

# THE NEW N.Y. GOVERNMENT REORGANIZATION AND CITIZEN EMPOWERMENT ACT: THE LATEST EFFORT TO REFORM NEW YORK'S LOCAL GOVERNMENTS

On June 24, 2009, Governor Paterson signed into law “The New N.Y. Government Reorganization and Citizen Empowerment Act” (the Act). The Act was developed by and introduced in the legislature at the request of Attorney General Andrew Cuomo. While the bill is touted as empowering New York’s citizens, its enactment was done without a deliberative review of its far-reaching impacts. This complicated legislation, which dramatically changes the method of restructuring New York’s local governments, moved swiftly through the State Legislature without any public hearings.

Unfortunately, it is highly unlikely the Act will achieve its stated goals of reducing the number of local governments, increasing efficiency, and lowering property tax burdens. In addition, despite its stated goal of creating a user-friendly process, the Act suffers from numerous procedural defects and creates a process which is more unwieldy than the current procedure for dissolving villages under Article 19 of the Village Law. The Act contains many vague and inconsistent provisions which will undoubtedly lead to confusion, at best, and expensive, time-consuming litigation, at worst, for citizens and local government officials seeking to initiate consolidations and dissolutions.

With this in mind and because the Act makes it substantially easier for the public to initiate dissolution and consolidation proceedings, local government officials should familiarize themselves with its procedures and be prepared to answer questions and address claims regarding dissolution and consolidation. To assist in this effort, this article will give a brief overview of the Act’s more prominent and important provisions. Moreover, while villages may consolidate, the more relevant issue for New York’s villages is dissolution. Consequently, the article will focus on issues involving the dissolution process. Finally, this article is not intended to be an exhaustive explanation of the Act. NYCOM is currently drafting a technical guide (part of NYCOM’s *Municipal Management Series*) which will thoroughly examine all of the Act’s provisions and the procedures for consolidating and dissolving local government entities. Publication of the guide is scheduled for early fall 2009.

## Overview of the Act

The Act applies to “local government entities” which are defined as:

- (a) towns,
- (b) villages,
- (c) districts,
- (d) special improvement districts or other improvement districts,
- (e) library districts, and
- (f) other districts created by law.<sup>1</sup>

Specifically excluded from the Act are school districts, cities, counties, and city and county created districts.<sup>2</sup>

The Act provides for two basic types of local government reorganization:

1. Consolidation, and
2. Dissolution.

Under the Act, consolidation is defined as either:

- (a) the combination of two or more local government entities resulting in the termination of the existence of each of the entities to be consolidated and the creation of a new entity which assumes jurisdiction over all of the terminated entities, or
- (b) the combination of two or more local government entities resulting in the termination of the existence of all but one of the entities which absorbs the terminated entity or entities.<sup>3</sup>

It must be noted that the language of this definition seems to imply that any town, village, or district may consolidate with any combination of other towns, villages, or districts. However, it is unclear whether this may be done without also complying with the requirements of New York’s Annexation Law. For example, a village consolidating with a district would invoke annexation issues as would a village consolidating with a town in which it was not located. Consequently, despite the definition of consolidation in the Act, for legal and practical reasons, it is questionable whether a village may consolidate with any other type of local government entity other than another village.<sup>4</sup>

Dissolution is defined as the termination of the existence of a local government entity. Towns are expressly excluded from the dissolution procedures. Moreover, because of practical issues involved in dissolving districts (dissolution of a district generally requires either that (a) the service the district is providing be discontinued, or (b) the service be provided on a town-wide basis), the Act’s dissolution procedures will most likely be used solely to dissolve villages.

## Methods of Consolidating and Dissolving

There are three basic procedures which can be used to consolidate or dissolve a local government entity:

1. Local governing board initiated consolidation or dissolution;<sup>5</sup>
2. Elector petition initiated consolidation or dissolution;<sup>6</sup> and
3. County initiated consolidation or dissolution.

While the Act addresses consolidation of towns, villages, and districts and the dissolution of villages and districts, the remainder of this article will focus on how village dissolutions will occur under the Act.

