

**ATTORNEY GENERAL'S LEGISLATIVE PROGRAM
PROGRAM BILL #1**

Senate #

Assembly #

**Attorney General Andrew Cuomo
The Capitol, Albany, NY 12224
(518) 486-3000**

MEMORANDUM

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 provisions of the town law and the village law, in relation thereto.

PURPOSE:

This bill — entitled “The New N.Y. Government Reorganization and Citizen Empowerment Act” (hereinafter referred to as “the Act”) — empowers citizens, local officials and counties to reorganize outdated and inefficient local governments. The Act establishes uniform and user-friendly procedures for local government entities to consolidate or dissolve. Through the use of these procedures, in appropriate cases, local governments can enhance the delivery of services, achieve savings and reduce local real property taxes and other taxes and fees.

SUMMARY OF PROVISIONS:

Section 1 of the Act sets forth the bill’s short title: “The New N.Y. Government Reorganization and Citizen Empowerment Act”.

Section 2 adds a new article 17-A of the General Municipal Law, consisting of the following four titles:

- Title I (§ 750) sets forth definitions;
- Title II (§§ 751-772) sets forth rules and procedures for the consolidation of local government entities;
- Title III (§§ 773-790) sets forth rules and procedures for the dissolution of local government entities; and
- Title IV (§§ 791-793) sets forth certain miscellaneous provisions.

Section 3 amends Municipal Home Rules Law § 33-a, by authorizing counties to abolish units of local government, subject to a county-wide referendum with special majority requirements.

Sections 4 through 17 amend and repeal various provisions of existing law.

Section 18 sets forth a savings clause pursuant to which the provisions of the Act should not be construed to impair pending consolidation or dissolution proceeding commenced under existing law prior to the Act's effective date.

Section 19 provides the effective date of the Act.

JUSTIFICATION:

New York State has more than 10,521 local governmental entities, which include towns, villages and different types of districts. These entities impose on the citizenry layer upon layer of overlapping taxing structures. As a result, New York's current system of local government is too expensive, confusing, inefficient and susceptible to waste, fraud and abuse.

Illustrative of the dysfunction in the current system of local government is the more than 6,900 town special districts operating in New York. State law now authorizes towns to establish special districts for an ever increasing number of functions, including such arcane functions as aquatic plant growth control (Town Law §§ 190, 198(10-e)), disposal of duck waste (Town Law § 198-a), and fallout shelters (Town Law §§ 190, 198 (10-c)). To be sure, some special purpose government entities play a crucial role in town governance, by providing services to geographic areas that other governments might not serve, managing critical public services, and bringing attention to specific discrete problems. Over the years, however, special districts have proliferated at an alarming rate, increasing the cost of local government.

Indeed, the astounding number of local governments in New York has contributed to the rise of local real property taxes. Throughout the State there are large pockets of overlapping taxing entities. Erie County alone has 1,044 such entities, including 3 cities, 25 towns, 15 villages, 32 fire districts and 939 special districts. Likewise, Nassau and Suffolk Counties combined have over 340 special districts. In Hamilton County, there exists one layer of government for every 132 people. Such examples can easily be multiplied.

For over 75 years, academics, commissions, government officials, good government groups and informed citizens have recognized the inherent dysfunction in New York's local government system. In 1935, for example, the New York State Commission for the Revision of the Tax Laws, commonly referred to as the Mastick Commission, noted that there were "too many units of [local] government," resulting in the "duplication of functions, overlapping areas, overlapping authority and

overlapping debt.” Sixth Report of the New York State Commission for the Revision of the Tax Laws, at 15-16 (1935). The Mastick Commission criticized the State’s local government system as violative of the “‘first principles’” of political science “‘taught in our high schools, colleges and universities’”, and “‘so contrary to elementary principles of human organization that it is difficult if not impossible for the administration of public affairs to be carried on with efficiency.’” *Id.*

Sixty years later, a study prepared by the 1995 Temporary State Commission on Constitutional Revision revealed that the problem had only grown in dimension:

New York’s forms of general purpose government — counties, cities, towns, and villages — were devised in the eighteenth century and developed in the nineteenth. But they have not been modified in the twentieth century, despite enormous changes in population size and diversity, economic activity, transportation systems, settlement patterns and communications technology. Instead, the state has added frequently but streamlined rarely. Localities kept their forms, but their functions converged. Where necessary, single-function, special districts and authorities were created to augment existing entities, increasing layering and complexity. The result is not a system, but a maze of overlapping and often competing jurisdictions.

Effective Government Now for the New Century: The Final Report of the Temporary State Commission on Constitutional Revision, at 15 (1995).

