

# County Government Organization in New York State

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County Government Institute, Inc.



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## **The County Government Institute, Inc.**

The County Government Institute, Inc., is a not-for-profit 501(c)3 corporation, established by the Board of Directors of the New York State Association of Counties to provide education and training services to county elected and appointed officials.

The NYSAC County Government Institute was founded in 2004, and celebrated its first graduating class in 2005. Originally founded as The Dennis A. Pelletier County Government Institute, CGI was inspired by a long-serving and highly respected Monroe County leader and member of the NYSAC Board of Directors.

The Institute's program includes a comprehensive educational curriculum designed to increase the knowledge and skills of county officials to assist them in their service to the public.

It is the mission of the County Government Institute to provide training and technical assistance to county officials to make them better able to participate in knowledgeable, constructive and civil dialogue on the challenges they face as elected and appointed leaders of New York State.

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## Introduction

New York is a diverse state with a long history of home rule and local decision making in the establishment of its local government structure and organization. The 57 counties located outside the City of New York have adopted varying methods of governmental organization, based upon their own perceived needs and decision-making processes.

This report will provide a basic introduction to the historical development and the state statutes in New York that have influenced the establishment of local government in general, and county government in particular. It will examine the provisions of several different methods of administrative organization in New York counties including those with a county charter and those without.

It will examine their charters, their local laws, and administrative codes where appropriate to give the reader a general overview of the differences and similarities in county government administrative structure in New York State.

The counties profiled in this report were not chosen because they are better run, more efficiently organized, or have a particular form of administrative structure that is preferable to another. They were chosen because they are illustrative of the different approaches that counties have adopted to establish an effective form of county government that meets their locally determined needs.

This report will probably not answer all your questions concerning the options available to counties in organizing their local administrative functions. It is our hope that this publication will give you the necessary background information about your current county administrative structure.

We believe that you will find the information contained in this report to be informative and useful in your attempts to continually improve the operation of your county government to better serve the citizens you represent.

## Executive Summary

New York State's 57 counties outside the City of New York have generally adopted one of three methods of county organization:

- Charter counties with an elected executive or appointed administrative official,
- Counties with an appointed manager or administrator organized under county law, and
- Those operating under the administrative direction of an elected legislative body.

**County Charters:** 23 counties: 18 currently with county executives elected in county-wide general elections and five with appointed administrators or managers.

**Appointed Manager/Administrator:** 23 counties are organized under county law and have administrators and 10 have managers.

**Legislative Body:** 7 counties provide oversight and administration through their board chair and/or committees that have jurisdiction over specific departments.

The State Constitution delineates county governments' powers and responsibilities through the Local Government Bill of Rights and the Statute of Local Governments. County Law and the Municipal Home Rule Law establish the procedures and standards set forth by the state legislature.

County Law makes no provision for an elected executive and places all authority for governance of a county under the auspices of the elected legislative body. Under county law, the legislative body is empowered to delegate certain administrative functions to the chair of the body, to committees formed to oversee operations and administration or to an administrative assistant as long as overall authority is retained by the legislative body.

The Municipal Home Rule Law delineates the general authority and restrictions on local governments' ability to enact Local Laws. The Municipal Home Rule Law also contains provisions known as the County Charter Law, which establishes the process by which counties may adopt a county charter to define the corporate powers of the local government.

Currently, 23 of the 57 counties outside the City of New York have organized their administrative systems under the provisions of a county charter. The 34 "non-charter" counties abide by the provisions of the County Law and the Municipal Home Rule Law to adopt their administrative structure. Of these counties, 26 have enacted local laws to create a county administrator or manager position to oversee the day-to-day administration of county government. The remaining eight counties have retained administrative control of the county through their legislative body. The Municipal Home Rule Law gives non-charter counties the ability to change their administrative structure through the enactment of local laws. These changes are not subject to mandatory public

referendum unless the local law abolishes diminishes or curtails the powers of an elected official. The legislative body may delegate certain administrative responsibilities to its chair or an appointed administrative official, as long as the legislative body retains overall administrative authority.

Article 4 of the Municipal Home Rule Law empowers counties to adopt and amend a county charter. A county charter may be enacted to establish the structure of county government, as long as an elected legislative body is maintained to determine county policy through powers of legislation and budgetary appropriation. County Charter Law allows for the creation of a position of county executive, elected in a county-wide general election, with the power to veto actions of the legislative body.

The county charter adoption process may be initiated through resolution of a legislative body or through a petition process of county voters. The legislative body is empowered to draft a proposed charter under its direct supervision, delegate drafting authority to a committee of the legislative body, or through a commission established and appointed by the body to draft a charter resolution.

A new county charter or an amendment to an existing charter cannot take effect until it has been approved by the voters through public referendum. If the proposed charter calls for the abolition of a department or transfer of duties of a department in a city or a town to the county, the proposed charter must be approved by a majority of voters residing in the cities, and the voters in areas outside the cities taken as two separate whole vote counts. If the charter transfers powers of a village to the county, all affected villages must approve the proposed charter or amendment as well.

## **New York County Organization**

New York's 57 counties outside the City of New York have generally adopted one of 3 methods of organization: Charter counties with an elected executive or appointed administrative official, counties with an appointed administrator or manager and counties organized under county law operating under the auspices of a county legislative body.

County Charters have been adopted in 23 New York counties, 18 of which currently have an office of county executive who is elected in a countywide general election. The remaining five counties have adopted county charters but have taken different approaches to county administration.

The Schenectady, Steuben and Sullivan County legislatures (and their voters) have adopted charters that make provisions for a day-to-day administration through an office of the county manager. Tompkins County's charter creates an office of the county administrator. Herkimer County adopted a county charter to redistrict its county

legislature to comply with federal court one-person, one-vote rulings, and has chosen to enact local laws under the provisions of the County Law and the Municipal Home Rule Law to create an office of county administrator.

A total of 23 counties, (including Charter Counties Tompkins and Herkimer) have created an office of the county administrator and have delegated day-to-day administrative functions to a professional administrator hired by and responsible to the legislative body. In Fulton County, the Administrator has the title of Administrative Officer/Clerk of the Board; and in Orleans County a title of Chief Administrative Officer has been adopted.

County manager positions have been created in 10 counties (including Charter Counties Schenectady, Steuben and Sullivan) and the remaining six counties have delegated administrative responsibility to the chair of the legislative body or the committee chairs in specific program areas.

**Table: County Administration**

**County Administrator**

<b>County</b>	<b>Legislative Body</b>	<b>Members</b>	<b>Population</b>
Allegany	Legislature	15 members	46,456
Cattaraugus	Legislature	21 members	76,439
Clinton	Legislature	10 members	78,753
Cortland	Legislature	17 members	46,126
Fulton	Bd. of Supervisors	20 members	52,669
Greene	Legislature	14 members	48,061
Herkimer	Legislature	17 members	59,822
Jefferson	Legislature	15 members	116,637
Livingston	Bd. of Supervisors	18 members	61,516
Madison	Bd. of Supervisors	20 members	67,097
Ontario	Bd. of Supervisors	20 members	112,707
Orleans	Legislature	7 members	39,318
Otsego	Bd. of Representatives	14 members	60,636
Oswego	Legislature	25 members	118,287
St. Lawrence	Legislature	15 members	107,733
Saratoga	Bd. of Supervisors	22 members	238,797
Schoharie	Bd. of Supervisors	15 members	30,063
Tompkins	Legislature	14 members	104,777
Warren	Bd. of Supervisors	20 members	65,599
Washington	Bd. of Supervisors	17 members	60,841
Wayne	Bd. of Supervisors	15 members	91,125
Yates	Legislature	14 members	24,451