## Local Governing Body Initiated Dissolution

Under the Act, village dissolution may be initiated by the village board of trustees. The Act provides flexibility and discretion to village boards of trustees in conducting dissolutions which the board itself initiates. If the dissolution procedure is initiated by

the local governing body, the local governing body itself may decline to proceed with the dissolution process up until the point it puts the matter to a vote of the village residents.<sup>7</sup> Unlike the process for elector initiated dissolution (which is discussed below), the local governing body has the benefit of being able to decline to proceed with dissolving the village after it has had the opportunity to study dissolution and develop a dissolution plan. Even if a village's board of trustees does vote to dissolve, dissolution does not take effect unless it is approved by a majority of voters of the village at a referendum on the proposed consolidation.<sup>8</sup>

### **Elector Initiated Dissolution**

#### *A New Lower Signature Threshold*

Unlike the procedure for dissolution initiated by a village board of trustees, the Act dramatically changes the process for elector initiated dissolutions from the current process, which 21 villages have used to dissolve in the past 30 years. The Act allows electors<sup>9</sup> to initiate the dissolution process by circulating a dissolution petition that, if signed by at least ten percent (10%) of the electors in a village, requires the village residents to vote on whether to dissolve the village. For villages with five hundred or fewer *electors*, the petition must be signed by at least twenty percent (20%) of the number of electors in the village.<sup>10</sup>

Requiring only 10% of electors to sign a petition to dissolve a village is a substantial change from the current law. Under Village Law Article 19, which will be deemed repealed as of March 21, 2010, village residents could initiate the dissolution process by having one-third of a village's electors sign the petition within a 120 day period.<sup>11</sup>

The Act's signature requirements to initiate the dissolution process are likely to cause some confusion because they fail to adequately define the number of signatures required. Unlike Village Law § 19-1900, which provides that the number of electors is calculated based upon the number of electors at the previous village election, the Act does not clarify whether the number of electors is based upon the prior village election, the prior gubernatorial election, the number of electors as of January 1 of that year, the number of electors at the time the petition is first signed, the number of electors at the time the petition is filed with the clerk, etc. Thus, because of the number of electors is a constantly changing figure, individuals circulating petitions and local government officials charged with determining the sufficiency of petitions are left to guess as to how many signatures are required.

In addition, the Act creates the incongruous result that fewer signatures will be needed to initiate the dissolution process in local governments that are larger than others. For example, for a village with 750 electors, a dissolution petition must be signed by 75 electors ( $750 \times 0.1 = 75$ ), while a petition to dissolve a village with 500 electors must be signed by 100 electors ( $500 \times 0.2 = 100$ ).

#### *Vote on the Initiative*

Another substantial change from the existing law on dissolutions is the procedure to have a vote on the dissolution before a plan is developed. A vote on whether to dissolve the village must be held not less than 60 days nor more than 90

days after the local governing body adopts a resolution calling for the dissolution referendum.<sup>12</sup> Under current law, Village Law Article 19 requires that the village conducts a study and develops a plan first and then put the dissolution proposal to a vote of the village residents. In effect, the Act requires village residents to make a decision and then figure out how to implement that decision and what the fiscal and service impacts of that decision will be.

Because village dissolutions are complicated processes, involving a myriad of issues, proponents of dissolutions are likely to argue that the vote is not to dissolve the village, but merely to study dissolution. While this may seem reasonable, there are two important implications: (1) dissolution studies and creating dissolution plans are very costly and disruptive to village operations, and (2) once village residents vote for dissolution, the only way to stop it under the Act is with a much more onerous petition process which is described below.

If the vote to dissolve the village fails, then electors may not initiate the dissolution process again for at least four years.<sup>13</sup>

#### *Developing the Elector Initiated Dissolution Plan*

If the residents of a village vote to dissolve the village, then the local legislative body has 180 days in which to develop a dissolution plan. While there is no reference to creating a committee to develop the plan, there are many practical reasons for doing so. Village Law Article 19 requires that a study committee be created to develop the dissolution plan. There are two major reasons for creating a study committee to develop the plan:

1. Developing a dissolution plan is extremely time-consuming and village boards of trustees will have to continue performing their normal functions while the dissolution plan is developed; and
2. There will be substantial distrust of any plan the board develops by many of the proponents of dissolution. Consequently, creating a study committee will serve as a method of allaying the criticism from dissolution proponents.

Note that creating a study committee will not absolve the board of its statutorily defined responsibilities to hold hearings on and approve the final plan. Moreover, in creating a study committee to draft the dissolution plan, the study committee may wish to direct that representatives from the town(s) in which the village is located sit on the board as well as the mayor and/or one member of the board of trustees. Consequently, the study committee should serve as the drafting entity.

