

REVIEW OF IMPLEMENTATION PLANS FOR AVAILABLE OPTIONS

Emergency Ambulance Services in the Town of North Hempstead, New York

This summary presents the discrete implementation plan steps required for each of the options contained in the final report, *A Review of Options for Ambulance Services in the Town of North Hempstead*. The report, released in mid-2010, followed a year-long study of emergency ambulance and EMS service provided throughout the Town of North Hempstead. Although the final *Options* report examined opportunities to enhance the emergency response system in several areas – streamlining emergency dispatch, mitigating the burden of non-emergency calls, leveraging economies of scale through standardized procurement, and more effectively meeting the volunteer challenge – the report’s fundamental objective involved an evaluation of options for delivering emergency ambulance services in a more cost-effective way. One aspect of that evaluation involved potential restructuring that might yield *new* revenues to offset public costs (*i.e.* reduce taxes), enable reinvestment in the community’s emergency response system, or both.

The following structural options were identified in the *Options* report:

1. “Spinning off” current fire-based ambulance systems into separate, stand-alone entities (*identified by the Town as its “preferred option”*);
2. Shifting to the County’s Emergency Ambulance Bureau (EAB) as sole provider in the community;
3. Revising State law to enable volunteer fire ambulance service providers to engage in “cost recovery;” and
4. Contracting for emergency ambulance service with private vendors and/or through the use of dedicated ambulance districts.

The implementation process for potential options was reviewed in the *Options* report, as well as in an accompanying comprehensive “Review of Legal Issues for Baseline Review of Ambulance Services and EMS in the Town of North Hempstead,” prepared by Sahn Ward & Baker, PLLC, Attorneys at Law. The implementation processes are summarized below for each option.

“Spinning off” current fire-based ambulances

As noted in the *Options* report, “One available option involves ‘spinning off’ existing fire-based ambulance services into separate, standalone entities – specifically, independent non-profit corporations. This approach would enable the system to retain the embedded investments it has already made in its fire-based ambulance and emergency medical system, and reconstitute the organizations in ways that permits them to engage in cost recovery under state law.

The implementation procedure for this option, as detailed in the “Review of Legal Issues...” is as follows:

- Note: The members of the not-for-profit corporation (NFPC) can be the same members of the existing ambulance or rescue squads of the fire district or department, and can use the same equipment and space that it previously occupied when those services were provided by the fire department.
- In order to “spin off” volunteer fire departments’ ambulance functions into autonomous entities, the ambulance services provided must be severed from the other services of the volunteer fire departments. This may be accompanied by either 1) rescinding prior authorization to the fire department to provide such ambulance service, or 2) terminating an existing contract to provide ambulance service. Thereafter, the Town may provide general ambulance services to its constituents in one of two ways. First, the Town may contract with one or more organizations for general ambulance services. Second, the Town may establish one or more ambulance districts in the Town.
- Regarding the “spinning” off of ambulance services, the implementation process is as follows:
 - Establish NFPC via filing signed Certificate of Incorporation with the New York State Department of State pursuant to Section 402 of the Not-for-Profit Corporation Law
 - Application for federal/state tax exemptions
 - Application for operating authority from New York State Department of Health (approximately 2 months)
 - The simplest way is for the fire department to transfer its operating authority to the NFPC
 - Secure insurance coverage for NFPC operations
 - Possible to address by adding the NFPC to the fire department’s existing policy as an “additional insured,” though final determination will be subject to the actual insurance carrier; if not permitted, the NFPC will be required to obtain a new policy covering its own operations
 - Contract with Town (*for additional information on the implementation process whereby the Town contracts with service providers for some/all territory in the municipality, see the later section on “contracting for emergency ambulance service with private vendors through the use of dedicated ambulance districts”*)

The “Legal Review...” completed by Sahn Ward & Baker, PLLC indicates the “spinning off” process can likely be completed within three months. It should be noted, however, that this process would need to be replicated by *each* volunteer fire department that opts to spin off its own ambulance service.

Shifting to the County's EAB as Exclusive Ambulance Provider

As noted in the *Options* report, the largest provider of ambulance services in Nassau County – in operational support and equipment terms, as well as financially and in total call volume – is the County Police Department's Emergency Ambulance Bureau. As noted, under state law the EAB is empowered to (and currently does) engage in cost recovery for its services. The County's ambulance bureau realized \$17.2 million in 2007, \$16.9 million in 2008, and budgeted \$19.5 million in 2009. Extending the County EAB's role in ambulance service provision – up to the extreme of making it the community's exclusive provider of ambulance services – would enable realization of the \$2.8 to \$3.2 million in potential revenues cited above. At least one previous study – the 2006 “Report of the Nassau County Emergency Ambulance Service Modernization Task Force” – suggested the addition of County EAB buses, not only to relieve the growing burden on the volunteer system but also to “(translate) into more billable recovery from...patients, as the NCPD EAB bills for patient transports.”

As noted in the *Options* report, there are pointed implementation challenges for this option. Beyond the need to add ambulance equipment (and personnel) at the County level, shifting to the County as sole provider would result in the loss of the major investments already embedded in the fire-based ambulance system. The volunteer fire-based providers serving portions of the Town of North Hempstead run a combined twenty-two ambulances and eleven “fly cars” and EMS utility vehicles, and comprise hundreds of volunteer personnel. Simply shifting ambulance responsibility exclusively to the County would result in a suboptimal use of these valuable resources.

The implementation process is as follows:

- Remove current fire-based ambulances from the emergency response system, either through unilateral action of the individual fire departments (*i.e.* ceasing to respond to calls via 911) or decertifying their respective ambulance units altogether; and
- Add capital and staff capacity to the Nassau County Emergency Ambulance Bureau at sufficient level to offset the lost capacity of volunteer fire units.

Revise State Law

All else being equal, the current ambulance and EMS framework in the community could continue and revenues could be realized only through a change to General Municipal Law, Section 209-b. Notably, there have been recent efforts to do just that. In 2010, the Fireman's Association of the State of New York (FASNY) added to its legislative agenda a call “to amend the General Municipal Law to authorize fire departments and companies that provide emergency medical services to establish fees and charge for the services.” Such an amendment would enable volunteer fire-based ambulance providers to begin the cost recovery process, and allow the system to realize at least a portion of the \$2.8 to \$3.2 million in potential revenues cited above.

The implementation process is as follows:

- Revise State GML Section 209-b to remove the prohibition on volunteer fire companies from engaging in cost recovery related to emergency ambulance services.

Third-Party Contracting for Emergency Ambulance Service

Another option available to the Town (and any villages within it) involves contracting for emergency service, general ambulance service or a combination of such services. Among the contractual options granted in General Municipal Law, Section 122-b is the ability to engage outside organizations “to supply, staff and equip suitable emergency medical service or ambulance vehicles and operate such vehicles for the furnishing of pre-hospital emergency treatment.” Permissible contracts entered into pursuant to this section include contracting with a private ambulance service, a volunteer ambulance corps and/or a private hospital.

This option has gotten substantial visibility in Nassau County over the past two years due in large part to a program launched by the Incorporated Village of Rockville Centre in the neighboring Town of Hempstead. In December 2008, the Village initiated a contract with North Shore-Long Island Jewish Health System’s Center for Emergency Medical Services (CEMS). In response to volunteer pool limitations that compromised the fire department’s ability to respond adequately to calls at certain times of the day, the Village engaged CEMS to provide supplemental ambulance service for twelve hours per day. Under terms of the relationship, CEMS places an ambulance in the Village from 6:30 am to 6:30 pm, Monday through Friday. Prior to the contract, that time window presented the greatest challenge for assembling volunteer responders. Begun as a six-month pilot program, the relationship was expanded into a full-year contract in June 2009. Costs are addressed on a sliding scale, and are subject to the number of calls CEMS receives. This is because, as a private ambulance service, North Shore LIJ is permitted to bill insurance and/or patients for services. In the event CEMS has a sufficient number of responses that payments cover its costs, the Village has no financial obligation. On the other hand, if CEMS’ response numbers are insufficient to produce full cost recovery, the Village is responsible to pay a fee up to a maximum of \$108,000.

While villages have authority to contract for ambulance services within their boundaries (using the Rockville Centre model), if the Town sought to establish a similar framework the most logical approach would be through the use of an ambulance district. As noted in the “Legal Review...,” the Town’s ability to create a town-wide model along the lines of Rockville Centre is limited, given home rule protections in Town Law, Section 190: “No such district shall be established...in a city or in an incorporated village provided, however, that such district may be established...wholly or partly within an incorporated village on consent of the village expressed in local law, ordinance or resolution...” In other words, villages’ prerogative to enter into (or not enter into) such contracts for ambulance services are protected in state law. The Town cannot force villages to adopt such a contractual arrangement for ambulance services. However, the Town can create ambulance districts in other (unincorporated) parts of its territory. As noted in the “Legal Review...,” “NY Town law provides two (2) separate procedures for the establishment of an ambulance district. These procedures can be found in Articles 12 and 12-A of the NY Town Law. The main distinction between these two procedures is that the establishment of an ambulance district under Article 12 requires that the process be commenced upon a petition of the real property owners situated within the proposed district owning at

least one half of the assessed value of the taxable real property therein, while the establishment procedure under Article 12-A may be commenced by a vote of the Town Board, but is then subject to permissive referendum.”

Given the procedural detail involved in the creation of ambulance districts and/or the contracting for services therein, refer to the relevant section on pages 10-27 of the “Legal Review...” attached hereto.

**REPORT ON LEGAL ISSUES FOR
BASELINE REVIEW OF AMBULANCE
SERVICES AND EMS IN THE TOWN OF
NORTH HEMPSTEAD**

May 6, 2010

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INTRODUCTION

Current Legal Framework—Pursuant to CGR Baseline Analysis and Review of Ambulance Services and EMS in the Town of North Hempstead

As explained in the CGR Report prepared for the Town of North Hempstead, the delivery of ambulance services and EMS (emergency medical services) within the Town of North Hempstead is built on different types of providers. Some of the providers are volunteer agencies, most of which are fire districts or fire departments whose territories are fully or partially located within the Town. A non-volunteer provider is the Nassau County Police Department (the “NCPD”). Further, as outlined in the CGR Report, some of the fire protection agencies provide both EMS and general ambulance services, while others provide EMS only. Moreover, the NCPD Emergency Ambulance Bureau has county-wide jurisdiction whereas the volunteer providers operate only within a defined service area. Another provider, the Mineola Volunteer Ambulance Corps, (“MVAC”), a non-profit corporation, has a contract for delivering services with the Village of Mineola and mutual aid agreements with other agencies.

The volunteer agencies that provide both general ambulance services and EMS have the capability of stabilizing patients at incident or accident scenes and transporting them to a local medical center for emergency treatment. The volunteer agencies that are EMS only providers are capable of stabilizing individuals at incident or accident scenes in advance of the arrival of a transporting ambulance.