## Board Chair

<b>County</b>	<b>Legislative Body</b>	<b>Members</b>	<b>Population</b>
Chenango	Bd. of Supervisors	23 members	46,458
Columbia	Bd. of Supervisors	23 members	61,286
Delaware	Bd. of Supervisors	19 members	44,740
Hamilton	Bd. of Supervisors	9 members	5,118
Tioga	Legislature	9 members	47,772
Wyoming	Bd. of Supervisors	16 members	39,666

## County Executive

<b>County</b>	<b>Legislative Body</b>	<b>Members</b>	<b>Population</b>
Albany	Legislature	39 members	315,811
Broome	Legislature	15 members	197,117
Chautauqua	Legislature	19 members	126,027
Chemung	Legislature	15 members	81,426
Dutchess	Legislature	24 members	297,545
Erie	Legislature	11 members	950,312
Monroe	Legislature	29 members	752,035
Montgomery	Legislature	9 members	49,623
Nassau	Legislature	19 members	1,383,726
Oneida	Legislature	23 members	228,846
Onondaga	Legislature	17 members	468,249
Orange	Legislature	21 members	405,941
Putnam	Legislature	9 members	98,045
Rensselaer	Legislature	19 members	159,853
Rockland	Legislature	17 members	339,022
Suffolk	Legislature	18 members	1,525,465
Ulster	Legislature	23 members	182,319
Westchester	Legislature	17 members	990,427

## County Manager

<b>County</b>	<b>Legislative Body</b>	<b>Members</b>	<b>Population</b>
Cayuga	Legislature	11 members*	74,998
Essex	Bd. of Legislature	18 members	36,910
Franklin	Legislature	7 members	46,373
Genesee	Legislature	9 members	57,535
Lewis	Legislature	10 members	26,699
Niagara	Legislature	19 members	210,880
Schenectady	Legislature	15 members	160,093
Seneca	Bd. of Supervisors	14 members	32,882
Steuben	Legislature	17 members	92,599
Sullivan	Legislature	9 members	79,658

\*Cayuga County voted to reduce its number of legislators from 15 to 11 effective in 2024.

## New York State and Local Governments

Any discussion of the options counties have in determining their organizational structure must begin with a review of the New York State Constitution and the provisions of state law that empower local governments. The State Constitution, and subsequent actions by the State legislature, set out the duties, powers, responsibilities and limitations of local government. In this section of this report, we will examine the provisions that are the foundations of county government in New York State.

## New York State Constitution

The New York State Constitution provides the basis for New York State law and the delineation of the powers and authority of local governments in New York State. Since its initial adoption in 1777, five (5) versions of the state constitution (as later adopted in 1821, 1846, 1894 and 1938) have provided the legal framework for governance in New York State.<sup>i</sup> The constitution adopted in 1938 was, in effect, a simple update of the constitutional provisions originally adopted in 1894.

The basic governmental structure as contained in the state constitution, has effectively remained unchanged for over a century, although the provisions of the state constitution have been periodically amended since it was last adopted by public referendum of the voters in 1938.

The State Constitution can be amended or changed in one of two ways.<sup>ii</sup> Article XIX, Section 2 of the constitution mandates that every 20 years after 1957, or when the state legislature decides by legislation, a referendum on whether to hold a constitutional convention must be submitted to the voters. The voters must both approve the resolution to hold a convention, and then vote to approve the constitutional changes proposed by the convention for a new constitution to take effect.

Since 1900, three constitutional conventions have been convened with the voters rejecting constitutional changes proposed in 1915 and 1967 and adopting those proposed in 1938. In 1997 the voters rejected a proposition that would have established a new state constitutional convention.

Amendments to the constitution may be proposed by the legislature. Article XIX Section 1 requires that any proposed amendment to the State constitution must first pass two successive, independently elected sessions of the state legislature before it can be submitted to the voters. The voters must approve the proposed amendment by referendum before it can take effect.

The constitution as approved by the voters in 1938, as later amended by actions of the legislature and the voters under the provisions of Article XIX, Section 1, forms the legal basis for all current New York State Law.

## Bill of Rights for Local Government

Article IX of the State Constitution establishes the “Bill of Rights for Local Governments” and delineates those powers granted to local governments and those reserved to the state through action of the state legislature.

Section 1 of this article states “Effective local self-government and intergovernmental cooperation are purposes of the people of New York State.” This section of the state constitution gives to local governments their “rights powers, privileges and immunities,”<sup>iii</sup> including the following.

- Every local government shall have an elected legislative body with the power to adopt local laws.
- All officers of local government not provided for in the constitution shall be elected or appointed by the officers of the local government.
- Local governments have the right to act jointly as authorized by the legislature.
- No local government can be annexed without consent of the voters through referendum.
- Local governments have the power of eminent domain.
- Local government cannot be prohibited by the legislature from receiving payments for property used by utilities.
- Local government has the power to apportion costs of government services upon any portion of its area of jurisdiction upon authorization of the state legislature.

Counties, except those contained within in New York City, can request the legislature to empower it to establish forms of county government.

## Powers and Duties of the Legislature; Home Rule Powers of Local Government

Although local governments are granted certain powers and privileges in the Local Government Bill of Rights, their ability to govern is closely tied to actions by the state legislature.

Section 2 of Article IX of the State Constitution details the responsibility of the New York State legislature to “...provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.”<sup>iv</sup>

The legislature is required by this section to enact a statute of local government that grants local governments their powers of legislation, administration and other powers delineated in the local government bill of rights. This grant of local authority can only be repealed or diminished by enactment of a new law, with the approval of the Governor, in

2 consecutive session years. This provision differs from the constitutional amendment process that requires enactment by 2 independently elected state legislatures.

Section 2 c gives the legislature the ability to provide additional powers to local governments to adopt local laws relating to issues other than “...the property, affairs or government of such local government,”<sup>v</sup> but also allows the legislature to enact restrictions on this authority.

## Statute of Local Governments

The Statute of Local Governments enacted by the legislature grants additional authority to local governments as prescribed under the local government bill of rights subject to “...such purposes, standards and procedures as the legislature may have heretofore prescribed or may hereafter prescribe.”<sup>vi</sup>

The specific powers granted to local governments under these stipulations include the following.

- The power to adopt, amend and repeal ordinances, rules and regulations.
- The power to acquire real and personal property.
- The power to acquire, construct, equip, operate and maintain recreational facilities.
- The power to dispose of personal property.
- The power to fix, levy, impose collect and administer rents, charges, rates and fees.
- The power to perform comprehensive planning.

Although the legislature is provided with the constitutional authority to provide local governments with the power to adopt local laws “... whether or not they relate to the property, affairs or government...” the legislature chose to reserve those powers to itself under section 11 of the Statute of Local Governments. This in effect gave the state legislature oversight of the operational authority of local governments.<sup>vii</sup>

The section specifically excluded from the scope of power granted to local governments and reserved to the legislature the sole authority to enact:

- Any law relating to defense of the state or providing for continuity of local government during states of emergency,
- Any law relating to a matter other than the property, affairs or government of a local government,
- Any law authorizing the voluntary transfer of power to another unit of local government, or
- Any law authorizing a cooperative exercise of power by 2 or more units of government.

## State Statutes Affecting County Government Organization

Counties and all local governments in general are affected by most actions of the state. Since the state legislature has the constitutional ability to grant authority to local governments subject to “...purposes, standards, procedures...”<sup>viii</sup> prescribed by the legislature, numerous state statutes mandate processes local governments must adopt to exercise their powers as delineated in the local government bill of rights.

The legislature has made several attempts over the years to enact statutes to provide for county organization. The Alternative County Law was adopted in the early 1950’s but was never used by counties to adopt administrative structures. Although still on the books, they are largely viewed as outdated statutes having little or no utility.

