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### ZONING AND LAND USE PLANNING

# New Law Provides Tools To Prune Local Government

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**A** new law, the “New N.Y. Government Reorganization and Citizen Empowerment Act,”<sup>1</sup> which took effect on March 21, has the potential for revolutionizing local government in New York State. The act sets forth, in a new Article 17-A of the General Municipal Law, the requirements and uniform procedures for the consolidation or dissolution of certain local government entities.<sup>2</sup> The advocates of the act undoubtedly believe that it is going to result in citizens, local officials, and counties seeking to reorganize local governments on a level that has not been seen before. Toward that end, Attorney General Andrew Cuomo, who developed the act, has a vast amount of information available on a Web site<sup>3</sup> about the steps that now can be taken under the new law. Opponents of the act view it as an attempt to erode zoning and other home rule powers<sup>4</sup> vested in local governments by the New York State Constitution and Municipal Home Rule Law.

Significantly, the act does not mandate the reorganization of any local government entity where a majority of the citizens are opposed. Thus, it remains to be seen just how many of the more than 10,000 towns, villages, authorities, and special districts throughout the state<sup>5</sup> will become the subject of consolidation or dissolution efforts, and whether any such action will achieve savings and reduce local property taxes and other taxes and fees, while enhancing the delivery of services. What is certain, however, is that the tools now are in place for such a process to begin.

#### Key Terms

There are numerous important terms defined in the act. One of the most significant is “local government entity,” which is the term for the local governments subject to consolidation

or dissolution under the law. A local government entity is defined as a town, village, district, special improvement district, or other improvement district, including, but not limited to, special districts created pursuant to Articles 11 (fire, fire alarm, and fire protection districts), 12 (such as sewer, wastewater disposal, drainage, and water districts), 12-A (certain “improvement districts”), or 13 (including the Fishers Island garbage and refuse district) of the Town Law, library districts, and other districts created by law; specifically excluded from the definition of a local government entity are school districts, city districts, and special purpose districts created by counties under county law.

“Consolidation” is defined as either 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 that assumes jurisdiction over all of the terminated entities, or the combination of two or more local government entities resulting in the termination of the existence of all but one of the entities, which entity shall absorb the terminated entity or entities. “Dissolution” means the termination of the existence of a local government entity. Another key term is “elector,” defined in the act as a registered New York voter who is registered to vote in the local government entity subject to consolidation or dissolution proceedings conducted pursuant to Article 17-A; notably, there is no longer any property-ownership requirement for a person to be an elector.



THE TOWN of Goshen, whose municipal building is pictured above, is one of **more than 4,200 local governments** located in New York state.

#### General Principles

Under the act, the consolidation or dissolution of a local government entity may be initiated in one of two ways: by an entity’s governing body, or by an initiative petition of electors residing in a particular entity. Two or more local government entities, whether within the same county or different counties, may be consolidated into a single local government entity if each of the local government entities is contiguous<sup>6</sup> to at least one of the other consolidating local government entities and if together the local government entities would form a consolidated local government entity of a kind or class that is authorized under New York law. The requirement that local government

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entities be contiguous to consolidate does not apply to entities other than towns and villages.

The governing body initiated process is triggered by the development and approval of a proposed written plan for consolidation or dissolution, followed by the plan's publication and public hearings aimed at maximizing citizen participation. A proposed joint consolidation agreement should specify:

- (a) the name of each local government entity to be consolidated;
- (b) the name of the proposed consolidated local government entity, which name shall distinguish it from the name of any other like unit of government in the state of New York (except the name of any one of the entities to be consolidated);
- (c) the rights, duties, and obligations of the proposed consolidated local government entity;
- (d) the territorial boundaries of the proposed consolidated local government entity;
- (e) the type and/or class of the proposed consolidated local government entity;
- (f) the governmental organization of the proposed consolidated local government entity insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;
- (g) a fiscal estimate of the cost of and savings that may be realized from consolidation;
- (h) each entity's assets, including, but not limited to, real and personal property, and the fair monetary value thereof;
- (i) each entity's liabilities and indebtedness, bonded and otherwise, and the fair monetary value thereof;
- (j) terms for the disposition of existing assets, liabilities, and indebtedness of each local government entity, jointly, separately, or in certain defined proportions;
- (k) terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, orders, and the like within the proposed consolidated local government entity;
- (l) the effective date of the proposed consolidation; and
- (m) the time and place or places for the public hearing or hearings on such proposed joint consolidation agreement.

#### Dissolution

The act also provides for dissolution. Generally speaking, a local government entity other than a town may be dissolved and terminated. Dissolution proceedings may be commenced by a resolution of the governing body of the local government entity to be dissolved endorsing a proposed dissolution plan, or elector initiative.