In the Town of North Hempstead, there are three (3) categories of volunteer agencies that provide both general ambulance services and EMS. These categories are as follows:

(i) Fire Districts or Joint Fire and Water Districts:¹ By statute, a fire district formed under N.Y. Town Law section 170 is a separate unit of local government that is established for the purpose of providing fire protection and response to emergencies. The law allows a fire district to contract with a neighboring municipality or district and its services may span several towns or portions of towns.²

(ii) Fire Departments:³ A municipal corporation may sometimes afford fire protection by means of fire departments. A municipal fire department is administered by a board of fire commissioners or, where no board of fire commissioners has been appointed, by the village board of trustees and the council of the fire department.⁴ The terms “fire department” and “fire company” are sometimes used interchangeably. However, there is a distinction.⁵ “A municipal fire department is a corporation consisting of the members of all of the fire, hose, protective and hook and ladder companies of a municipality whereas a fire company is an association or a corporation, separate and distinct from the municipality, but is, in certain respects, under the control of the municipal authorities.”⁶

¹ In the Town of North Hempstead, The Garden City Park Fire Department, Manhasset-Lakeville Fire Department, and Westbury Fire Department fall under this category.

² See N.Y. Town Law § 189-a (“The town board of a town or the town boards of more than one town, and the board of trustees of an incorporated village or the boards of trustees of more than one incorporated village . . . located in said town or towns are hereby authorized to establish in such town or towns and village or villages a joint fire district . . . provided all of the territory in such joint fire district shall be contiguous.”); N.Y. Gen. Mun. Law § 119-o (“[M]unicipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project.”).

³ In the Town of North Hempstead, The Floral Park Fire Department, New Hyde Park Fire Department, and Williston Park Fire Department fall under this category.

⁴ See N.Y. Village Law § 10-1000; see also N.Y. Village Law § 3-308 (stating that “[t]he board of trustees *may* establish or abolish a board or boards of fire . . . commissioners or a single municipal board having the powers, duties and responsibilities of two or more such separate boards”) (emphasis added).

⁵ See N.Y. Op. State Comp. No. 90-19 (1990), available at, <http://www.osc.state.ny.us/legal/1990/legalop/op90-19.htm>

⁶ *Id.*

(iii) Fire Companies:⁷ Fire protection services are also provided by volunteer fire companies. Independent volunteer fire companies are special not-for-profit corporations formed to provide fire protection to a fire district, joint fire and water district, fire protection district, or municipality under contract.⁸

1. The General Statutory Framework Governing Fire Protection Agencies Under New York State Law:

A. Fire Districts – Generally

Fire districts are established pursuant to N.Y. Town Law, chapter 62, article 11, section 170, et.seq. Once a fire district is established, a board of fire district commissioners is appointed by the town board.⁹ N.Y. Town Law section 176 describes and sets forth the powers and duties of fire district commissioners. Of particular note is Town Law section 176(22). This subsection authorizes contracts for fire protection, emergency service and general ambulance service within the fire district with any city, village, fire district or incorporated fire company under the statutory guidelines as stated subsection 22. In this regard, the statute states that the fire district commissioners:

may contract for the furnishing of fire protection within the fire district with any city, village, fire district, or incorporated fire company having its headquarters outside such fire district and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district; provided there is not fire company maintaining its headquarters in said district or provided the fire department of said district is, in the judgment of such fire commissioners, unable to render adequate and prompt fire protection to such district or any area thereof. The contract may also provide for the furnishing of (1) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firemen would be required and (2) general

⁷ In the Town of North Hempstead, Carle Place Fire Department, Glenwood Fire Department, Great Neck Vigilant Fire Company, Port Washington Fire Department, and Roslyn Rescue Fire Department fall under this category.

⁸ See N.Y. Not-for-Profit Corp. Law § 1402.

⁹ N.Y. Town Law §174.

ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law.¹⁰

B. Fire Departments – Generally

A separate board of fire commissioners may be established by the board of trustees of a village.¹¹ The board of fire commissioners of a village may, subject to approval of the board of trustees, purchase suitable equipment for the prevention and extinguishment of fires or for the purposes of equipping an emergency and first aid squad within the fire department. It may also erect and maintain the necessary buildings for the fire department, and adopt rules and regulations governing fire companies and fire departments.¹²

Further, under Village Law section 10-1004, “[t]he board of fire commissioners, with the approval of the board of trustees, may organize and maintain fire, hose, protective and hook and ladder companies, whenever in its judgment the public interests require.”¹³ Any of these companies, subject to the approval of the board of trustees, may be incorporated.¹⁴ The statute also provides that “[t]he members of all the fire, hose, protective and hook and ladder companies of a village, organized and maintained in pursuance of law, constitute a corporation by the name of the ‘fire department of...’”¹⁵

C. Not-for-Profit Fire Companies or Corporations – Generally

Not-for-profit fire companies or corporations are formed pursuant to N.Y. Not-For-Profit Corporation Law, chapter 35, article 14, sections 402 and 1402. In addition to the general requirements set forth in N.Y. Not-for-Profit Corporation Law section 402, upon formation, a fire company must specify in its certificate of incorporation the precise boundaries of the

¹⁰ N.Y. Town Law § 176(22).

¹¹ N.Y. Village Law § 3-308.

¹² N.Y. Village Law § 10-1000.

¹³ *Id.* § 10-1004.

¹⁴ *Id.*

¹⁵ *Id.* § 10-1008.

geographic territory in which it intends to operate.¹⁶ The Not-For-Profit Corporation Law provides that such a corporation,

shall be under the control of the city, village, fire district, or town authorities having, by law, control over the prevention of extinguishment of fire. Such authorities may adopt rules and regulations for the government and control of such corporations Where a fire corporation formed outside of a city, village or fire district furnishes fire protection to territory outside of the boundaries specified in the certificate of the incorporation, the fire corporation and the members there of shall be under exclusive control of the town board of the town in which the fire corporation maintains its apparatus.¹⁷

Any debts incurred by a Not-For-Profit Fire Corporation are the responsibility of such corporation, and a municipality is not liable therefor in the event of default by the corporation.¹⁸

Further, such a corporation may engage in fund raising activities pursuant to N.Y. General Municipal Law section 204-a.¹⁹

With this background, and with reference to the CGR Baseline Analysis and Review, this Report addresses three specific questions with respect to the provision of general ambulance services in the Town.

¹⁶ N.Y. Not-for-Profit Corp. Law § 1402.

¹⁷ *Id.* § 1402(e)(1).

¹⁸ N.Y. Op. State Comp. No. 451 (1978).

¹⁹ N.Y. Not-For-Profit Corp. Law § 1402(e)(4).

**QUESTION 1:
WHAT IS THE LEGAL PROCESS FOR
“SPINNING OFF” VOLUNTEER FIRE DEPARTMENTS’
AMBULANCE FUNCTIONS INTO AUTONOMOUS ENTITIES?**

ANSWER 1: In order to “spin off” volunteer fire departments’ ambulance functions into autonomous entities, the ambulance services provided must be severed from the other services of the volunteer fire departments. This may be accomplished by either: 1) rescinding prior authorization to the fire department to provide such ambulance service; or 2) terminating an existing contract to provide ambulance service.

Thereafter, a municipality may provide general ambulance services to its constituents in one of two ways. First, the municipality may provide general ambulance services by contracting with one or more individuals, municipal corporations, associations, or other organizations for general ambulance services. Second, the municipality may establish one or more ambulance districts in the Town.

DISCUSSION

In general, section 209-b of the General Municipal Law governs the establishment and operation of emergency rescue and first aid squads in fire departments and fire companies, composed mainly of volunteers. More specifically, subsection (1) governs the furnishing of emergency ambulance services and subsection (2) governs the furnishing of general ambulance services.

As relating to emergency ambulance services, section 209-b(1) provides that a fire department or fire company is permitted to establish an emergency rescue or first aid squad to provide emergency ambulance services in the case of “accidents, calamities, or other emergencies in connection with which their services may be required, as well as in case of alarms of fire.”²⁰ In addition, where the governing board of a city, town or fire district has not

²⁰ N.Y. Gen. Mun. Law § 209-b(1)(a)

authorized its fire department to render emergency ambulance services, such governing board may contract with another city, town, village or fire district for emergency ambulance services.²¹

As relating to general ambulance services, section 209-b(2) provides the circumstances under which the governing body of a city, town, village, or fire district may authorize or contract for the provision of general ambulance services with the emergency rescue and first aid squads of a fire department or fire company composed mainly of volunteer firefighters, for the purpose of:

(1) transporting any sick, injured or disabled resident or person found within the area described in the certificate of incorporation of the fire corporation to a hospital, clinic, sanatorium or other place for treatment and care and returning any such person therefrom if still sick, injured or disabled, and

(2) transporting any sick, injured or disabled resident of such described area from a hospital, clinic, sanatorium or other place where such person has received treatment and care to any other place for treatment and care or to such person's home whether such hospital, clinic, sanatorium or other place where such person has received treatment and care is within or without the area described in the certificate of incorporation of such fire corporation or the territory listed on the ambulance service certificate or certificate of registration as the usual territory within which the ambulance service operates.²²

In order to confer authority to an emergency rescue or first aid squad to provide general ambulance services, section 209-b requires that a town board adopt a resolution authorizing any such squad to furnish general ambulance service. More specifically, pursuant to General Municipal Law section 209-b(2)(a) and (b),

a. The governing board of any city, town which has a fire department, village or fire district which has in its fire department an emergency rescue and first aid squad composed mainly of volunteer firefighters, by resolution, may authorize any such squad to furnish general ambulance service . . . [; or]

²¹ N.Y. Gen. Mun. Law § 209-b(2)(b).

²² *Id.* § 209-b(2)(a).

b. The town board of a town which does not have a fire department but in which there is a fire corporation located outside any village, fire district, fire alarm district or fire protection district, by resolution, may authorize the emergency rescue and first aid squad of such fire corporation to furnish general ambulance service

In addition, section 209-b(2)(c) provides a town board with the authority to contract on behalf of a fire protection or fire alarm district, for the furnishing of general ambulance services.

c. The governing board of a city, village or fire district which by law is authorized to contract to have fire protection furnished for any district or area thereof, or the town board on behalf of a fire protection district or fire alarm district, may include in any fire protection contract a provision for the furnishing of general ambulance service by the emergency rescue and first aid squad of the fire department or fire company which furnishes such protection.

A public hearing is required before a town board can authorize a volunteer agency to provide general ambulance service under the terms of General Municipal Law section 209-b(2)(a) and (b), and before a town board can enter into a fire protection contract which for the first time provides for the furnishing of general ambulance services under subsection (c). The procedures and requirements for holding such public hearing are set forth in subsection (e) of the statute. These procedures are extensive.