Two other specific bodies of state law have the greatest effect on county administration and organization and their ability to enact local laws: the County Law and the Municipal Home Rule Law.

## County Law

The County Law is a compilation of statutes that define the legal authority of counties, (except those contained within New York City), to operate under the constitutional provisions adopted in 1938. The statutes that comprise the county laws were primarily adopted when all county governments were organized under the oversight of a board of supervisors.

The County Law makes no provision for an elected county executive,<sup>ix</sup> vesting all of the authority of county governance in the board of supervisors. Subsequent amendments to the county law, vested the same authority given to boards of supervisors in county legislatures, board of representatives or any other designated name given to an elected legislative body formed at the county level.

The County Law delineates the powers and duties of the elected legislative body and requires it to elect a chair to facilitate the administration of its activities. Under County Law, the chair remains a member of the board of supervisors with the same powers and responsibilities of all other members of the board. The board of supervisors may establish standing committees to assist the board in transacting its business. The board of supervisors may also delegate certain of its powers to the Chair, including “...such other administrative duties as the board may determine necessary...”<sup>x</sup> to be exercised on its behalf and under its general oversight.

The county law provides that all powers of the county shall be exercised through a local law or resolution adopted by majority vote of the board of supervisors. The board also has the authority to amend, repeal or supersede any local law or resolution it has previously adopted.<sup>xi</sup> The county law further delineates the duties and responsibilities of other county elected and appointed officials and other issues affecting county administration and governance.

## The Municipal Home Rule Law

The Municipal Home Rule Law delineates the general powers and restrictions placed upon local governments' ability to adopt and amend local laws. These consolidated laws contain the procedures for the adoption of local laws, indicate the process for local laws subject to referendum, and establish the filing and publication procedures for local laws. The Municipal Home rule law also contains provisions that lay out the process by which local governments may request the state legislature to enact special laws that only apply to individual units of government.

Also included in these consolidated laws are provisions establishing the County Charter law, which gives counties the power to adopt, amend and repeal a county charter that “establishes or continues a specific county...as a municipal corporation or body politic and includes the fundamental provisions defining, extending or limiting its corporate powers or affecting the framework of its government.”<sup>xii</sup>

Under Article 2 of the Municipal Home Rule Law, local governments are granted many of the powers that were included in Article IX Section 2c of the State Constitution but were reserved by the state legislature under section 11 of the Statute of Local Governments. These powers granted to local governments can be restricted or revoked, based upon action of the state legislature, as long as the constitutionally mandated processes are followed.

Section 10 of this article gives local government the power to adopt or amend local laws relating to the following.<sup>xiii</sup>

“The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees...This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.”<sup>xiv</sup>

- Incurring of its obligations, except that bonding authority must be consistent with laws enacted by the legislature.
- The transaction of its business.
- The care and maintenance of highways and roads.
- Discharge of claims against it.
- Acquisition and operation of transit facilities.
- Levy, administration and collection of local taxes and fees as authorized by the legislature.
- Wages and hours of work of contractors and subcontractors.
- Protection of its physical environment.
- The public safety and health of its citizens.

This section also gives local governments the ability to adopt local laws regarding the apportionment of its legislative body, its composition, terms of membership and the voting powers of the body for those local governments that adopt a plan of apportionment that complies to state established standards.<sup>xv</sup>

Section 10 (b) also grants additional powers specific to counties. These additional powers to enact local laws include the following.<sup>xvi</sup>

- The ability to adopt, amend or repeal a county charter under the provisions of the county charter law.
- The power to establish a county tax department.
- The authority to delegate to the chair of the board of supervisors or legislative body, “....specified administrative functions, powers, and duties on behalf of such board.....with further provision that such local law shall not divest such board of such functions, powers and duties.”
- The ability to create an office of administrative assistant to the chair of the board of supervisors, and assign to it specified administrative functions, powers and duties on behalf of the board, again with the proviso that this action does not divest the board of its overall authority and powers.
- The power to establish the levels of compensation to be paid to county employees.
- The establishment of methods for the correction of assessment and tax rolls under the real property tax law.
- Protection of wildlife on county owned land.
- Flood control and soil conservation.
- Reforestation of county owned lands.
- Prevention and eradication of infectious diseases affecting animals.
- Regulation of garbage and waste disposal.

Municipal Home rule law prohibits local governments from enacting local laws that supersedes a state statute by:<sup>xvii</sup>

- Raising the government’s debt limits,
- Removing restrictions on bonding,
- Enacting local laws which affect the education system or teachers’ retirement system,
- Enacting local law which affect the courts,
- Enacting local laws restricting the state comptroller’s ability to audit municipal records,
- Changing the number or term of office of a supervisor from a city or town, and
- Enacting laws relating to the administration of civil service laws.

## Counties Adopting Local Laws Creating a County Administrator or Manager

Throughout New York State, 37 counties have formed their governmental administrative structure under local laws and administrative codes adopted under the provisions of the county law and the municipal home rule law.

Of these counties, 21 have created county administrator positions and seven have delegated administrative authority to a county manager. The remaining 9 counties have retained administrative control of the counties through their legislative body, seven of which are boards of supervisors, one is a board of representative and one is a county legislature.

In this section of this report we will examine some of the provisions of the local laws in selected counties that have established an administrative office to which the legislative body has delegated day-to-day administrative authority on its behalf.

### Schuyler County

Local Law Number 3 of 1999 was adopted by the Schuyler County Legislature establishing an office of the County Administrator. The County Administrator position was created under the County Law "...with the primary goal of improving the general efficiency of administration as consistent with all laws, rules and regulations."<sup>xviii</sup>

The County Administrator is appointed by the county legislature and serves at its pleasure. The county administrator functions as the agent for the legislature in supervising the daily operation of Schuyler County. To accomplish this task and the overall goal of improving the general efficiency of government in the county, the administrator is charged with the responsibility of studying the organization of the county's government, and providing to the legislature proposed changes in personnel, finances and structures deemed necessary.

The County Administrator is required to provide staff services to the legislature and its various committees and to supervise and coordinate county departments and agencies.

Local Law Number 3 requires the County Administrator to:

- Conduct regular meetings with department heads to assure smooth implementation of policies and procedures adopted by the county legislature,
- Develop an annual operations plan with department heads for submission and approval by the legislature,
- Recommend to the legislature the appointment and dismissal of all non-elected department heads,
- Develop and submit to the legislature an annual performance plan to be used as an evaluation tool for county department heads,
- Serve as the county budget officer,
- Prepare a draft county budget for submission to the legislature for its action,



- Establish budgetary controls and monitor expenditures,
- Report to the legislature on financial status of the county on a periodic basis,
- Assist all department heads in the initiation and preparation of grant requests as approved by the legislature,
- Prepare data and analysis to be utilized by the legislature in policy discussions,
- Participate in collective bargaining as a member of management team,
- Develop data and advise the legislature on the impact county actions have on the tax base and economic development goals established by the legislature, and
- Serve as the legislature’s liaison and represent its interests with political subdivisions and state and federal officials.

The local law also states that nothing in the local law shall “...divest or curtail the power of any elected or appointed official nor constitute an impermissible delegation of legislative authority.”<sup>xix</sup>

An amendment to the procedures of the legislature, passed as Resolution 99 in 2004, further clarified the relationship between the County Administrator and the Legislature. Under the modified procedures, the County Administrator is designated as having the operational control of all county departmental matters, except those that are of a purely legislative nature. These specific powers are retained by the legislature, which also provides general oversight through its committee structure in conjunction with the county administrator. Within the resolution, general oversight is defined as “....guidance and review at the general policy making level.”<sup>xx</sup>

The County Administrator represents all county employees before the legislature and is responsible for mediating and resolving complaints against county employees in conjunction with the Human Resources Manager and legal counsel. The Administrator may involve the appropriate legislative committee in resolving complaints at the administrator’s discretion.