Another key change in the dissolution process is the Act's timeframe in which the dissolution plan must be created. Under Village Law Article 19, the timeframe for developing the plan was open-ended. The Act imposes a 180 day time requirement. While some villages may be able to develop dissolution plans within 180 days, most villages will find this time period extremely difficult to comply with. Village dissolutions are so complicated and time-consuming that most villages retain a consultant to study the implications of dissolution and assist in developing a plan. The process of hiring a consultant alone frequently takes weeks. The intense

fact-gathering and analysis and the negotiations between the village and the town(s) to determine how services will be provided upon dissolution of the village generally take a year. All of this takes place while the village officials continue carrying on the normal village operations.

### *Reconsidering “Dissolution by Default”*

Under the Act, once the dissolution plan is finalized by the village board of trustees, the plan becomes effective *unless* a petition is submitted calling for the dissolution plan to be put to a vote of the village’s residents. While this requirement appears to be intended to provide opponents to the dissolution in general or the dissolution plan in particular an opportunity to put it to a vote of the public, the specific petition requirements imposed by the Act are extremely onerous and seems to be designed to thwart having votes on finalized dissolution plans. The petition putting a dissolution plan to a vote of the village residents must be signed by 25 percent of the village’s electors and filed with the clerk of the local government entity within 45 days of the village board finalizing the dissolution plan. This procedure is much more burdensome than the petition requirement to initiate the process (a 10 percent signature requirement with no time period) or the petition procedure under Village Law § 19-1900 (33 percent signature requirement with a 120 day time period). Thus, the Act creates a situation where villages dissolve by default, even if the arguments for dissolving that were asserted at the beginning of the process are found to be without merit after dissolution is actually studied and a plan is formed.

If a petition is filed in a timely manner, then the village is required to hold a referendum not sooner than 30 days, but not later than 90 days after the plan is finalized on whether the village should be dissolved pursuant to the finalized plan.

### **County Initiated Consolidation and Dissolution**

Another provision of the Act which has garnered considerable attention and concern is the Act’s amendment to Municipal Home Rule Law § 33-a, which provides for county boards of supervisors to initiate consolidation and dissolution. It must be noted that Municipal Home Rule Law § 33-a is not a new provision of law, but was originally adopted in 1970. And while on its face the Act appears to give broad power to counties with boards of supervisors to restructure local governments, any county initiated proposal must be put to a vote of the residents of the county and only takes effect if it receives a majority vote in favor of the proposal from both (a) the total votes cast in the county outside of the cities and (b) the total votes cast in the villages subject to the proposed consolidation or dissolution. This requirement combined with the fact that any proposal would by necessity have to address the practical and fiscal implications of dissolution or consolidation, raise serious questions about whether this provision will be utilized at all.

### **Conclusion**

The Act creates a complicated statutory scheme with many vague, ambiguous, and illogical provisions. Unfortunately, because the Act is radically different from any other provision currently in State law, there is no legal precedent on how to

interpret and implement the Act’s provisions. This article has given a very cursory overview of the Act, mostly in the context of village dissolution. NYCOM is in the process of drafting a comprehensive guide to the Act, which is scheduled to be published and distributed to its members in early fall 2009. In addition, NYCOM is drafting proposed amendments to the law to address the Act’s deficiencies. Before taking any action implementing the Act, municipal officials are strongly encouraged to consult with their municipal attorney. Any questions regarding the Act can be directed to Wade Beltramo, NYCOM General Counsel at wade@nycom.org or (518) 463-1185.

#### *Endnotes*

1. Gen. Mun. Law § 750(13).
2. *Id.*
3. Gen. Mun. Law § 750(2).
4. Gen. Mun. Law § 750(5).
5. The consolidation procedures are set forth in Title 2 of the Act.
6. The dissolution procedures are set forth in Title 3 of the Act.
7. See Gen. Mun. Law § 776(3).
8. See Gen. Mun. Law § 777.
9. Elector is defined “as a registered voter of this state registered to vote in the local government entity subject to consolidation or dissolution proceedings conducted pursuant to this article.” Gen. Mun. Law § 750(7).
10. Gen. Mun. Law § 779. Note that as of August 9, 2009, the Attorney General’s website contained written and audio/visual information that incorrectly stated that the 20% threshold applied in local government entities with “populations” of 500 or fewer. Gen. Mun. Law § 779 states in relevant part “[W]here the local government entity to be dissolved contains five hundred or fewer electors, the petition shall contain the signatures of at least twenty percent of the number of electors”.
11. Note that the gathering 1/3 number is based upon the number of registered voters at the previous village election.
12. Gen. Mun. Law § 780.
13. Gen. Mun. Law § 781(4).