Moreover, the statute provides that any action taken to authorize general ambulance services under this subdivision may be rescinded by a “resolution” of the governing body which took the action. In this regard, General Municipal Law section 209-b(2)(i) defines the term “resolution” to mean “resolution, ordinance, act or local law.”

The statute does not specifically state that a “resolution” to rescind an authorization to provide general ambulance services requires the same public hearing process as the initial authorization for such services. Nonetheless, given the broad definition of the term “resolution,”

and given that General Municipal Law section 209-b(2)(e) requires a public hearing process to authorize or contract for ambulance services, it seems proper to interpret the statute as to require a public hearing to rescind a prior authorization. However, on this point, appropriate guidance would be useful from the Office of the State Comptroller or the Office of the Attorney General.

Assuming that prior authorizations by the Town of North Hempstead for the provisions of ambulance services by volunteer organizations followed the public hearing provisions of General Municipal Law section 209-b(2), the Town would, therefore, need to follow the same procedures to rescind those authorizations. These procedures would include consents by the fire departments, the fire company and the emergency rescue and first aid squad rendering the ambulance services per General Municipal Law section 209-b(2)(d).

On the other hand, if the general ambulance service is provided by contract, the Town could terminate the contract pursuant to its terms, or when the term of the contract otherwise expires, the Town could chose not to enter into a new contract. General ambulance service could then be provided by other means, and through other providers.

Accordingly, to “spin off” general ambulance services now provided by a volunteer fire district or department that provides both general ambulance services and EMS, the Town may (i) rescind a prior authorization to provide such services, (ii) terminate an existing contract for services, or (iii) allow an existing contract to expire by its own terms.

Once general ambulance services currently provided by volunteers are severed either by the termination or expiration of existing contracts or rescission of existing authorizations to provide ambulance services, a municipality may choose from two options in order to provide general ambulance services. These options include (1) contracting with one or more individuals, municipal corporations, associations or other organizations for general ambulance services or (2)

establishing one or more ambulance districts to provide these services. These options are discussed below. Alternatively, a fire department can form a new not-for-profit corporation (“NFPC”) either under its own control or as an independent entity, for the purpose of providing these services, which NFPC would then be able to contract with the Town or the fire department for the provision of general and emergency ambulance services. This option will also be more fully discussed below.

1. Contracting With One or More Individuals, Municipal Corporations, Associations or Other Organizations for Emergency and/or General Ambulance Services.

Pursuant to N.Y. General Municipal Law section 122-b, “[a]ny county city, town or village, acting individually or jointly may provide an emergency service, a general ambulance service or a combination of such services for the purpose of transporting sick or injured persons found within the municipality to a hospital or other place of treatment.”²³ In order to do so, such county, city, town or village, acting individually or jointly, may:

- (1) acquire, by gift or purchase, emergency vehicles and its equipment;
- (2) contract with certain individuals, municipal corporations, associations, or other organizations for operation, maintenance and repair of such vehicles and for the furnishing of pre-hospital emergency treatment;
- (3) contract with certain individuals, municipal corporations, associations, or other organizations to supply, staff and equip suitable emergency medical service or ambulance vehicles and operate such vehicles for the furnishing of pre-hospital emergency treatment; and
- (4) use any combination of the aforementioned methods.²⁴

Permissible contracts entered into pursuant to this section include, but are not limited to, contracts with: a paid police force,²⁵ a paid fire department,²⁶ a private ambulance service, such

²³ N.Y. Gen. Mun. Law § 122-b.

²⁴ *Id.* § 122-b(1)(a)-(e).

as First Response Ambulance or LifeStar Response;²⁷ a voluntary ambulance corps, such as Mineola Volunteer Ambulance Corps or Bellmore Merrick Emergency Medical Services;²⁸ and/or contracts with a private hospital that maintains its own ambulance services, such as North Shore-Long Island Jewish Center for Emergency Medical Services.²⁹

Impermissible contracts under General Municipal Law section 122-b are contracts entered into for the emergency or general ambulance service from any emergency rescue or first aid squad of a fire department or fire company comprised mainly of volunteers and organized under General Municipal Law section 209-b, which, as explained above, governs contracts entered into for emergency and general ambulance services from such squads.

Once a contract is entered into, the municipality must establish the rules and regulations, regarding the use of such apparatus and equipment.³⁰ Furthermore, the municipality “may fix a schedule of fees or charges to be paid by persons requesting the use of such facilities.”³¹ In other words, fees may be paid on a town-wide basis, a per-use-basis by those who request the use of the ambulance service, or a combination thereof.³² However, such fees shall not exceed the cost of providing such services.³³

In addition to the authority to contract for emergency and general ambulance services set forth in General Municipal Law sections 209-b and 122-b, Town Law section 184 provides additional authority for a town board to enter into contract for emergency and general ambulance services in a fire protection district. Town Law section 184(1) provides, in relevant part, that

²⁵ See N.Y. Op. State Comp. No. 8 (2005).

²⁶ *Id.*

²⁷ See N.Y. Op. Att’y Gen. (Inf.) (1972).

²⁸ See generally N.Y. Op. State Comp. No. 80-702 (1980).

²⁹ See generally N.Y. Op. State. Comp. No. 78-759 (1978).

³⁰ N.Y. Gen. Mun. Law § 122-b(2).

³¹ *Id.*

³² See N.Y. Op. State Comp. No. 98-9 (1998), available at, <http://www.osc.state.ny.us/legal/1998/legalop/op98-9.htm>.

³³ See N.Y. Op. State Comp. No. 2005-8 (2005), 2005 WL 3752344.

In the event that the fire department or fire company furnishing fire protection within the district pursuant to contract does not maintain and operate an ambulance then a separate contract may be made for the furnishing within the district of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an incorporated fire company having its headquarters outside the district which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law, or with an ambulance service, certified or registered pursuant to article thirty of the public health law, which is not organized under the provisions of section two hundred nine-b of the general municipal law. [Emphasis added.]

This section would permit a town board to contract for general and emergency ambulance services within a fire protection district from an emergency rescue or first aid squad of a fire department or fire company located outside of that district, after ambulance services are discontinued by rescission, termination or expiration, as discussed above, with the fire department or fire company providing fire protection services for that district.³⁴

2. The Establishment of an Ambulance District

N.Y. Town Law provides two (2) separate procedures for the establishment of an ambulance district. The purpose of an ambulance district is to provide emergency medical services, general ambulance services, or a combination of services to persons found within the boundaries of such district.³⁵ These procedures can be found in articles 12 and 12-A of the N.Y. Town Law. The main distinction between these two procedures is that the establishment of an ambulance district under article 12 requires that the process be commenced upon a petition of the real property owners situated within the proposed district owning at least one half of the assessed value of the taxable real property therein, while the establishment procedure under article 12-A

³⁴ N.Y. Town Law § 184(1).

³⁵ See N.Y. Town Law § 198(10-f). These purposes and functions of an ambulance district are further discussed below under Powers of Town Boards with Respect to Ambulance Districts.

may be commenced by a vote of the Town Board, but is then subject to permissive referendum. Although the procedure under both articles of the Town Law is different, the result is the same. Both of these procedures are set forth in greater detail below.

A. N.Y. Town Law, Article 12 – District And Special Improvements

Generally, a town board may create an ambulance district within a given town or part of a town.³⁶

No such district shall be established . . . in a city or in an incorporated village provided, however, that such district may be established . . . wholly or partly within an incorporated village on consent of the village expressed in local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article nine of the village law, as the case may be, and . . . on consent of a village expressed in a local law by resolution of the board of trustees and not subject to any referendum.³⁷

Petition

In order to establish an ambulance district, a petition must be presented to the town board and include the signatures of the property owners whose property is located in the proposed district or extension thereof, “owning in the aggregate at least one-half of the assessed valuation of all the taxable property of the proposed district or extension” based on the most recent assessment-roll of the town.³⁸ If only a portion of a property is located within the proposed district or extension, the town board shall determine the relative value of that portion, based on the assessment-roll.³⁹

The petition should include a description of the boundaries of the proposed district or extension, “in a manner sufficient to identify the lands included therein as in a deed of

³⁶ N.Y. Town Law § 190.

³⁷ *Id.*

³⁸ *Id.* § 191.

³⁹ *Id.*

conveyance.”⁴⁰ Such petition must “be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the [E]lection [L]aw.”⁴¹ The Election Law requires that a petition “must set forth . . . the name of the signer, his or her residence address, town or city . . . and the date when the signature is affixed.”⁴² The petition must substantially follow the form set forth in N.Y. Election Law section 6-132, which will also include a “Statement of Witness” attached to the petition, in which such person attests to witnessing all of the signatures on the page, not including his or her own.⁴³ In lieu of the “Statement of Witness,” a statement signed by a notary public or commissioner of deeds is acceptable as well.⁴⁴ Each sheet of the “petition shall be signed in ink.”⁴⁵ The petitions must also comply with the requirements of N.Y. Election Law section 6-134 and 9 N.Y.C.R.R. section 6215.

If the petition requests the construction or acquisition of an improvement or the performance of supplying of certain services, the maximum amount to be expended shall be included in such petition.⁴⁶

Notice of Hearing on Petition

When the town board is in receipt of a petition for the establishment of an ambulance district,

the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition, the boundaries of the proposed district, the improvements proposed, the maximum amount proposed to be expended for the improvement . . . or supplying of services . . . [as] stated in the petition . . . and the cost of the district or extension to, the typical

⁴⁰ N.Y. Town Law § 191

⁴¹ *Id.*

⁴² N.Y. Elec. Law § 6-130.

⁴³ *See id.* § 6-132.