The County Administrator reports only to the Chair of the Legislature and is not directly responsible to the legislative committees.

## Yates County

The Yates County Legislature adopted Local Law No. 1 of 1987 creating a position of county administrator recognizing its “...responsibility in providing an efficient and accountable administrative government that provides for a clear delineation of responsibility and authority between the legislative function of the county legislature and that of the county government structure.”<sup>xxi</sup>

The county administrator was established as a representative of the legislature responsible for the overall administration of county government, and provides staff services to the legislature. The administrator is directly responsible to the legislature and is responsible for implementing the policies and programs adopted by it.

The county administrator is authorized to appoint all county department heads and staff assistants in the office of the county administrator, with the approval of the legislature. The administrator is also empowered to select all employees working in departments under the direct supervision of the administrator. This authority can be delegated to a department head at the discretion of the administrator.

The administrator is also granted authority to layoff, suspend or remove any county employee upon approval of the legislature and in accordance with applicable Civil Service statutes. This authority can only be exercised following consultation with the County Attorney and the County Personnel Officer.

The specific duties and powers of the administrator are delineated in the local law, including the following.<sup>xxii</sup>

- Implementing and enforcing all local laws, legalizing acts, ordinances and resolutions adopted by the legislature.
- Attending all meetings of the legislature and its committees, offering recommendations on proposed actions when appropriate.
- Preparation of the annual county budget in conjunction with the elected county treasurer, in the capacity as county budget officer.
- Providing recommendations for action on the proposed budget by the county legislature.
- Implementing administrative policies that may be required to carry out the actions of the legislature.
- Performing specific tasks and developing resolutions for the legislature as directed by the Legislature's Standing Committee of Government Operations. The administrator is not to perform any actions requested by an individual legislator or group of legislators.
- Approving organization and staffing within specific county departments as provided for in the budget adopted by the legislature.
- Participating in collective bargaining negotiations as authorized by the legislature.
- Conducting an annual evaluation on the performance of county department heads and making recommendations to the legislature on their annual salary and benefits.
- Executing contracts in the name of the county as authorized by resolution of the legislature.
- Conducting regular meetings with department heads and other agencies as appropriate.

The county administrator is also empowered to exercise general supervision over all county institutions and agencies, coordinate administrative activities of the county and unify the overall management of county affairs.

## Livingston County

The Livingston County Board of Supervisors adopted Local Law No. 3 to create the position of County Administrator at a regular meeting of the Board of Supervisors in August of 1988.

The Board of Supervisors created the position under Section 204 of the County Law,<sup>xxiii</sup> which empowers a board of supervisors to create positions of employment within the county by local law.

The County Administrator was created to be the chief administrative officer of Livingston County, under the supervision, direction and control of the board of supervisors, serving at its pleasure. The heads of all administrative units and agencies were directed by the board of supervisors to cooperate with the county administrator and provide whatever assistance and information the administrator may request.

The duties of the County Administrator as included in Local Law No. 3 of 1988 adopted by the Board of Supervisors include:<sup>xxiv</sup>

- Appointing assistants in the office of the administrator as authorized by the Board of Supervisors,
- Coordinating administration of all units of county government in accordance with policies established by the board of supervisors,
- Supervising and administering the county's central services,
- Providing recommendations to the Board of Supervisors on all county department heads for their appointment by action of the Board,
- Serving as chief budget officer of the county,
- Preparing the annual operating budget and capital plan of the county for submission and adoption by the board of supervisors,
- Acting as purchasing agent for the county and overseeing the maintenance and management of county property under the policies adopted by the board of supervisors,
- Attending all meetings of the board of supervisors and its committees and conducting any research or providing any information the board of supervisors may request,
- Reporting annually to the board of supervisors on the activities and performance of county departments under the administrator's supervision,
- Having any and all powers deemed necessary for the administrator to exercise and perform the duties and functions delegated by the Board of Supervisors, and
- Performing any other duties and responsibilities delegated to the County Administrator by any local law, administrative code or resolution adopted by the Board of Supervisors.

The local law establishing the position contains the proviso that nothing in the law shall be construed to modify, diminish, or abolish any power, duty, or authority of the board of supervisors or any other elected official.

## Seneca County

The Seneca County Board of Supervisors adopted Local Law No. 7 in 1995, as amended by Local Law No. 4 of 2001, to create the position of County Manager to serve as the Chief Administrative Officer of Seneca County under the direct supervision of the Board of Supervisors.<sup>xxv</sup>

The County Manager is charged with the overall administrative operation of Seneca County government with the Board of Supervisors retaining final administrative authority. The county manager is also the sole budget officer of the county. The County Manager provides all staff services to the board of supervisors, the chairperson of the board and the committees of the board.

The duties detailed in the local law creating the county manager position include the following.<sup>xxvi</sup>

- Selecting and appointing staff as authorized by the Board of Supervisors.
- Preparing the annual county budget for adoption by the board of supervisors and providing appropriate budgetary controls.
- Authorizing the transfer of funds not to exceed \$10,000 within the budget, in the capacity as chief budget officer, and transferring of personnel. Any transfer is reported to the Board at its next regular meeting.
- Making recommendations to the appropriate jurisdictional committee of the Board or the Chair of the Board, on the appointment of all heads of county government departments or agencies not appointed by an elected official.
- Working in conjunction with and coordinating the activities of county departments to efficiently implement the directives of the board of supervisors.
- Having general supervision of all county departments, units or agencies and their employees.
- Determining duties to be performed by county employees not defined by law.
- Transferring employees temporarily from one department to another in consultation with the county personnel officer.
- Assisting the board of supervisors in evaluating proposals before it and providing recommendations on suggested courses of action.
- Providing for the enforcement of all local laws, legalizing acts, ordinances and resolution of the board of supervisors and promulgating administrative regulations required to implement them.
- Overseeing collective bargaining with negotiating units representing county employees.
- Resolving all personnel grievances.
- Serving as liaison and representing the board in contacts with political subdivisions and state and federal officials in conjunction with the board.

The local law also contains a “No Divestiture of Powers or Duties of the Board of Supervisors” clause, which stipulates that nothing in this local law should be construed as divesting the Board of Supervisors of any of its powers or duties.

## Qualifications of a County Manager / County Administrator

The minimum qualifications established for a county manager or administrator position vary from county to county. Several counties have established minimum qualifications for these positions within the body of the local law or charter creating the position.

### Sullivan County

Under the Sullivan County Charter, the County Manager serves at the pleasure of the legislature. A two-thirds majority vote of the legislature is required to hire the county manager, but only a simple majority vote of the legislature is required to remove the manager.<sup>xxvii</sup> By resolution, the board may authorize the Chair of the legislature to execute a written contract with the county manager for a term of up to by not exceeding one year beyond the term of the current elected county legislators (a maximum of 3 years). The County Manager can hold no other political or public office.

The County Manager must possess a Masters Degree in Public Administration or an appropriate equivalent degree from an accredited college or university and a minimum of five years employment experience in a government administrative post.<sup>xxviii</sup>

The County Manager is required to become a resident of Sullivan County within 6 months of accepting employment and remain so throughout the term of employment.

The County Manager is subject to a written performance evaluation & review by the legislature each year, which becomes part of his permanent record.

### Yates County

The local law creating the County Administrator in Yates County details the requirements for the person holding the title of County Administrator. The County Administrator is directly responsible to and serves at the pleasure of the Yates County Legislature. The person filling the position is required to be qualified by formal training in public administration, finance or related fields. The County Administrator is required to be a resident of the county during the 4-year term of employment.