When a governing body of a local government entity proposes to dissolve the local government entity, it endorses a proposed dissolution plan for the purpose of commencing dissolution proceedings. The act requires that a proposed

dissolution plan specify matters similar to that required of a plan of consolidation.

Consolidation of local government entities other than towns or villages may go into effect after the governing body or bodies give final approval to the plan. However, consolidation or dissolution of towns or villages cannot go into effect without the approval of a majority of voters residing in each of the affected entities at a referendum. Likewise, the dissolution of a village must be approved by a majority vote.

#### The Citizen Process

The citizen-initiated process is triggered by the filing of a petition containing the signatures of at least 10 percent of the electors or 5,000 electors, whichever is less, in each local government entity to be consolidated or dissolved. For small entities with 500 or fewer electors, a petition must contain the signatures of at least 20 percent of the electors.

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Significantly, the act does not mandate the reorganization of any local government entity where a majority of the citizens are opposed.

The filing of a petition requires a referendum to be held in each of the affected entities. If a majority of the electorate in each entity votes in favor of consolidation or dissolution, then the entities' governing body or bodies must meet and develop a proposed written plan to implement the voters' decision, followed by the plan's publication and public hearings. Consolidation or dissolution takes effect when the governing body or bodies approve a final version of the plan. However, citizens may, within 45 days after the plan's final approval, petition for a permissive referendum on the question whether the plan should take effect. To compel such a referendum, the petition must contain the signatures of at least 25 percent of the electors or 15,000 electors, whichever is less, in each local government entity to be consolidated or dissolved.

#### Other Provisions

The act also authorizes the commencement of a court proceeding seeking a court order compelling consolidation or dissolution following a citizen-initiated consolidation or dissolution. In addition, the act lays out various rules and procedures regarding transition issues raised by the dissolution or consolidation of local government entities. Among the issues the act addresses are the election and appointment of officials; the effect of transition on employees, existing laws, and actions and procedures; debts, liabilities and obligations; the registration of electors; the disposition of records, books and papers; and the winding down of the affairs of a dissolved entity.

Finally, the act facilitates the ability of counties to exercise the authority vested in them by the State Constitution<sup>7</sup> to reorganize local governments, expanding on the provisions

of the Municipal Home Rule Law §33-a(1) that limited counties to abolishing only "offices, departments and agencies" of local governments as opposed to the governments themselves. Thus, a county now may effect dissolutions, mergers and consolidations of whole units of government, subject to the approval by the voters of the county in a referendum, with special majority requirements.<sup>8</sup>

#### Conclusion

To be sure, many local government entities play a crucial role in governance, providing services to geographic areas that other governments might not serve, establishing land use and zoning laws to regulate development, managing critical public services, and bringing attention to specific discrete problems. There is, therefore, a great deal to consider when citizens, or elected officials, contemplate the consolidation or dissolution of local government entities. Now, there are new, well-defined rules that clearly set forth the procedures that govern such actions. It will be interesting to see what happens with the act having become effective.

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1. See Bill No. A8501, available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08501&Summary=Y&actions=Y&Votes=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08501&Summary=Y&actions=Y&Votes=Y&Memo=Y&Text=Y).

2. There were statutory provisions existing before the enactment of the act that provided for local government reorganization. However, the applicable statutes were scattered throughout the Town Law, Village Law, General Municipal Law ("GML"), and Municipal Home Rule Law. Moreover, for different types of local government entities, there were different consolidation and dissolution rules and procedures. In addition, some rules seemed anachronistic; for example, the Town Law provided that a citizen had to own taxable property within a water district to sign a petition or vote in a special town election on a proposition to consolidate the district with another one. See, e.g., Town Law §206(7) (repealed).

3. See [http://www.ag.ny.gov/bureaus/legislative/government\\_consolidation/about.html](http://www.ag.ny.gov/bureaus/legislative/government_consolidation/about.html).

4. See "Mayor Ed Sieban fights Albany on Misguided Consolidation Plan," at [http://www.villageofeastrockaway.org/index.asp?Type=B\\_PR&SEC=%7BFDC30B8-1321-4505-A934-899DD2111A23%7D](http://www.villageofeastrockaway.org/index.asp?Type=B_PR&SEC=%7BFDC30B8-1321-4505-A934-899DD2111A23%7D).

5. *Id.*

6. "Contiguous" means when a portion of a town or village abuts the boundary of another town or village, including a town or village separated from the exact boundary of another town or village by a street, road, railroad, highway, river, or other natural or artificial stream or body of water. GML Art. 17-A, §750(4).

7. N.Y. Const. Art. 9, §1h(1).

8. In addition to the county-wide referendum requirement, local laws adopted by a county that seek to abolish or consolidate one or more villages must also receive a majority of all the votes cast in all of the affected villages, considered as one unit.