⁴⁴ *See id.*

⁴⁵ *Id.*

⁴⁶ N.Y. Town Law § 191.

property and, if different, the typical one or two family home, and specifying the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof, concerning the same.”⁴⁷

A copy of the order shall be certified by the town clerk and published.⁴⁸ The order shall be published, at a minimum, once in the official paper between ten and twenty days before the hearing.⁴⁹ A copy shall also be posted on the signboard of the town between ten and twenty days before the hearing.⁵⁰ If the town maintains a website, a copy of the order shall be posted on it as well.⁵¹ Before the order is published, the board shall make a file available with the town clerk for public inspection.⁵² Such file shall contain information regarding the proposed ambulance district, including the computed cost of the district to the typical property and typical one or two family home, if different.⁵³

‘[T]ypical property’ shall mean a benefitted property having an assessed value that approximates the assessed value of the mode of the benefitted properties situated in the district or extension that will be required to finance the cost of the proposed improvements ‘[T]ypical one or two family home’ shall mean a benefitted property improved by a one or two family dwelling and having an assessed value that approximates the assessed value of the mode of the benefitted properties improved by one or two family dwellings situated in the district or extension that will be required to finance the cost of the proposed improvements.⁵⁴

Establishment of Districts

After the requisite hearing is held, the town board will determine by resolution whether 1) the petition met all of the requirements as provided by N.Y. Town Law section 191, 2) whether all affected property and property owners are benefitted by the proposal, 3) whether all

⁴⁷ N.Y. Town Law § 193(1)(a).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ N.Y. Town Law § 193(1)(a).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* § 193(2)(a) and (b).

benefitted property and property owners are included within the limits of the proposed district, and 4) whether it is in the public interest to grant the proposed district.⁵⁵

If the town determines that the manner in which the notice was published was insufficient or that establishing an ambulance district is not in the public interest, the town board will deny the petition.⁵⁶ If the town board determines that all of the aforementioned questions are answered in the affirmative, except that a portion of the property owners within the proposed district are not benefitted or that certain property owners have been excluded, the town board shall make the necessary changes to the boundaries of the proposed district and call a further hearing between fifteen and twenty five days after such determination.⁵⁷ Notice of such hearing shall follow the same guidelines as provided in N.Y. Town Law section 193, except it shall include the manner in which the boundaries are to be altered.⁵⁸

If and when the town board answers all of these questions in the affirmative, the board may adopt a resolution approving the establishment of an ambulance district, specifying the agreed upon boundaries.⁵⁹

Permission of the State Comptroller

Pursuant to N.Y. Town Law section 194(6), permission of the State Comptroller to establish an ambulance district is required if:

it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor or it is proposed that debt service on obligations issued to finance the costs of facilities acquired be assumed, pursuant to subdivision twelve of section one hundred ninety-eight . . . and, if the state comptroller shall have computed

⁵⁵ N.Y. Town Law § 194(1)(a)-(d).

⁵⁶ *Id.* § 194(2)(a).

⁵⁷ *Id.* § 194(2)(b).

⁵⁸ *Id.*

⁵⁹ *Id.*

average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the costs of the district or extension to the typical one or two family home, as stated in the notice of hearing, is above the average estimated cost to typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller. The state comptroller annually shall provide to towns notice of the average cost thresholds.⁶⁰

If it is determined that permission of the state comptroller is required, within ten days of the adoption of a resolution approving the establishment of an ambulance district, a certified copy of such resolution and an application for permission to create or extend an ambulance district, shall be filed by the town clerk, in duplicate, in the office of the state department of audit and control at Albany, New York.⁶¹

Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following (1) A certified copy of the petition (omitting, however, the signatures, and acknowledgments or proofs, or authentications) . . . (2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced by bonds, bond anticipation notes, capital notes and budget notes; the amount of joint indebtedness contracted or incurred for a joint service or a joint water, sewage or drainage project and the amount of such indebtedness allocated and apportioned to the town, as defined in title one-a of the local finance law; the amount of the indebtedness proposed to be contracted for the improvement; the amount of budgetary appropriations for the payment of any such indebtedness, whether or not such appropriations have been realized as cash, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application, (3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application;(4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the

⁶⁰ N.Y. Town Law § 194(6).

⁶¹ *Id.* § 194(3)(a).

provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law, [and] (5) A statement as to the manner in which it is proposed to finance the cost of the improvement.⁶²

Within five days after such application is filed, the State Comptroller shall give notice to the board of supervisors of the county in which the proposed ambulance district is located, by filing one copy of the application.⁶³ Within fifteen days of such filing, the board of supervisors may file an objection with the office of the department of audit and control.⁶⁴ After the fifteen-day period has expired, the State Comptroller will determine whether the proposed district will serve the public interest and whether it will pose an undue burden on the affected properties.⁶⁵ The State Comptroller shall make an order, in duplicate, either granting or denying the proposed district and file one copy with the office of the state department of audit and control in Albany, New York and the other copy with the office of the town clerk of the town of the proposed district.⁶⁶

B. N.Y. Town Law, Article 12-A – Establishment or Extension of Improvement Districts – Alternative Procedure

A town board may adopt a resolution, subject to permissive referendum as set out in article 7 of the N.Y. Town Law,

appropriating a specific amount to pay the cost of preparing a general map, plan, and report for providing facilities, improvements or services in any portion of the town not included within the boundaries of any incorporated village, city or existing improvement district in which such facilities or services are provided, except that all or part of an incorporated village may be included therein on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive

⁶² N.Y. Town Law § 194(3)(a)(1)-(5).

⁶³ *Id.* § 194(3)(b).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* § 194(4).

referendum under article five-a of the village law Such maps, plans and reports shall be prepared by or under the supervision of town officers and employees to be designated by the town board or by persons to be employed for the purpose, or the town may contract for the preparation thereof within the limitations of the amount appropriated.⁶⁷

Any costs incurred from such preparation shall be paid for by a town charge, “assessed, levied and collected in the same manner as other town charges.”⁶⁸ The aforementioned maps, plans and reports shall be filed in the office of the town clerk.⁶⁹

Notice of Hearing

After the requisite maps, plans and reports are filed with the town clerk, the town board may adopt an order and enter it in the minutes of its proceedings, which shall include:

a description of the boundaries of the proposed district or extension in a manner sufficient to identify the lands included therein as in a deed of conveyance, the improvements proposed, the maximum amount proposed to be expended for the improvement, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, the proposed method of financing to be employed, the fact that a map, plan and report describing the same are on file in the town clerk's office for public inspection and specifying the time when and the place where said board will meet and hold a public hearing to hear all persons interested in the subject thereof, concerning the same.⁷⁰

A copy of the notice shall be published, at a minimum, in the official paper between ten and twenty days before the hearing.⁷¹ A copy shall also be posted on the sign-board of the town between ten and twenty days before the hearing.⁷² If it is deemed necessary or desirable to have

⁶⁷ N.Y. Town Law § 209-b.

⁶⁸ *Id.*

⁶⁹ *Id.* § 209-c.

⁷⁰ *Id.* § 209-d(1).

⁷¹ *Id.*

⁷² *Id.* § 209-d(1).

an additional viewing location of the map, plan and report, the notice may include such location.⁷³

If it is determined that permission of the state comptroller is not required to establish such ambulance district (see below, Permission of the State Comptroller), “a certified copy of the order of the town board adopted . . . shall also be filed with the state comptroller on or about the date of the publication of a copy of such order.”⁷⁴

Establishment of Districts

After the requisite hearing is held, the town board will determine by resolution whether 1) the petition met all of the requirements as provided by N.Y. Town Law section 209-d, 2) whether all affected property and property owners are benefitted by the proposal, 3) whether all benefitted property and property owners are included within the limits of the proposed district, and 4) whether it is in the public interest to grant the proposed district.⁷⁵

If the town determines that the manner in which the notice was published was insufficient or that establishing an ambulance district is not in the public interest, the town board will enter the reasons for its determination in the minutes of its proceeding.⁷⁶ If the town board determines that all of the aforementioned questions are answered in the affirmative, except that a portion of the property owners within the proposed district are not benefitted or that certain property owners have been excluded, the town board shall make the necessary changes to the boundaries of the proposed district and call a further hearing between fifteen and twenty-five days after such determination.⁷⁷ Notice of such hearing shall follow the same guidelines as provided in N.Y. Town Law section 209-d, except it shall include the manner in which the boundaries are to be

⁷³ N.Y. Town Law § 209-d(1).

⁷⁴ *Id.* §209-d(2)(a).

⁷⁵ *Id.* § 209-e(1)(a)-(d).

⁷⁶ *Id.* § 209-e(2)(a).

⁷⁷ *Id.* § 209-e(2)(b).

altered.⁷⁸ If and when the town board answers all of the aforementioned questions in the affirmative, the board may adopt a resolution approving the establishment of an ambulance district, specifying the agreed upon boundaries, but subject to a permissive referendum pursuant to article seven of N.Y. Town Law.⁷⁹

The proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the proposed district or proposed extended district as shown upon the latest completed assessment-roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser [A] corporate owner of such taxable real property shall be considered one owner for the purposes of a petition requesting a referendum and shall be entitled to one vote to be cast by an officer or agent of the corporation or other duly authorized person designated by appropriate resolution of such corporation.⁸⁰

The town clerk shall have the proper forms for the petition, which will be available upon request.

Id. If the time for filing expires and a petition requesting the matter be submitted to a referendum of the property owners is subsequently filed, the petition will not be filed with the town clerk, but a “certificate stating such fact [will be filed] in the office of the county clerk” and, if permission of the state comptroller is required, in the office of the department of audit and control at Albany, New York as well.⁸¹ If a referendum is held and petition requesting the matter be submitted to a referendum of the property owners is subsequently filed, the petition will not be filed with the town clerk, but “a certificate stating that a petition was filed and a referendum

⁷⁸ N.Y. Town Law § 209-e(2)(b).

⁷⁹ *Id.* § 209-e(3).

⁸⁰ *Id.* § 209-e(3).

⁸¹ *Id.* § 209-e(4)(a).

was held . . . and certifying the result of the vote on the proposition [will be filed] in the office of the county clerk” and, if permission of the State Comptroller is required, in the office of the department of audit and control at Albany, New York as well.⁸²

Permission of the State Comptroller

Pursuant to N.Y. Town Law section 209-f(1), permission of the state comptroller to establish an ambulance district is required if:

it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor, or shall assume the debt service on obligations issued to finance the cost of facilities, pursuant to subdivision twelve of section one hundred ninety-eight of this chapter, and, if the state comptroller shall have computed average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the cost of the district or extension to the typical one or two family home as stated in the notice of hearing is above the average estimated cost to the typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller.⁸³

If it is determined that permission of the State Comptroller is required, within ten days of the adoption of a resolution regarding the establishment of an ambulance district, a certified copy of such resolution and an application for permission to create or extend an ambulance district, shall be filed by the town clerk, in duplicate, in the office of the state department of audit and control at Albany, New York.⁸⁴

Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following: (1) A certified copy of the notice of public hearing, with proof of publishing and posting thereof as required by this article . . . ; (2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced

⁸² N.Y. Town Law § 209-e(4)(b).

⁸³ *Id.* § 209-f(1).

⁸⁴ *Id.* § 209-f(3)(a).

by bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes; the amount of budgetary appropriations for the payment of any such outstanding indebtedness, whether or not such appropriations have been realized as cash; the amount of indebtedness proposed to be contracted for the improvement, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application; (3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application; (4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law; [and] (5) A statement as to the manner in which it is proposed to finance the cost of the improvement.⁸⁵

Within five days after such application is filed, the state comptroller shall give notice to the board of supervisors of the county in which the proposed ambulance district is located, by filing one copy of the application.⁸⁶ Within fifteen days of such filing, the board of supervisors may file an objection with the office of the department of audit and control.⁸⁷ After the fifteen-day period has expired, the State Comptroller will determine whether the proposed district will serve the public interest and whether it will pose an undue burden on the affected properties.⁸⁸ In making his determination, the State Comptroller may require the submission of additional information.⁸⁹ The State Comptroller shall make an order, in duplicate, either granting or denying the proposed district and file one copy with the office of the state department of audit and control in Albany, New York and the other copy with the office of the town clerk of the

⁸⁵ N.Y. Town Law § 209-f(3)(a)(1)-(5).

