary of the major provisions and direction to the public as to where the agreement itself may be examined.

The entities may hold one or more public hearings held no less than 35 days nor more than 90 days after commencement of the consolidation proceedings. After the hearings, the governing bodies may amend the agreement with any final agreement approved by the board within 180 days of the final hearing or they may decline to proceed any further.

If the consolidation involves a town or village (not a district), then contemporaneously with the final board approval of the consolidation agreement the bodies shall call for a public referendum to be held within 60-90 days. The bodies must obtain an affirmative vote in each municipality to be consolidated for the final agreement to be approved. If any entity does not approve the consolidation, the measure fails and may not be reinitiated for a period of four years.

Citizen-Initiated Petitions

Citizens may initiate consolidation by circulating petitions signed by registered voters of each of the local entities under consideration. The signed petitions must contain not less than 10% of the number of registered voters or 5,000 registered voters, whichever is less, in each local government entity to be consolidated provided, however, that where the entity to be consolidated contains 500 or fewer voters, the petition shall contain at least 20% of the number of registered voters.

Within ten days of receiving the petitions, the clerk must make a final determination regarding the sufficiency of the signatures on the petition. Once the clerk has certified that the petitions contain the necessary signatures, the governing bodies must pass a resolution calling for a referendum in each of the entities within 30 days thereafter. The referendum shall take place within 60-90 days of the governing bodies' resolutions.

The notice of the referendum must include the date, time and place of the vote and a summary of the contents of the resolution and petition for consolidation and any joint consolidation agreement, if any, the names of the government entities and a description of their territories and any other matters as necessary to provide for and give notice of the referendum.

The question on the referendum shall read: "Shall (insert type and name of government entity) be consolidated with (insert type and name of government entity)?" An affirmative vote in each government entity must occur for the referendum to pass. If any one of the entities does not reach a majority approval then the measure fails and may not be reinitiated for a period of four years.

If, however, an affirmative vote is reached, the governing bodies shall meet within 30 days of the certified vote and within 180 thereafter (i.e., within 210 days of the certified vote) and prepare and approve by resolution a consolidation plan containing the same information that is contained in the joint consolidation plan required to be prepared and reviewed by the public under a governing board-initiated consolidation but prior to a referendum.

Public hearings to review a consolidation plan under the citizen-initiated consolidation are held in effect after the vote to consolidate and within 35 -90 days after the governing bodies have approved a consolidation plan. The governing bodies may amend the plan following the public hearing but must approve a final version within 60 days of the final hearing.

The final plan may be overturned and fail to take effect if the registered voters of any of the government entities to be consolidated initiate another petition drive and, within the 45 day period after the final approval of the consolidation plan, file a petition with their clerk containing not less than 25% of the registered voters or 15,000 voters, whichever is less, seeking a revote, and the second referendum then fails to be approved. Only those entities that receive a petition for a revote hold a second referendum.

If a governing body or bodies fail to prepare and approve a citizen-initiated consolidation plan or are otherwise unable or unwilling to “accomplish and complete the consolidation” as described above within the time allotted, then any five petitioners may commence a special proceeding in State Supreme Court pursuant to Article 78 to compel compliance. Possible outcomes include mediation, an injunction to comply or appointment of a court hearing officer to hear and determine a consolidation plan for the entities.

The law then details ways in which the employees, assets, liabilities, debts, elected officials and local laws are to be treated in a combined entity.

Dissolutions

Dissolutions under 17-A are limited to villages and districts. Board-initiated dissolutions and citizen-initiated dissolutions proceed under substantially the same procedures and time schedules as described above. The difference is that, in case of a dissolution, a notice to the receiving government entity – most likely a town in the case of a village – is required.

County Powers

Section 33-a of the municipal home-rule law has been amended to grant counties the added authority to initiate “the abolition” of units of government (cities, towns, villages, districts or other units of government), including any departments, agencies or offices thereof, when the level and quality of all of the services they provide are transferred. The abolition of villages is subject to a mandatory referendum at a general or special election and must receive a triple majority. Voters within the cities must approve, voters outside the cities must be counted separately and approve, and voters within the villages (if involved) must separately approve. When villages are involved, the results of a mandatory referendum within all of the villages involved is considered as a unit in determining if there is an approval. The consolidation or dissolution of a town or district shall be conducted under the earlier terms of Article 17-a discussed above.