The Minimum Qualifications are either:<sup>xxix</sup>

- Ten years of full-time experience in a responsible management position in private or public business, or
- Possession of a Bachelors Degree from an accredited college or university and 6 years of responsible management experience, or
- A Masters Degree in Public Administration or Business Administration or a closely related field and 4 years of responsible management experience, or
- An equivalent combination of education, training and management experience.

- The County Administrator can hold no other public or political office and is a full-time employee of Yates County.

## Schuyler County

The Schuyler County legislature adopted Local Law No. 3 of 1999 creating a County Administrator position as the chief administrative Officer of the county serving at its pleasure of a 4-year term.

The County administrator must possess the following minimum qualifications:<sup>xxx</sup>

- A Bachelors Degree in Business or Public Administration and 3 years of management experience in public administration, and
- Such other qualifications as may be required for the responsibilities of the office.

The person hired by the County Legislature to become County Administrator must become a resident of the county within 90 days and remain so during the term of office.

## Seneca County

The Seneca County Board of Supervisors adopted Local Law No. 7 in 1995 to create a position of county manager, serving as the chief administrative officer of Seneca County on behalf of the Board of Supervisors for a term of four years. The Board of Supervisors retains final administrative authority.

If a position becomes vacant, the Board of Supervisors will appoint a new manager for the length of the unexpired term.

The Minimum Qualifications for the position as included in the local law are:<sup>xxxi</sup>

- A Masters in Public Administration or Business Administration or equivalent degree and have 4 years full-time management experience, or
- A Bachelor's Degree in a business related field and 6 years of full-time management experience, or
- Ten years full-time management experience, or
- An equivalent combination of education and experience.

The County Manager must become a resident of the county within 90 days and remain a resident for the entire term of office.

## Counties with Legislative Administration

The chair of the county legislative body serves as the chief administrative official in 9 of New York's counties, eight of which are boards of supervisors, one a board of representatives and one a county legislature.

The member of the legislative body may serve two distinct functions, as an elected Supervisor in charge of the administration of a town government and as a county official, by their participation in a Board of Supervisors. The Boards may have a mix of representatives, including Town Supervisors and Supervisors who represent wards in cities as a county supervisor but have no other local government function.

One-person, one-vote federal court decisions in the early 1960's established a mandate that affected counties adopt legislative voting procedures to meet the requirements of the court decisions. Counties adopted either a "weighted voting" method, which takes into consideration each supervisor's relative share of the county's population, or a district method, in which legislative or representational districts were established of equal population.<sup>xxxii</sup>

Each of the counties utilizing a system of legislative administration, have unique procedures and processes for administration of county government. The main similarity between them is that the chair of the legislative board, as elected by its membership, has been delegated administrative responsibilities on behalf of the board subject to their approval. The chair retains full voting authority on the legislative board with the same duties and responsibilities of every other member.

These legislative bodies also utilize a "strong committee" system, with committees of the body being delegated overall responsibility for policy direction and oversight of county departments.

### Otsego County

The county's legislative body is a board of representatives from specified districts. It has established the following committee structure to oversee its county operations on behalf of the Board of Representatives.

- Public Works
- Intergovernmental Affairs
- Human Services
- Public Safety & Legal Issues
- Health, Education and Agriculture
- Otsego Manor (County Nursing Facility)
- Solid Waste
- Administration

The Board of Representatives has also established a Special Committee on Negotiations, to oversee collective bargaining between the county and its employees.

### Schoharie County

The county's Board of Supervisors form of legislative body has formed the following standing committees.

- County Buildings & Purchases
- Extension Agriculture, Conservation
- Finance/Solid Waste
- Highway, Transportation
- Historical, Planning and Promotion, Youth
- Law Enforcement, Judicial
- Personnel
- Public Health
- Rules and Legislation, Elections
- Human Services
- Emergency Management
- Flood Control

## Cayuga County

The county's legislative body has been established as a County Legislature from specified districts, has adopted the following standing committees of the legislature.

- Ways & Means
- Public Works
- Health & Human Services
- Government Operations
- Planning & Economic Development
- Judicial & Public Safety

Although there are basic similarities in the types of standing committees established by each of the legislative bodies, each county has adopted unique committee structures that fit their particular needs and local conditions.

## Role of the Chair

Through local law, many counties have outlined the role the chair plays in the administrative affairs of the county, acting on behalf of the legislative board. Generally these additional powers and authorities are delegated to the chair subject to the approval of the legislative body and under the proviso that the delegation of authority is not construed to divest the legislative body of any of its functions, powers and duties. Although some day-to-day administrative powers are delegated to the chair, the legislative body retains full final authority and responsibility for the operation of governance within the county.

Besides their statutory authority to preside over all meetings of the legislative body, the chairs are often given the authority for:

- Appointing chairs of legislative committees to oversee county departments,



- Serving as ex-officio member of all committees,
- Executing contracts on behalf of the county as approved by the legislative body,
- Appointing department heads, with the approval of the legislative body,
- Coordinating the activities of county departments and agencies, in conjunction with legislative committees formed to provide oversight, direction and adoption of county policy,
- Participating in labor contract negotiations, in conjunction with committees of the legislative body formed for the specific purpose of collective bargaining,
- Serving as liaison for the legislative body with other political representatives and sub-divisions, and
- Appointing staff to assist the chair in the administrative affairs of the county, as approved by the legislative body.

Several counties provide for an administrative assistant to the chair of the legislative body to assist them in general management activities of the county. The administrative assistant may also assist the chair in performing functions relating to the chair's role as presiding officer of the legislative body. This functional responsibility can be provided by the Clerk of the Legislative Body elected by it at its organizational meeting or by an appointed administrative assistant to the chair.

## Changing County Administrative Format

All Counties have the authority to change the format of county government administration under the provisions of the municipal home rule act. The actions that must be carried out differ, if the county has been organized under the provisions of the county charter law, or under the provisions of the county law and municipal home rule law.

The 21 counties in New York State that have adopted a charter under the provisions of the county charter law, are required to adopt, abolish or amend the provisions of their charter, through legislative action or petition of the voters followed by mandatory public referendum on the proposed charter change. This procedure will be fully spelled out in the section entitled "Adopting a County Charter" beginning on page 29 of this paper.

The remaining 36 counties have established their local administration through local law and resolutions and are not subject to the same requirements as those counties that have adopted a county charter. Every local government is empowered to "...adopt and amend local laws not inconsistent with the constitution or not inconsistent with any general law."<sup>xxxiii</sup>

A Local Law adopted by the county legislative body created all of the positions of county manager and administrator created in the non-charter counties featured in this paper.

The Municipal Home Rule Law gives counties the ability to enact a local law "relating to the powers, duties, qualifications...of its officers and employees."<sup>xxxiv</sup> Since each of the

positions created by the respective legislative bodies, had certain administrative duties delegated to them, with the legislative body maintaining final administrative and overall authority, the creation of this position did not require a mandatory referendum since the local law did not diminish, curtail or transfer any power vested in an elected official.

This position was clearly stated in an informal opinion of the New York State Attorney General issued in 1995.<sup>xxxv</sup> In this opinion, the attorney general was reacting to a request from a county attorney asking if a board of supervisors in a non-charter county was empowered to create the position of county administrator by local law, and not be subject to mandatory referendum.

The Opinion concluded, “...that a county board of supervisors in a non-charter county may by local law establish the position of county administrator. Further if the local law does not transfer, curtail or abolish the powers of an elective officer, it would not be subject to mandatory referendum.”

New York State does not have statutes allowing initiative and referendum for public vote on most topics. The state legislature has carefully limited the authority of local governments to conduct public referendum. Numerous court decisions and opinions of the attorney general have upheld that a local government cannot conduct a public referendum on any subject without specific state authorization to do so.