⁸⁶ *Id.* § 209-f(3)(b).

⁸⁷ *Id.*

⁸⁸ *Id.* § 209-f(3)(c).

⁸⁹ *Id.*

town of the proposed district.⁹⁰ The order shall be presented to the town board at the next meeting.⁹¹ If the state comptroller denies permission for the establishment of an ambulance district, the town board shall adopt an order consistent with the denial.⁹² If the state comptroller grants permission, the town board shall adopt a final order establishing the district.⁹³

Recording and Review of Determination

Within ten days of the town board's adoption of the final order, such order shall be recorded in the office of the clerk of the county in which the town is located.⁹⁴ Once the final order is recorded, it will be "presumptive evidence of the regularity of the proceedings for the establishment or extension of such district, of the proceedings instituted for the construction of such improvement and of all other action taken by said town board in relation thereto."⁹⁵ During the same time period, the town clerk shall file a certified copy of the final order in the office of the state department of audit and control at Albany, New York.⁹⁶

Such an order is deemed final, unless an interested party aggrieved by such order commences a proceeding within thirty days from the date of the recording of the certified copy of the order in the county clerk's office.⁹⁷ Review shall take place only if it is approved by the supreme court, or a justice thereof.⁹⁸

⁹⁰ N.Y. Town Law § 209-f(4).

⁹¹ *Id.*

⁹² *Id.* § 209-f(5).

⁹³ *Id.*

⁹⁴ *Id.* § 209-g(1).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* § 209-g(2).

⁹⁸ *Id.*

C. Ambulance Districts - Generally

Powers of Town Boards with Respect to Ambulance Districts

“After an ambulance district has been established . . . the town board may provide an emergency medical service, a general ambulance service, or a combination of services for the purpose of providing pre-hospital emergency medical treatment or transporting sick or injured persons found within the boundaries of the district.”⁹⁹ In order to provide such services, the town board may obtain, by gift or purchase, suitable vehicles and equipment.¹⁰⁰ The town board may also “[c]ontract with one or more individuals, municipal corporations, associations, or other organizations”¹⁰¹ that (1) have adequately trained personnel for the “operation, maintenance and repair of such emergency medical service or ambulance vehicles and for the furnishing of pre-hospital emergency treatment” and/or (2) “supply, staff and equip emergency medical service or ambulance vehicles suitable for such purposes and operate such vehicles for the furnishing of pre-hospital emergency treatment.”¹⁰² However, the town board may not contract with an “emergency rescue and first aid squad of a fire department or fire company [comprised mainly of volunteers] which is subject to the provisions of section two hundred nine-b of the general municipal law.”¹⁰³ If the State Comptroller denies the establishment of an ambulance district,

⁹⁹ N.Y. Town Law § 198(10-f).

¹⁰⁰ *Id.* § 198(10-f)(a)(i).

¹⁰¹ This includes contracts with the Mineola Volunteer Ambulance Corps. A town is authorized to enter into an ambulance service contract on behalf of a town ambulance district under which the service provider will provide services, including the vehicles owned and operated by the service provider. N.Y. Op. State Comp. No. 2006-7 (2006), *available at*, <http://www.osc.state.ny.us/legal/2006/op2006.7.htm>. In fact, if the town owns an unneeded ambulance, it may convey such ambulance to a not-for-profit ambulance company that provides service, so long as the town board determines that it would secure the best price obtainable or most beneficial terms for an unneeded ambulance held on behalf of an ambulance district,” subject to public hearing requirements. *Id.*

¹⁰² N.Y. Town Law § 198(10-f)(a)(ii) and (iii).

¹⁰³ *Id.*

the town board must adopt an order consistent such decision.¹⁰⁴ If permission is granted by the state comptroller, the town may adopt an order consistent with such decision if it so chooses.¹⁰⁵

The town board has various other powers with respect to regulating, maintaining, and operating the service.¹⁰⁶ The town board may adopt rules and regulations regarding the emergency medical apparatus and equipment, purchase or provide insurance indemnifying against liability, provide for the administration of such service, and establish by local law a board of commissioners for the ambulance district, either by appointment or election.¹⁰⁷

Furthermore, a town board is authorized to enter into an ambulance service contract on behalf of a town ambulance district under which the service provider will provide services, including the vehicles owned and operated by the service provider.¹⁰⁸ In fact, a town board may also “convey an unneeded ambulance to a private entity providing services to the ambulance district as part of the consideration under the ambulance service contract, as long as the town board satisfies its fiduciary duty to ensure the best possible price and most beneficial terms for the ambulance.”¹⁰⁹

Expense of Establishing an Ambulance District

The expense of establishing an ambulance district “shall be assessed, levied, and collected from the several lots and parcels of land within the district for each purpose in the same manner and at the same time as other town charges, except as otherwise provided by law.”¹¹⁰

¹⁰⁴ N.Y. Town Law § 194(5).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § 198(10-f)(b)-(e).

¹⁰⁷ *Id.* § 198(10-f)(b)-(e).

¹⁰⁸ N.Y. Op. State Comp. No. 2006-7 (2006), *available at*, <http://www.osc.state.ny.us/legal/2006/op2006.7.htm>.

¹⁰⁹ *Id.*

¹¹⁰ N.Y. Town Law § 202(3).

Once the district has been established, costs of its maintenance shall be determined pursuant to N.Y. Town Law section 202-a.¹¹¹

Fees

Pursuant to N.Y. Town Law § 202-a(1), the expense of maintaining and ambulance district *shall* be assessed, levied and collected from the properties within the district in the same as other town charges. However, the town board also has the authority to:

fix a schedule of fees or charges to be paid by persons requesting the use of [ambulance district] facilities, provide for the collection of such fees and charges, or formulate rules and regulations for the collection thereof by the individuals, municipal corporations, associations, or other organizations furnishing service under contract.¹¹²

Thus, “[a] town board, on behalf of an ambulance district, can impose fees upon users of the ambulance district services to offset district costs and raise the remainder of district costs by ad valorem assessment.”¹¹³ In N.Y. Op. State Comp. No. 93-26, the opinion expresses that the cost of the operation and maintenance of an ambulance district is akin to the cost of the operation and maintenance of a town water district. This is an important distinction from general and emergency ambulance service furnished by emergency rescue and first aid squads of fire departments and fire companies comprised mainly of volunteers under General Municipal Law section 209-b, which cannot charge a fee for their services.¹¹⁴

¹¹¹ Section 202-a of N.Y. Town Law sets forth the manner in which costs for maintaining an ambulance districts may be raised. This includes, but is not limited to, that “[t]he town board may apportion against and charge to the expense of maintaining any improvement an allowance for any services rendered by any town officer or employee when such services have been necessary to and occasioned by reason of the maintenance of an improvement, or the town board may separately compensate any town officer or employee for services necessary to or occasioned by reason of the maintenance of an improvement and include the amount so paid in the expense of such maintenance.” N.Y. Town Law § 202-a(7).

¹¹² *Id.* § 198(10-f)(b).

¹¹³ N.Y. Op. State Comp. No. 93-26 (1993), *available* at, <http://www.osc.state.ny.us/legal/1993/legalop/op93-26.htm>; *see also* N.Y. Town Law § 202, § 202-a.

¹¹⁴ N.Y. Gen. Mun. Law § 209-b(4).

3. Alternatively, Fire Districts Or Departments Can “Spin Off” Their Existing Ambulance Services Or EMS Into A Not-For-Profit Corporation Through Which Billing For Those Services Are Permitted

As an alternative method to provide general and emergency ambulance services, the fire department or district that currently provides such services can form a NFPC for the express purpose of providing those services. The benefit of this would be that the NFPC could then bill for the provision of those ambulance services. As stated above, pursuant to General Municipal Law § 209-b(4), volunteer fire departments are prohibited from billing for the ambulance or emergency medical services that they are statutorily authorized to provide in conjunction with their fire services.¹¹⁵ However, there is nothing that prohibits a fire district or department from forming an independent NFPC for the purpose of providing ambulance and/or emergency medical services, which NFPC would then be permitted to bill for its services. The members of the NFPC can be the same members of the existing ambulance or rescue squads of the fire district or department and can use the same equipment and space that it previously occupied when those services were provided by the fire department.

If the fire district or department wishes to retain control over the new not for profit company that will be providing ambulance services, there are a variety of methods by which it may do so, such as, requiring all members of the NFPC to be members of the fire department or to join the fire department; making the board of the fire department the board of the NFPC; or making the fire department the only voting member of the NFPC.

The fire department may also allow the NFPC to independently control itself. In addition, there can be hybrids of these two control mode. An example of this would be that the NFPC controls itself, but the fire department is the only one with the power to amend the bylaws and certificate of incorporation.

¹¹⁵ N.Y. Op. State Comp. No. 2004-1

Regardless of which method of control that the fire department decides upon, the fire department can benefit from an economic standpoint by the creation of the NFPC. This may be done by a variety of methods, but must be governed by a detailed contract between the NFPC and fire department. The NFPC can contract to pay the fire department for things such as equipment, supplies, space in the fire house to store their equipment. In addition, the fire department can contract with the NFPC to manage the NFPC, and then be paid a management fee for such services.

In order for the fire department to “spin off” its ambulance services, the NFPC must be created, the federal and state tax exemptions must be applied for, and NFPC must receive operating authority from the New York State Department of Health (“DOH”). With regard to obtaining the DOH operating authority, the simplest way to do this is for the fire department to transfer its authority to the NFPC. This application process takes approximately 2 months. In addition, the new NFPC must obtain insurance coverage. In some cases, this can be dealt with by adding the NFPC to the fire department’s existing policy as an additional insured. This is not allowed by all insurance companies, and the carrier must be consulted to determine if this is a possible alternative to obtaining a new policy for the NFPC. In total, the entire process should take approximately 3 months.

**QUESTION 2:
IS THERE A LEGAL PROHIBITION
AGAINST VOLUNTEERS BEING MEMBERS OF
MULTIPLE FIRE DEPARTMENTS SIMULTANEOUSLY?**

ANSWER 2: Yes. N.Y. Town Law section 176-b(10) prohibits a person from becoming a volunteer member of more than one fire company or department. However, under certain circumstances, a member of one fire company or department may assist another company or department in providing emergency or ambulance services as provided for in General Municipal Law section 209-i.