Study after study has demonstrated that the reorganization of local government entities — through consolidation and dissolution — holds the potential for minimizing bureaucracy and thus maximizing efficiency and savings.¹ Nevertheless, despite a virtual consensus that the State’s local government system needs to be fixed, consolidations and dissolutions of local government entities rarely occur.

Multiple impediments stand in the way of local government reorganization, but existing law is one which looms large. The applicable statutes are randomly scattered throughout the Town Law, Village Law, General Municipal Law and Municipal Home Rule Law, creating an incomprehensible maze for lawyers and laypersons alike. For different types of local government entities there are different consolidation and dissolution rules and procedures, many of which are inconsistent

¹ See generally, New York State Commission on Local Government Efficiency & Competitiveness, *21st Century Local Government* (April 2008); Nassau County Office of the Comptroller, *Cost-Savings Ideas for Special Districts in Nassau County* (Dec. 13, 2006); *Report of the Governor’s Blue Ribbon Commission on Consolidation of Local Government* (Oct. 1993); The Nelson A. Rockefeller Institute of Government, *Report on the Local Government Restructuring Project* (1992).

and nonsensical. Some rules are anachronistic, harkening back to a bygone era. For example, a citizen must own taxable property within a water district in order 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). Such pecuniary and propertied qualifications should have no place in contemporary society. A person's wealth is irrelevant to their ability to participate intelligently in the electoral process.

Additionally, citizen petition requirements related to consolidations and dissolutions, to the limited extent they exist under current law, are complex, confusing and difficult to meet. In some cases, citizens cannot even require their elected representatives to consider as an option the consolidation or dissolution of a local government entity. Such voter powerlessness places New York out of step with numerous other states that grant their citizens the right to readily initiate local government reorganizations.

The Act dramatically reforms existing law. It repeals, amends and supersedes outdated statutes and establishes in a single article of the General Municipal Law uniform and all-inclusive procedures under which local government entities² may be consolidated or dissolved. Notably, the Act does not mandate the reorganization of local government entities in which a majority of the citizens are opposed to it. The bill will, however, facilitate consolidations and dissolutions throughout the State, by giving citizens, local officials and counties a readable roadmap to follow.

Under the Act, the consolidation or dissolution of local government entities may be initiated in one of two ways:

- by the entities' governing body, or
- initiative petition of electors residing in the entities.

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. 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 and/or villages cannot go into effect without the

² The phrase "local government entity", as used in the new article 17-A of the General Municipal Law established by the Act, 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, 12, 12-A or 13 of the town law, library districts, and other districts created by law; provided, however, that a local government entity shall not include school districts, city districts or special purpose districts created by counties under county law."

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-initiated process is triggered by the filing of a petition containing the signatures of at least 10% 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 the petition shall contain the signatures of at least 20% of the electors.) The Act strikes from existing law all pecuniary or property qualifications for signing the petition. The filing of the petition requires a referendum to be held in each of the 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% of the electors or 15,000 electors, whichever is less, in each local government entity to be consolidated or dissolved.

The Act anticipates the possibility that the governing body or bodies of local government entities are either unable or unwilling to comply with the requirements imposed on them during the course of a citizen-initiated consolidation or dissolution. In such circumstances, the Act authorizes the commencement of a court proceeding which may, if necessary, result in an order compelling consolidation or dissolution, thereby ensuring the people's will is carried out.

Also, the Act lays out various rules and procedures regarding transition issues raised by the dissolution or consolidation of local government entities. Among the issues addressed 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 to reorganize local governments. N.Y. Const. Art. 9, § 1h(1) confers upon counties the authority to transfer or abolish units of local government, subject to multiple referenda requirements. In 1970, however, the Legislature did not fully implement the counties' constitutional authority when it enacted Municipal Home Rule Law § 33-a(1). That statute presently limits counties to abolishing only "offices, departments and agencies" of local governments, as opposed to the governments themselves. Further, existing law conditions abolition on the county transferring all of the functions and duties of the offices, departments and agencies to other units of government. The Act remedies this curtailment of counties'

authority, by amending Municipal Home Rule Law § 33-a(1) to authorize counties to abolish entire units of local government — including cities, towns, villages and special districts — when the level and quality of ongoing services are transferred. With these changes to existing law, a county may, in appropriate cases, effect dissolutions, mergers and consolidations of whole units of government, subject to the approval by the voters of the county in a referendum.

FISCAL IMPLICATIONS:

By facilitating the dissolution and consolidation of layers of bureaucracy that duplicate services and drive up costs, the Act will provide savings and reduce real property taxes and other taxes and fees. Additionally, when local governments, citizens and/or counties begin to utilize the consolidation and dissolution procedures established by the Act, there will be overall long term savings to the State.

EFFECTIVE DATE:

This bill will take effect two hundred and seventy days after it is enacted.