The local Government handbook published by the New York Department of State states this point very clearly.

“On the principle that voters elect government officials to make decisions on their behalf, government officials are not given broad authority to delegate decision making back to the electorate. Case law stipulates that all local government must find specific authority, either in the constitution or state law, to conduct an official referendum on any subject and in the absence of such authority it may not conduct a referendum. A local government may not spend public monies to conduct a so-called ‘advisory referendum’, that is one conducted to gather public opinion on a particular matter unless state law specifically authorizes it.”<sup>xxxvi</sup>

Changes in the format of the administrative functions of county government may be adopted by local law as long as the creation of an administrative position within the county does not divest an elected official of functions, powers or responsibilities.

Powers that have been delegated by a legislative body and then amended by the passage or repeal of a local law, do not divest an elected official of any function, power or responsibility, since the legislative body retained final authority even though certain duties were delegated to be performed on its behalf.

Proposed changes in county administrative functions, which create or abolish an elected post, change the number of members of a county-wide legislative body or re-district the areas they represent, are subject to mandatory referendum of the voters.

## County Charter Law

Article 4 of the Municipal Home Rule law is devoted to the procedures for the adoption of county and city charters. Part 1 of this article is designated the County Charter law and details a county government's power to adopt and amend a charter.<sup>xxxvii</sup> This Article delineates the provisions that may be included within the charter, spells out the procedures for its adoption, places certain limitations and restrictions on the provisions of a county charter and explains the state legislature's intent on the adoption of this article of municipal home rule law.

All counties are empowered to develop, amend or repeal a county charter under the provisions of the County Charter law, in accordance with the provisions of the state constitution and other applicable state laws including those detailed in Article 2 of the Municipal Home Rule statutes which grants local governments their authority to adopt local laws.

A county charter establishes the structure of the county government and explains how it is to function. It may also provide for the election or appointment of county officers, as long as an elected legislative body that "...shall determine county policy and exercise such function as may be assigned to it" is maintained under its provisions.

A county charter must provide for the powers of the legislative body for legislation and budgetary appropriations, the duties functions and powers of county officials and the equalization of real property taxes under standards adopted by the New York State Legislature.

A county charter may, but is not required to, address such issues as:<sup>xxxviii</sup>

- The assignment of executive or administrative functions to an elected or appointed official,
- Empowering a county-wide elected official, typically a county executive, to veto actions of the legislature and provide procedures for legislative override,
- Providing for an administrative code, and
- Providing for the termination of the terms of office of existing officers.

## Limitation on County Charters

The state legislature imposes several limitations on what counties can include in a charter or charter amendment unless they are specifically authorized by state statute. A county charter cannot contain provisions relating to:<sup>xxxix</sup>

- Taxation of state property or property of its agencies,
- Provision of exemptions from taxation,
- Assistance by the state to any unit of local government,

- The division of the county into 2 or more counties or provisions relating to the abolition of any unit of local government,
- The levels of compensation to members of the judiciary fixed by the legislature, or
- Superseding of any general or special law enacted by the state legislature.

## Adopting a County Charter

There are two ways that a process to adopting a county charter can be initiated: through the adoption of a resolution by the county legislative body or through a petition process filed by county voters with the clerk of the legislative body.

The county legislative body may adopt a resolution calling for the drafting of a county charter. The legislature is empowered to draft a proposed county charter under its direct supervision, delegate the responsibility to a committee of the board or through a charter commission established and appointed for the purpose of drafting a county charter by resolution of the board.<sup>xi</sup>

The voters of the county can initiate the process by filing a petition with the clerk of the legislative board containing the signatures of at least 10% of the total number of voters in the last gubernatorial election asking that the board establish a charter commission.<sup>xli</sup> If the legislative body of the county does not adopt a resolution forming a charter commission on its own accord within three months of the petitions' filing with the clerk of the board, the board is required to submit the question to the voters by referendum on whether or not to establish a charter commission. This question must be posed to the voters at the next general election occurring not less than five months from the petitions' filing.

If the voters approve the formation of a charter commission, the board must appoint one within two months of the public referendum.

A new county charter or an amendment to an existing charter adopted by the legislative board will not take effect until it has been approved by the voters through referendum.<sup>xlii</sup> The referendum on the charter or amendment of an existing charter can be held at the next general election or at a special election called for the specific purpose of adopting the charter or amendments. The election should occur not less than 60 days after the adoption of the proposed charter or amendment by the legislative board.

If the provisions of the charter call for the transfer of the duties or abolition of an office, department or agency of a city, or town to a county, the referendum must receive the majority of the voters cast in the cities and areas of the county outside the cities, taken as two separate whole vote tallies. If the charter also transfers powers of a village to the county, all affected villages must also approve the charter as well.<sup>xliii</sup>

Upon adoption of a charter, all local laws adopted by the county must be consistent with the terms of the adopted county charter.

## **Counties Organized Under County Charter Law**

County Charters lay out the duties and responsibilities of elected officials, provide the framework under which the county will function and provides, in most cases, a listing of the duties of county offices and appointed department heads.

To illustrate the differences and similarities contained in the 21 adopted county charters in New York an examination of charters creating an elected county executive, and those creating the position of county manager and county administrator will be conducted in this section of the paper.

As indicated previously, Herkimer County adopted its form of government by enacting a charter dealing with legislative districts and organization, and then adopted a local law to create and define the duties and responsibilities of a county administrator to which it delegated certain administrative responsibilities. This format will also be explored in this section to give a thorough review of the administrative and organizational options contained in county charters.

### **Erie County Charter**

Erie County is one of the larger counties in New York, with a population of just over 950,000. In 1960, Erie County adopted a charter establishing a strong elected county executive system with a legislative branch established as a county legislature. In April of 2005, the Erie County legislature adopted a resolution creating a county charter commission to examine and re-define elements of the Erie County Charter.

The Charter Commission deliberated throughout 2005 and submitted its report to the County Legislature in June of 2006. The County Legislature adopted much of the changes in the charter recommended by the charter commission but voted to maintain a strong county executive. The proposed Charter amendments were submitted and approved by the voters by referendum in November of 2006.

Article I of the county Charter establishes the county Legislative Districts of the County legislature. Article II details the powers of the legislative branch of the county. The article also includes a provision that the charter will be subject to review every 10 years commencing in 2016.

Under Article II of the charter, the powers of the county legislature are delineated; their qualifications and term of office are described, and the procedures for adoption of local laws and ordinances are detailed. The adopted charter amendments included provisions to require the legislature to conduct a public hearing on all proposed local laws prior to consideration by the full legislature. The amendment also requires 5 day prior notice about the public hearing and posting of the text of the proposed law on the county website and distribution of a summary of the proposed local law to the media.

Under the charter the county legislature is empowered to:<sup>xliv</sup>

- Make appropriations, levy taxes, and incur debt,
- Enact local legislation and ordinances subject to veto of the county executive,
- Adopt an administrative code for the county by local law,
- Create, change or abolish county administrative units not headed by elected officials,
- Adopt rules and regulations for its conduct and procedures,
- Set salaries for all officers and employees except those employed by the judiciary,
- Conduct studies and investigations, subpoena witnesses, and administer oaths,
- Award contracts submitted for approval on bids,
- Confirm or re-confirm hold-over appointments to administrative posts made by the county executive,
- Select its chair and officers, and
- Override vetoes of the county executive with attainment of 2/3 majority vote of the legislature.

Article III of the County charter establishes the Executive branch and empowers a countywide elected executive with broad administrative powers and duties. The charter establishes a 4-year term for the county executive and bans the executive from holding any other public office.