DISCUSSION

N.Y. Town Law section 176-b(10) expressly provides that, “[a] person shall not be eligible to volunteer membership in more than one fire company at one time [emphasis added].”¹¹⁶

Notwithstanding this prohibition, a volunteer member¹¹⁷ of one fire company or department may “assist” another fire company or department on an “on-going” basis under certain circumstances. This “on-going” assistance is authorized by section 209-i(1-a) of the General Municipal Law which provides, in relevant part, as follows:

A volunteer firefighter who, because of his residence or usual occupation, is regularly in the area served by a volunteer fire company or department of which he is not a member may nevertheless volunteer his services on an on-going basis to the officer in command thereof to assist such fire company or fire department for the purpose of assisting such company or department's general or emergency ambulance services, or for the purpose of assisting such fire company or fire department at a fire or other emergency scene or for the purpose of training with such fire company or fire department.¹¹⁸ (emphasis added).

After the volunteer firefighter’s services to assist are accepted by the commanding officer of a department in which the volunteer is not a member, the volunteer firefighter shall be entitled

¹¹⁶ N.Y. Town Law § 176-b(10) (emphasis added).

¹¹⁷ Duties of volunteer members are may be determined for each fire department or company by the fire district commissioners. *See id.* § 176(11).

¹¹⁸ N.Y. Gen. Mun. Law § 209-i(1-a); See also 1999 N.Y. Op. Att’y Gen. No. 41 (1999).

to all powers, rights, privileges and immunities “granted by law to volunteer firefighters during the time such services are rendered, in the same manner . . . as if he were a volunteer member of the fire company or department which. . . he is assisting, including benefits under the volunteer firefighters’ benefits law.”¹¹⁹

Likewise, emergency service by a volunteer firefighter outside the firefighter’s regular service area is authorized by General Municipal Law section 209-i. This section provides that whenever a volunteer fireman is within the State, but outside the area regularly served by the fire company or department of which he is a member and he has knowledge of a fire or other emergency at or near the place where he is for the time being, such volunteer fireman may report to the officer in command of one of the paid or volunteer fire companies or departments engaged in handling such fire or other emergency and, on an individual basis, offer his services to assist such fire company or department. As with section 209-i(1-a) of the General Municipal Law, once the volunteer’s services are so accepted by the commanding officer, the volunteer is entitled to all powers, rights, privileges and immunities otherwise granted by law during the time the volunteer renders services.

The discretion of the commanding officer, authorized by General Municipal Law section 209-i, to accept services from a volunteer in such emergency circumstances may be limited or precluded if the legislative body of the city or village, the board of fire commissioners or other governing body of the fire district, or the town board of the town in relation to the fire companies serving territory outside villages or fire districts, or a town fire department, as the case may be, has forbidden acceptance of such services by a resolution previously adopted for that purpose.

¹¹⁹ N.Y. Gen. Mun. Law § 209-i(1-a). Benefits that such volunteer firefighters are entitled to include, but are not limited to, those under Volunteer Firefighters’ Benefit Law. *See id.* § 209-i(1).

Numerous opinions of the State Comptroller and the Attorney General have confirmed the statutory prohibition on a volunteer holding membership in two fire companies or departments at the same time.¹²⁰ This prohibition applies regardless of whether the companies are part of the same fire department or different fire departments.¹²¹ Indeed, upon joining a second company, a volunteer will be automatically removed from membership in the volunteer's original company.¹²²

Notably, however, the statutory prohibition of Town Law section 176-b(10) does not prohibit an individual from becoming a member of a fire company and a volunteer ambulance corps at the same time, but he or she must fulfill the minimum service requirements of both organizations.¹²³

Accordingly, under the relevant statutes, and except as explained above, volunteers cannot hold membership in multiple fire departments or companies simultaneously.

It is important to note that this rule is subject to change, as there is currently proposed legislation pending in the New York State Assembly that, if enacted, would make it permissible for volunteer firefighters to be members of multiple fire departments or fire companies simultaneously.¹²⁴

¹²⁰ See N.Y. Op. Att'y Gen. (Inf.) No. 99-2 (1999); N.Y. Op. Att'y Gen. (Inf.) 129 (1975); N.Y. Op. Att'y Gen. (Inf.) No. 105 (1972); N.Y. Op. State Comp. No. 00-13 (2000).

¹²¹ N.Y. Op. State Comp. No. 91-23 (1991).

¹²² N.Y. Op. State Comp. No. 85-31 (1985).

¹²³ N.Y. Op. State Comp. No. 97-23 (1997).

¹²⁴ New York State Assembly Bill No. A09216

**QUESTION 3:
WHAT IS THE PROCESS FOR CONSOLIDATING
FIRE DISTRICTS AND HOW IS IT IMPACTED BY THE
RECENT CONSOLIDATION LAW IN NEW YORK STATE?**

ANSWER 3: The fire district consolidation process is currently governed by N.Y. Town Law section 172. However, the New York State Legislature has enacted a new law, under which N.Y. Town Law section 172 will be repealed as of March 21, 2010 and all consolidation processes thereafter will be governed by N.Y. General Municipal Law article 17-A.

DISCUSSION

1. Process for the Consolidation of Fire Districts under N.Y. Town Law Section 172

The process for consolidating fire districts was previously governed by N.Y. Town Law section 172. This consolidation procedure still must be followed for all consolidation processes commenced prior to March 21, 2010, the effective date of the “New N.Y. Government Reorganization and Citizen Empowerment Act” (the “Act”). After March 21, 2010, the consolidation of all local government entities, including fire districts, will be governed by the newly enacted article 17-A of the N.Y. General Municipal Law. The consolidation procedure for fire districts under the Act will be discussed in detail in part two of this answer.

Under N.Y. Town Law section 172, where the boundaries of two or more fire districts adjoin, consolidation of those fire districts is possible. The town boards of every town in which the adjoining fire districts are located must, “acting jointly by a majority vote of the members of each such town boards” vote to adopt a resolution consolidating the fire districts.¹²⁵ If the adjoining fire districts are located within the same town, only a majority of the members of that town’s board is required.¹²⁶ Before such a vote can take place, the town board(s) must receive either: (1) “a written petition of resident taxpayers owning taxable real property aggregating at

¹²⁵ N.Y. Town Law § 172.

¹²⁶ *Id.*

least one-half of the assessed valuation of all the taxable real property of each of the districts, . . . [or (2) a] written petition of a majority of the members of the board of commissioners of each fire district proposed to be included within the consolidated district.”¹²⁷ The second method is by far the more commonly used of the two methods available for consolidation under Town Law section 172.

Such petition(s) must “be signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the [E]lection [L]aw.”¹²⁸ The Election Law requires that a petition “must set forth . . . the name of the signer, his or her residence address, town or city . . . and the date when the signature is affixed.”¹²⁹ The petition must substantially follow the form set forth in N.Y. Election Law section 6-132, which will also include a “Statement of Witness” attached to the petition, in which such person attests to witnessing all of the signatures on the page, not including his or her own.¹³⁰ In lieu of the “Statement of Witness,” a statement signed by a notary public or commissioner of deeds is acceptable as well.¹³¹ Each sheet of the “petition shall be signed in ink.”¹³² The petitions must also comply with the requirements of N.Y. Election Law section 6-134 and 9 N.Y.C.R.R. section 6215.

Notice of a public hearing for the consolidation of fire districts shall be given in a similar manner as notice of public hearings for the establishment of fire districts.¹³³ In order to hold a public hearing for the consolidation of fire districts, a notice must be “published at least once in a newspaper having general circulation in the territory affected,” between ten and twenty days

¹²⁷ N.Y. Town Law § 172.

¹²⁸ *Id.*

¹²⁹ N.Y. Elec. Law § 6-130.

¹³⁰ *See* N.Y. Elec. Law § 6-132.

¹³¹ *See id.*

¹³² *Id.*

¹³³ N.Y. Town Law § 172.

before the hearing.¹³⁴ Furthermore, the town clerk(s) shall post copies of such notice on the town(s)'s sign-board and other conspicuous places within the territory affected.¹³⁵ If the town maintains a website, a copy of notice shall be posted on it as well.¹³⁶ The information in the notice shall include a description of the purpose of the hearing, districts proposed to be included and specify the time and place of the town board(s)'s meeting to consider the petition.¹³⁷

The fire district consolidation shall be effective on the date the town board(s) resolution providing for consolidation is adopted,” unless the resolution specifies another date.¹³⁸ The town clerk(s) shall have a certified copy of the resolution “duly recorded in the office of the clerk of the county or counties in which such fire districts . . . are located, and shall, within ten days” file a certified copy of the resolution in the State Comptroller’s Office in Albany, New York.¹³⁹

Within ten days after a consolidated fire district is established, the town boards of affected towns shall act jointly, by a majority vote of the members, to appoint five fire district commissioners and a treasurer.¹⁴⁰ Such officers shall hold their respective positions until December 31st following such election, unless the election is held subsequent to October 1, in which case, the officers shall retain their positions until December 31st of the next succeeding year.¹⁴¹

If, at the time of consolidation, any district has any indebtedness,

such district shall continue to exist in law for the purpose of paying such indebtedness, and there shall be annually assessed and levied upon and collected from the taxable real property within such original fire district, in the same manner and at the same time and by the same officers as town taxes are assessed, levied and

¹³⁴ N.Y. Town Law § 171(2)(a).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* § 172.

¹³⁹ *Id.* § 173.

¹⁴⁰ *Id.* § 174.

¹⁴¹ *Id.*

collected, a sum sufficient to pay such indebtedness and interest thereon as the same shall be due. All real property within the consolidated district shall be liable for the payment of indebtedness incurred for the purposes of the district after such consolidation.¹⁴²

2. Process for the Consolidation of Fire Districts under the “New N.Y. Government Reorganization and Citizen Empowerment Act” (the “Act”)

As stated above, the Act becomes effective on March 21, 2010. The Assembly Memorandum in Support of the Act states that the purpose of the Act is to empower “citizens, local officials and counties to reorganize outdated and inefficient local governments . . . [by] establish[ing] userfriendly procedures for local government entities to consolidate or dissolve . . . [and, thereby,] enhance the delivery of services, achieve savings and reduce local real property taxes and other taxes and fees.”¹⁴³

Thus, in order to simplify the consolidation and dissolution of local government entities into a “userfriendly” process, on the effective date of the Act and thereafter, article 17-A of the General Municipal Law will govern the consolidation and dissolution of all “local government entities.” The term “local government entity” is defined in General Municipal Law section 750(13) as

a town, village, district, special improvement district or other improvement district, including, but not limited to, special districts create pursuant to articles eleven, twelve, twelve-A, or thirteen of the town law, library districts, and other districts created by law; provided, however, that local government entity shall not include school districts, city districts or special purpose districts created by counties under county law.

Under this definition, a fire district is considered a “local government entity,” and all fire district consolidation processes will be governed by General Municipal law article 17-A, title 2, after the

¹⁴² N.Y. Town Law § 172.

¹⁴³ 2009 Sess. Law News of N.Y. Legis. Memo Ch. 74

effective date of the Act. Thus, the procedures for consolidation set forth by N.Y. Town Law section 172, and outlined in part 1 above, will no longer apply.

Pursuant to General Municipal Law, article 17-A, title 2, section 751, the process of consolidating a fire district must begin with the commencement of a consolidation proceeding.

A consolidation proceeding may be commenced when,

[t]wo 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 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 the laws of the state of New York. The requirement that local government entities be contiguous to consolidate does not apply to entities other than towns and villages [emphasis added].¹⁴⁴

Thus, it is important to note that under the Act, boundaries of fire districts no longer have to be adjoining, as currently required under Town Law section 172, in order for fire districts to be consolidated.

General Municipal Law section 751 proscribes two (2) methods for commencing consolidation proceedings.

Consolidation proceedings may be commenced by either:

- (a) a joint resolution by the governing body or bodies of the local government entities to be consolidated endorsing a proposed joint consolidation agreement; or
- (b) elector initiative.¹⁴⁵

A. Consolidation of Fire Districts under General Municipal Law Section 751(a)

The first method of consolidation of local government entities under General Municipal Law article 17-A requires that the “governing bodies” of the fire districts to be consolidated pass

¹⁴⁴ N.Y. Gen. Mun. Law § 751(1).

¹⁴⁵ *Id.* §§ 751(2)(a) and (b).

“a joint resolution . . . endorsing a proposed joint consolidation agreement[.]”¹⁴⁶ The term “governing body” is defined in General Municipal Law section 750(10) as “the body in which the general legislative, governmental and/or public powers of a local government entity are vested and by authority of which the official business of such entity is conducted.” The “governing body” of a fire district is the board of commissioners of the fire district.¹⁴⁷ Thus, it is by joint resolution of the boards of commissioners of the fire districts to be consolidated that the consolidation process is commenced under the first method of consolidation. This significantly different from how fire districts are consolidated under Town Law section 172, which requires the consolidation process to be commenced by the town board in which the fire districts to be consolidated are located, upon written petition from either the owners of certain real property or the boards of commissioners within each district.

The proposed joint consolidation agreement that is to be endorsed by joint resolution of the boards of commissioners of the fire districts has specific requirements as to the information that it must contain. These requirements are set forth in General Municipal Law section 752 (2)(a). This section states that the proposed joint consolidation agreement shall specify the following:

- (a) the name of each local government entity to be consolidated;
- (b) the name of the proposed consolidated local government entity, which name shall be such as to 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;

¹⁴⁶ N.Y. Gen. Mun. Law § 751(2)(a).

¹⁴⁷ Important to note is that in fire protection districts, the “governing body” would be the town board.

(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 which may be realized from consolidation;

(h) each entity's assets, including, but not limited to, real and personal property, and the fair value thereof in current money of the United States;

(i) each entity's liabilities and indebtedness, bonded and otherwise, and the fair value thereof in current money of the United States;

(j) terms for the disposition of existing assets, liabilities and indebtedness of each local government entity, either 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, consistent with section seven hundred sixty-nine of this title;

(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 pursuant to section seven hundred fifty-four of this title.¹⁴⁸

After the respective boards of commissioners for the fire districts to be consolidated pass a joint resolution endorsing a proposed joint consolidation agreement, General Municipal Law section 753 requires the proposed joint consolidation agreement be published within five (5) business days. The publication requirement may be satisfied by,

(i) causing a copy of the agreement and a summary of the agreement to be displayed and readily accessible to the public in a public place or places within the entity;

¹⁴⁸ N.Y. Gen. Mun. Law § 754.

- (ii) causing the agreement, a summary of the agreement, and a description of the public place or places where a copy of the agreement and summary may be examined, to be displayed on the entity website, or county, town or village website in which the entity is located; and
- (iii) causing the agreement, a summary of the agreement, and a description of the public place or places where a copy of the agreement and summary may be examined, to be published in a newspaper of general circulation within each entity for four (4) successive weeks.¹⁴⁹

Within thirty five (35) days after the consolidation proceeding is commenced, but no more than ninety (90) days, the boards of commissioners of the fire districts to be consolidated must hold a public hearing or hearings on the proposed joint consolidation agreement.¹⁵⁰ The public hearing(s) may be held jointly or individually by the boards of the fire districts being consolidated.¹⁵¹ Notice for the public hearing must be given at least ten (10) days, but no more than twenty (20) days, in advance of the hearing, by publication in a newspaper of general circulation within each fire district to be consolidated and displayed on the fire district website, or the town, village and/or county website in which the fire district is located.¹⁵² The notice must provide the location, date and time of the hearing, a summary of the proposed consolidation agreement and the location where a copy of the agreement may be examined.¹⁵³

Once the final public hearing is held, the respective boards of commissioners of the fire districts to be consolidated shall decide whether to: (i) amend the proposed joint consolidation agreement, provided the amended agreement complies with the requirements of General Municipal Law section 752(2)(a) and is published in the same manner that the proposed joint

¹⁴⁹ N.Y. Gen. Mun. Law § 754.

¹⁵⁰ *Id.* § 754(1)

¹⁵¹ *Id.*

¹⁵² *Id.* § 754(2)

¹⁵³ *Id.*

consolidation agreement was originally published;¹⁵⁴ and/or (ii) approve a final version of the joint consolidation agreement; or (iii) decline to proceed with the consolidation proceedings.¹⁵⁵

This concludes the consolidation process for fire districts under the first method provided for in the Act. Up until the effective date set forth in the joint consolidation agreement, the consolidated fire districts will continue to be governed as they were prior to consolidation.

B. Consolidation of Fire Districts under General Municipal Law Section 751(b)

The second method for the consolidation of fire districts under article 17-A of the General Municipal Law is the commencement of the consolidation proceedings by elector initiative.¹⁵⁶ The proceeding herein is commenced by the filing an original petition with the town or village clerk where the fire districts are located, containing the signatures of ten (10%) percent of the electors,¹⁵⁷ or five thousand (5,000) electors, whichever is less, in fire district to be consolidated;¹⁵⁸ provided, however, that in fire districts containing five hundred (500) or fewer electors, twenty (20%) percent of the electors' signatures are required. Notably, the requirement of Town Law section 172, that the signatories of the petition to commence the consolidation proceeding be "resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of each of the districts . . ." has not been included in either method of consolidation created pursuant to the Act. The form of the petition is provided in N.Y. General Municipal Law section 757(3).

Within ten (10) days of the filing of the petition, the clerk with whom the petition was filed must make a determination as to whether the number of signatures is sufficient.¹⁵⁹ The

¹⁵⁴ N.Y. Gen. Mun. Law §§ 754 (3) and (4).

¹⁵⁵ *Id.* § 754.

¹⁵⁶ *Id.* §§ 751(2)(b) and 757.

¹⁵⁷ The term "electors" is defined as a "registered voter of this stat registered to vote in the local government entity subject to consolidation or dissolution proceedings pursuant to this article." *Id.* §750(7).

¹⁵⁸ *Id.* §§ 757 (1) and (2).

¹⁵⁹ *Id.* § 757(6).

clerk must then provide “timely written notice of such determination” to the individual who submitted the petition. This determination is subject to judicial review pursuant to C.P.L.R. article 78.

If the clerk determines that the number of signatures is sufficient, then within thirty (30) days of such determination, the board of commissioners of the fire districts to be consolidated by the terms of the petition must enact a resolution pursuant to N.Y. General Municipal Law section 755(2), calling for a referendum on the proposed consolidation, and set a date for such referendum.¹⁶⁰ The resolution calling for the referendum shall:

(a) provide (i) the name of each of the towns and/or villages proposed to be consolidated, (ii) a statement fully describing the territory to be included within the proposed consolidated local government entity, (iii) the name of the proposed consolidated local government entity, and (iv) the date for the referendum, in accordance with subdivision one of section seven hundred fifty-eight of this title;

(b) state the substance of the question to be submitted to the electors; and

(c) set forth such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.¹⁶¹

Thereafter, the referendum must be placed before the electorate of each fire district to be consolidated at a special election that must be held not less than sixty (60) or more than ninety (90) days after the enactment of the resolution.¹⁶² However, if a town or village general election falls within the proscribed time period, the referendum may be considered at the general election.¹⁶³ Further, the referendum in each district to be consolidated may be held on either the same day or on different days, provided that they are held within twenty (20) days of one

¹⁶⁰ N.Y. Gen. Mun. Law § 757(7).

¹⁶¹ *Id.* § 755(2).

¹⁶² *Id.* § 758(1).

¹⁶³ *Id.*

another.¹⁶⁴ The governing boards of the fire districts to be consolidated must provide notice of the referendum by publication in a paper of general circulation within the boundaries of the fire districts to be consolidated, at least once a week for four consecutive weeks immediately prior to the date of the referendum.¹⁶⁵ The notice must include the following:

- (a) a summary of the contents of the resolution and joint consolidation agreement or petition for consolidation, as the case may be;
- (b) a statement as to where may be examined a copy of the resolution and . . . petition for consolidation . . . ;
- (c) the names of the local government entities to be consolidated and a description of their territory;
- (d) with respect to a resolution calling for a referendum under section seven hundred fifty-five of this title only, the name of the proposed consolidated local government entity;
- (e) the time and place or places at which the referendum will be held; and
- (f) such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.¹⁶⁶

The question to be posed to the electorate in the referendum must simply state “Shall (insert type and name of local government entity) be consolidated with (insert type and name of local government entity or entities)? Yes _____ No _____”.¹⁶⁷

The referendum and the tabulation of the results thereof shall be conducted in the same manner as in other municipal elections or referendums in the fire districts to be consolidated.¹⁶⁸

The consolidation shall take effect if a majority of the electors voting in each fire district to be

¹⁶⁴ N.Y. Gen. Mun. Law § 758(2).

¹⁶⁵ *Id.* § 758(3).

¹⁶⁶ *Id.* § 758(3).

¹⁶⁷ *Id.* § 758(4).

¹⁶⁸ *Id.* §§ 758(6) and 759.

consolidated vote in favor of consolidation.¹⁶⁹ If approved, the results shall be filed with the secretary of state and with the clerks of the government entity and county in which any part of the fire districts are situated.¹⁷⁰ If a majority fails to vote in favor of the consolidation in any of the fire districts to be consolidated, than the referendum shall fail and there will not be any consolidation of the fire districts.¹⁷¹ Further, if the referendum fails, the statute imposes a four (4) year moratorium from the date of the referendum on the further commencement of any consolidation process under General Municipal Law, article 17-A, title 2, “for the same purpose[.]”¹⁷²

Upon the majority of electors voting to approve the proposed consolidation of the fire districts, the boards of commissioners of the fire districts to be consolidated must meet within thirty (30) days of the certification of the vote and within one hundred eighty (180) days of such first meeting to prepare and approve by resolution a proposed elector initiated consolidation plan.¹⁷³ The consolidation process commenced by elector initiative from this point forward is a mirror image of the consolidation process commenced by resolution endorsing a proposed joint consolidation agreement, except as explained below.