The charter establishes the county executive as the chief executive and administrative officer of Erie County. As such the county Executive is given the following powers.<sup>xlv</sup>

- Appoint the head of every department or administrative unit to serve at the executive's pleasure subject to confirmation by the legislature or as in accordance with state law.
- Supervise and direct the internal organization of every department.
- Serve as the chief budget officer of the county.
- Determine and fix real property tax equalization rates and file them with the legislature before a specified date.
- Appoint temporary commissions to assist in county administration.
- Report on an annual basis to the county legislature.
- Determine the amount of capital borrowing required to fund capital projects approved by the legislature.
- Advise the comptroller of short-term borrowing needs.
- Veto actions of the legislature, or amendments to the executive budget proposal.
- Appoint a member of the legislature to serve as the chair of the legislature if the legislature is unable to elect a chair by February 1 of each year.
- Such other powers given to the executive by local law or resolution.

The charter also establishes the financial procedures of the county that involves both the executive and legislative branches and the independently elected Comptroller. The Executive is required to prepare and submit a tentative budget for the coming year, a

capital plan for the next six years and a budget message to the legislature in November of each year.

The charter amendments adopted in 2006 provide expanded powers to the independently elected Comptroller. Under the adopted charter amendments, the Comptroller is responsible for reviewing county-wide revenue projections and providing recommendations to the legislature that action be taken to reduce inflated projections. The legislature may reduce the revenue by a two-third vote to an appropriate amount.

After conducting public hearings on the tentative executive budget, the legislature may reduce or delete budget items proposed by the executive except those required by law or to meet debt service requirements. The legislature may also add or increase appropriations in the budget, subject to executive approval. Deletions to the executive's budget proposal do not require the executive's approval.

The legislature's budget committee must present its recommendations to the full legislature at least 48 hours before the general meeting of the legislature when the budget shall be considered. The charter was amended to require the legislature to vote on each individual line item proposed in an amendment to the budget offered less than 48 hours before the meeting of the legislature.

If the budget is approved, the budget with additions must be submitted to the county executive for the executive's action before the first Tuesday in December. The Executive must veto increases in the budget adopted by the legislature by the 2nd Tuesday in December, when a notice of the executive's approval is filed with the clerk of the legislature. The Legislature may override any items vetoed by the Executive by 2/3 vote of the legislature.

The charter also delineates the powers of other county elected officials including the Comptroller, County Clerk, District Attorney and County Sheriff. The duties and responsibilities of Executive Branch agencies and departments and other county boards and offices are also included in the charter.

Under the amended charter, the Comptroller was given control over all county bank accounts, responsibility for revenue recovery, and the provision of accounting services for all county departments and offices as part of a centralized accounting system. The Comptroller was also empowered to declare that the county is in deficit and provide recommendations to the legislature for on how to address the financial shortfall.

The charter amendments also included a provision requiring a 2/3 vote of the legislature to appropriate fund balance as revenue during a fiscal year, after the budget has been adopted.

Any future amendments to the Charter must be approved by the voters through referendum, consistent with the provisions of the state County Charter Law.

## The Ulster County Charter

The Ulster County legislature adopted resolution No. 247 in August of 2004 to establish an eleven-member, bi-partisan, Ulster County Charter Commission to provide recommendations to the legislature on structures and processes through which Ulster County should be governed.

The commission held hearings throughout the county, commissioned various studies on county organization alternatives and provided its final recommendations to the legislature on a proposed county charter in April of 2006.

The legislature held a public hearing and adopted a resolution recommending the charter, with some revisions, in August of 2006. The proposed Ulster County charter submitted to the voters as Introductory Local Law No. 2 of 2006 (A Local Law Adopting a County Charter for the County of Ulster, State of New York) was approved by public referendum in November of 2006.

The charter provides for the phased introduction of a strong executive form of government with the election of a County Executive in November of 2008 to an initial term of 3 years, commencing in January of 2009. Thereinafter the County Executive will be elected to a 4-year term.

Until such date as the offices created under the charter take effect, the existing structure of the Ulster County government as adopted by local law was maintained until January 1, 2009.

The charter abolished the office of county treasurer and replaced it with a comptroller, who was elected county-wide in November of 2008 to an initial term of 2 years. In November of 2010, the comptroller will be elected to a 3-year term, and a 4-year term at the regularly schedule election in November of 2013 and every 4 years thereafter.

The legislature will be reduced from its current level of 33 members to 23 legislators, following the release of the data from the 2010 federal census. Legislators will be elected to 2-year terms commencing with the regularly scheduled election in November 2011.

The charter provides that the legislative districts will be drawn to have each legislator represent an equal proportion of the population of the county, entitled to one vote in the legislature. The legislative districts will be drawn up by a seven-member, independent Commission on Reapportionment whose membership will represent the various geographic areas of the county.

The County Executive shall solicit interest in serving on the commission through the general media and through community groups. The pool established of interested parties will be submitted to the legislature for its consideration. The majority and minority leaders of the legislature will each make 2 appointments to the commission from the pool submitted by the County Executive of interested applicants no later than 60 days after census data becomes available.



The 4 members selected by the leaders of the legislature will select the remaining 3 members of the commission from the list submitted by the county executive. If the 4 members are unable to agree on the remaining 3 members within 70 days after the census data becomes available, they will no longer be eligible to serve on the commission and new appointments will be made by the leaders of the legislature.

No member of the Commission can be a public officer or employee.  
Under Article II of the charter, the duties and powers of the legislature are delineated.

The legislature is empowered to:

- Make appropriations, levy taxes, incur debt and adopt a budget including a capital program,
- Enact, amend and rescind local laws and submit to them to the County Executive for approval,
- Override any veto of the county executive by 2/3 vote,
- Confirm department heads appointed by the county executive,
- Adopt a county administrative code,
- Adopt its own rules of procedure,
- Fix compensation of officers and employees of the county that are not subject to collective bargaining agreements,
- Approve all labor contracts,
- Determine and fix real property tax equalization rates,
- Provide for an annual independent audit of the county,
- Approve the execution of contracts in excess of \$50,000,
- Make provision for any matter of government not provided for in the county charter.

Article III of the charter details the powers, duties and qualifications of the County Executive as the chief administrative officer of the County.

The County Executive is empowered to:

- Appoint all officers and department heads as contained in the charter subject to confirmation of the legislature,
- Supervise, direct and control all departments,
- Conduct or supervise collective bargaining with designated bargaining units,
- Serve as chief budgetary officer of the county and submit an annual budget and capital program to the legislature for its approval,
- Designate depositories of county funds,
- Approve or disapprove all local laws, resolutions or budgets enacted by the legislature,
- Submit an annual budget and capital plan to the legislature by the first Friday of October for its consideration for the operation of the county for the subsequent fiscal year,

- Appoint one or more deputy county executives as provided for in appropriations approved by the legislature, and
- Make any recommendation to the legislature with respect to the affairs of the county deemed appropriate for its action.

The charter further delineates the fiscal procedures of the county, describes the duties and responsibilities of various county departments, and establishes the duties of the elected county comptroller under Article IX.

The Article IX of the charter establishes the Comptroller as the chief accounting and auditing officer of the County.

The Comptroller is empowered to:

- Examine, audit and verify all books, records and accounts of the county,
- Maintain records of appropriations, encumbrances and expenditures,
- Certify the availability of funds for all purchases, contracts and requisitions,
- Audit and certify for payment all claims or charges made against the county,
- Audit any program, function or department of county government,
- Report at least quarterly to the legislature and the public on the financial condition of the county, and
- Exercise all powers and perform all duties established by state or local law.

The charter also establishes a 5-member County Board of Ethics appointed by the County Executive, subject to confirmation by the legislature. No more than 2 members can be affiliated with the same political party.