Accordingly, the requirements for the proposed elector initiated consolidation plan are nearly identical to the requirements for the proposed joint consolidation agreement. Specifically, the requirements for the elector initiated consolidation plan are set forth in General Municipal Law section 760(2). Like the proposed joint consolidation agreement, the proposed elector initiated consolidation plan must be publicized within five days of the resolution approving it and

¹⁶⁹ N.Y. Gen. Mun. Law § 759(3).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 759(4).

¹⁷² *Id.*

¹⁷³ *Id.* § 760(1).

in the same manner as the publication of the proposed joint consolidation agreement.¹⁷⁴ The public hearing or hearings on the proposed elector initiated consolidation plan must be held within the same thirty five (35) to ninety (90) day period of time as the public hearing or hearings for the proposed joint consolidation agreement and the board of commissioners must provide notice in the same manner.¹⁷⁵

Upon conclusion of the final public hearing on the proposed elector initiated consolidation plan, the boards of commissioners of the fire districts to be consolidated must either amend or approve the plan.¹⁷⁶ This, however, is a departure from the consolidation procedure under the first method, where the boards of commissioners also have the option of declining to proceed with the consolidation process.¹⁷⁷ If the boards decide to amend, the amended plan must comply with the requirements of General Municipal Law section 760(2) and be publicized in accordance with General Municipal Law section 766(4).¹⁷⁸ Regardless of whether the respective boards of commissioners decide to approve or amend, the final version of the plan must be approved within sixty (60) days of the conclusion of the final hearing.¹⁷⁹

Upon approval of the elector initiated consolidation plan, the fire districts shall continue to be governed as they previously were prior to consolidation, up until the effective date specified in the consolidation plan.¹⁸⁰ The effective date “shall be no less than forty-five days after final approval of such plan. . .”¹⁸¹

Unlike the consolidation process that is commenced by joint resolution of the board of commissioners, this may not ultimately conclude the consolidation proceeding commenced by

¹⁷⁴ N.Y. Gen. Mun. Law § 761.

¹⁷⁵ *Id.* §§ 762(1) and (2).

¹⁷⁶ *Id.* § 762(3).

¹⁷⁷ *Id.* § 754(3).

¹⁷⁸ *Id.* § 762(3).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* § 763(1).

¹⁸¹ *Id.*

elector initiative. Here, the statute provides for an opportunity for the electors in the fire districts to be consolidated to decline to proceed with the consolidation process. This option is similar to the option given to the boards of commissioners to decline to proceed with the consolidation process at the conclusion of the public hearings under the first method.¹⁸² Pursuant to General Municipal Law section 763(2),

the elector initiated consolidation plan shall not take effect if, no later than forty five days after final approval thereof . . . , electors of a local government entity to be consolidated pursuant to such plan shall:

(a) file an original petition, containing not less than the number of signatures provided for in subdivision three of this section, seeking a referendum on the question whether the elector initiated consolidation plan shall take effect, with the clerk of the town in which the entity or the greater portion of its territory is located, except that if the entity is a village the original petition of electors from the village shall be filed with the clerk of the village; and

(b) thereafter less than a majority of the electors in the entity vote in the affirmative on such question at a referendum.

General Municipal Law section 763(3) provides that the petition shall be circulated, signed and authenticated in the same manner as the original petition for consolidation.¹⁸³ However, the petition to stop the consolidation process must contain the signatures of at least twenty five (25%) percent or 15,000, whichever is less, of the electors of the fire district to be consolidated.¹⁸⁴

Thereafter, the referendum process called for in order to stop the consolidation is substantially the same as the referendum process that was followed to commence the consolidation process herein.¹⁸⁵ The question to be posed by referendum must state “The voters

¹⁸² N.Y. Gen. Mun. Law § 754(3).

¹⁸³ *Id.* § 763(3).

¹⁸⁴ *Id.*

¹⁸⁵ *See Id.* §§ 763(4) to (8).

of the (insert type and name of local government entity to which the consolidation plan applies) having previously voted to consolidate, shall the elector initiated consolidation plan take effect? Yes ____ [,] No ____ [.]”¹⁸⁶ If the majority of the voting electors vote in favor of the consolidation, the consolidation plan shall take effect.

The statute also provides for a court-ordered consolidation, when the consolidation proceedings are commenced by elector initiative.¹⁸⁷ This section provides that if the boards of commissioners fail to

prepare and approve an elector initiated consolidation plan . . . or are otherwise unable or unwilling to accomplish and complete the consolidation . . . , then any five of the electors who signed the original petition seeking consolidation may commence a special proceeding against the . . . [boards of commissioners] pursuant to Article 78 of the civil practice law and rules, in the supreme court within the judicial district in which the consolidated . . . [fire districts] will be located to compel compliance with the provisions of this article.¹⁸⁸

Upon review of the actions or inaction of the boards of commissioners, the court will make a determination as to whether the boards acted in good faith to prepare and approve the consolidation plan.¹⁸⁹

If the court finds that the boards acted in good faith, then it may refer the matter to mediation, with costs to be borne to the fire districts to be consolidated, as the court determines appropriate.¹⁹⁰ If the boards of commissioners thereafter prepare and approve an elector initiated consolidation plan, then the statutory provisions shall apply as if the boards of commissioners had acted without the intervention of the court.¹⁹¹

¹⁸⁶ N.Y. Gen. Mun. Law § 763(7).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* § 764(1).

¹⁸⁹ *Id.* § 764(2).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

If the court finds that the boards failed to act in good faith, “the court shall issue an injunction ordering the . . . [boards of commissioners] to comply with the applicable provisions of this article.”¹⁹² If the boards of commissioners thereafter violate the injunction, the court shall appoint a judicial hearing officer to “hear and determine” a consolidation plan in accordance with General Municipal Law section 760(2).¹⁹³ The final determination of the judicial hearing officer shall constitute final approval of the elector initiated consolidation plan and such plan shall take effect forty five (45) days after the filing of the determination with the clerk of the court, unless a referendum pursuant to General Municipal Law section 763 is filed prior to that date.¹⁹⁴

3. General Statutory Provisions Affecting the Consolidated Fire District

Whether fire districts have been consolidated under the first or second method under the Act, there are additional sections of the General Municipal Law that apply to the newly consolidated fire districts. After the effective date of consolidation, the consolidated fire districts shall be treated and considered to be one single district, and operate under the name and terms and conditions set forth in the joint consolidation agreement or the elector initiated consolidation plan, as the case may be.¹⁹⁵ Specifically, in relevant part, General Municipal Law section 765 provides that

2. All rights, privileges and franchises of each component local government entity and all assets, real and personal property, books, records, papers, seals and equipment, as well as other things in action, belonging to each component local government entity shall be deemed as transferred to and vested in the consolidated local government entity without further act or deed.

¹⁹² N.Y. Gen. Mun. Law § 764(3).

¹⁹³ *Id.*

¹⁹⁴ *Id.* § 764(4).

¹⁹⁵ *Id.* § 765(1).

3. All property, rights-of-way and other interests shall be as effectually the property of the consolidated local government entity as they were of the component local government entities prior to their consolidation. The title to real estate, either by deed or otherwise, under the laws of the state of New York vested in any of the component local government entities shall not be deemed to revert or be in any way impaired by reason of the consolidation.

4. The consolidated local government entity shall in all respects be subject to all the obligations and liabilities imposed and shall possess all the rights, powers, and privileges vested by law in other similar entities.

5. Upon the effective date of the consolidation, the joint consolidation agreement or the elector initiated consolidation plan, as the case may be, shall be subordinate in all respects to the contract rights of all holders of any securities or obligations of the local government entities outstanding at the effective date of the consolidation.

...¹⁹⁶

The election of new officials of the consolidated fire district, for which required to be election is required, shall take office on the first Monday of January following the election designated in the joint consolidation agreement or elector initiated consolidation plan, as the case may be.¹⁹⁷ The election of officials for the consolidated fire districts shall otherwise remain unchanged and must comply with applicable provisions of law, including, but not limited to, Town Law section 175.¹⁹⁸ All appointed officials, except as otherwise provided for in the joint consolidation agreement or elector initiated consolidation plan, shall be appointed as they had been appointed prior to consolidation and in accordance with article 11 of the Town Law.¹⁹⁹

With respect to the effect of consolidation on the existing employees of consolidated fire districts, General Municipal Law section 767 provides, in relevant part, that

¹⁹⁶ N.Y. Gen. Mun. Law § 765.

¹⁹⁷ *Id.* § 766.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

[e]xcept as otherwise provided by law and except for those officials and employees protected by tenure of office, civil service provisions or collective bargaining agreement, upon the effective date of consolidation, all appointive offices and positions then existing in all component local government entities involved in the consolidation shall be subject to the terms of the joint consolidation agreement or elector initiated consolidation plan, as the case may be.

All valid and lawful debts, liabilities, and obligations of the component fire districts prior to consolidation, shall upon the effective date of the consolidation become the debts, liabilities and obligations of the consolidated fire district.²⁰⁰ Likewise, with respect to actions or proceedings in which a component fire district is a party prior to consolidation, the consolidated fire district may be substituted as the party in that action or proceeding after the effective date of the consolidation.²⁰¹

With respect to existing laws, General Municipal Law section 769 states, in relevant part,

Subject to the provisions of the joint consolidation agreement or elector initiated consolidation plan, as the case may be, pertaining to the common administration and uniform enforcement of laws in the consolidated local government entity, all local laws, ordinances, rules or regulations of the component local government entities in effect on the effective date of consolidation shall remain in full force and effect within the respective areas of the component local government entities that existed prior to consolidation, insofar as the local laws, ordinances, rules or regulations are not repugnant to law, until repealed or amended. As soon as practicable but not later than two years after the effective date of consolidation, the governing body of the consolidated local government entity shall adopt new local laws, ordinances, rules and regulations as necessary to redress conflicts and otherwise redress ambiguities arising among the then-existing laws, ordinances, rules or regulations for the common administration and uniform governance of the consolidated local government entity.

²⁰⁰ N .Y. Gen. Mun. Law § 768.

²⁰¹ *Id.* § 770.

Finally, any right, title, interest or claim arising out of the consolidation of the fire districts, that is not determinable under the provisions of the Act or by the joint consolidation agreement or elector initiated consolidation plan, or otherwise under the laws of the State of New York, shall be determined by the board of commissioners of the consolidated fire district and in conformance with the laws of the State of New York.²⁰²

Also, it is important note that there is currently legislation under consideration by the State Senate and Assembly that proposes to amend General Municipal Law article 17-A.²⁰³ . These proposed amendments attempt, among other things, to clarify perceived ambiguities in Article 17-A through additional definitions and to increase certain time limitations contained therein. Currently, this proposed legislation has been referred to the Committee on Local Governments.

²⁰² N.Y. Gen. Mun. Law § 772.

²⁰³ A.10432 / S.7238