The charter establishes a Periodic Compensation Review Panel of 5 members, 3 appointed by the legislature, one of whom must be appointed by the legislative minority. The remaining 2 members, not affiliated with the same political party, are appointed by the County Executive.

The panel will review the compensation of elected officials in the County every 2 years and provide recommendations to the county executive and legislature on the level of compensation following public hearing. Any changes in compensation for elected officials of the county recommended by the Periodic Compensation Review Panel will have to be enacted by local law.

The charter stipulates that five years from adoption of the charter, and every 10 years thereafter, a Charter Review Commission will be appointed by the legislature and the County Executive to review the charter and make recommendations to the county executive and the legislature on suggested changes, modifications or amendments to the county charter.

The commission is empowered by 2/3 vote of its members to directly submit to the voters for referendum, amendments to Articles II or III of the charter pertaining to the legislative branch or executive branch.

## Schenectady County Charter

The charter adopted by Schenectady County has many similarities to the Charter adopted by Erie County except in one crucial area. The Schenectady County Charter does not establish an independently elected executive. Schenectady County chose to adopt a charter giving preeminent authority to a county legislature but created an office of county manager to serve as the chief administrative officer of the county.

The Schenectady County Charter generally reserves to the legislature the ultimate authority given to both the Executive and the legislature in Erie County's Charter. One additional authority granted to the legislature by Schenectady County's Charter is to appoint a county manager who serves at the pleasure of the legislature. The manager has supervisory authority over all county departments and agencies, except those under the direct supervision of an elected official.

The County Manager has the following duties under Article III of the charter adopted by Schenectady County.<sup>xlvi</sup>

- Serves as chief executive office and administrative head of county government.
- Appoints to serve at the manager's pleasure, all county department heads and subordinates subject to the confirmation of the legislature.
- Supervises all administrative agencies and prescribes their internal organization.
- Executes and enforces all local laws, ordinances and legalizing acts of the legislature.
- Collects all revenues and makes all expenditures of the county under procedures established by the legislature.
- Serves as the chief budget officer of the county and is responsible for the preparation of the county operating and capital budgets.
- Examines the books and papers of administrative units of the county and reports to the legislature.
- Executes county contracts for goods and services as approved by the county attorney and in accordance with the budget adopted by the legislature.
- Reports to the legislature annually or as directed by the legislature.
- Has all necessary incidental powers to perform his duties and functions as delegated by the legislature.

Article VII of the Schenectady County Charter establishes the county's financial procedures, which differ somewhat from Erie County that has an independently elected executive.

Under Schenectady County's Charter, the County Manager is responsible for the preparation and submission of the tentative county budget, 6 year capital plan and budget message to the legislature by October 1.<sup>xlvii</sup>

The legislature is required to hold a public hearing on the budget prior to any legislative action. At least 10 days before the budget is acted on by the legislature, the details of budget must be published and appropriate notice and summaries published through local print media of general circulation.

After the public hearing the legislature can adopt the budget as presented or add or delete any item except those required by law or to meet debt service requirements.

No additions or deletion from the budget can occur until the county manager is requested to present the manager's recommendations on the additions or deletions included in the county budget. The county manager does not have veto authority but the legislature is required to request and consider the recommendations of the county manager within 5 days of adoption of the budget. There is no requirement that the legislature follow the recommendations of the administrator. If recommendations are not received from the manager with 5 days, the legislature may adopt their changes to the budget.

The Schenectady County Charter also spells out the duties and responsibilities of county departments and provides for Charter Amendment procedures consistent with those contained in the County Charter Law.

### Tompkins County Charter

Tompkins County also adopted a county charter that did not create an independently elected executive, maintaining the ultimate authority for the conduct of county business with the legislature. Tompkins County enacted a charter that created an Office of County Administration, headed by a county administrator who serves as the county's chief executive officer and administrative head.

The Tompkins County legislature has the same general powers as given to the legislature under the Erie and Schenectady County Charters. The Tompkins County Charter, however, gives to the legislature the sole authority to appoint the County Administrator, the County Attorney, the County Finance Director and the Clerk to the Legislature, all of whom serve under the direct supervision and at the pleasure of the County Legislature. This differs from the Erie County where the County Executive appoints the County Attorney and Finance Director and from the Schenectady County where these offices are appointed by the County Manager.

Under the Tompkins County Charter, the County Administrator:<sup>xlviii</sup>

- Supervises the implementation of policies adopted by the legislature,
- Supervises and controls all departments and offices headed by an appointed official,
- Oversees the activities of county departments as authorized by the legislature,

- Supervises the implementation of contracts for services as authorized by the legislature and executed by the Chair of the legislature,
- Provides adequate insurance and surety bond coverage to protect the county,
- Maintains an administrative manual defining operational policies and procedures as approved by the legislature,
- Serves as freedom of information officer of the county, and
- Appoints County department heads not reporting to an elected official with the consent of the legislature.

Under the Financial Procedures contained in Article 5 of the Tompkins County Charter<sup>xlix</sup>, the County Administrator is responsible for the preparation of the operating budget of the county. The Administrator is also responsible for the preparation of the county's capital plan for the next 5 years in conjunction with the Division of Budget and Finance, and the preparation of the Budget message, all of which must be introduced to the appropriate legislative committees by November 10th of each year.

No later than the 20th day of November, the clerk of the legislature will publish a summary of the proposed budget and capital plan in a publication of general circulation determined by the legislature. The legislature will hold a public hearing on the budget no later than December 1st of each year.

Following the public hearing, they can add or delete appropriations or projected revenues to the budget proposal or capital plan as long as additional revenues to sufficiently fund the increases offset any additions to the budget proposal or capital plan.

If the legislature fails to enact a budget or capital plan by December 10th, the budget submitted to the legislature by the county administrator becomes the budget and capital plan for the coming year, including all necessary implementing appropriations and tax levies.

After adoption of the budget and capital plan, the county administrator is responsible for maintaining controls on all county expenditures, except those of the county legislature.

### Herkimer County Charter

The Herkimer County Charter was adopted as local law number 1 of 1966. The charter was adopted, in part, in response to federal court rulings, which found that, the organization structure of many boards of supervisors in New York State, including Herkimer County, were in violation of one person, one vote requirements.<sup>1</sup>

Herkimer County chose to adopt a county charter that provides a change in government structure from a board of supervisors to a county legislature. The charter established legislative districts, provided for the organization of the legislature, and established a re-districting commission, which is formed three months after publication of the census to

evaluate the existing legislative districts for equity in representation as reflected by the population figures contained in the census.

The charter reserved to the legislature, all powers formerly held by the board of supervisors, and those reflected in the County Law and municipal home rule statutes. All other administrative functions are delegated by local law and the administrative code as adopted by the County Legislature.<sup>li</sup>

In 1976, the Herkimer County Legislature adopted Local Law Number 3, which established the position of county administrator in Herkimer County. Under the provisions of this local law, the County Administrator is charged with the following.<sup>lii</sup>

- Assisting the chair and the legislature in coordinating legislative policies and procedures.
- Advising the legislature and implementing county policy as adopted by the legislature.
- Developing policy and procedural recommendations for consideration of the legislature.
- Coordinating the activities of county department heads.
- Maintaining liaison for the legislature with political sub-divisions and state and federal officials.
- Identifying sources of state and federal revenues.
- Providing recommendations to the legislature on increasing county efficiency.
- Providing appropriate recommendations to the legislature during its meetings.
- Attending all committee meetings of the legislature.
- Such other responsibilities as assigned by the legislature.

Under local law No. 3 of 1976, the county administrator reports and is responsible to the Herkimer County legislature acting as a committee of the whole.

## Conclusion

Across New York State, counties are examining their existing administrative structure to determine the best approach to providing comprehensive services to the public while easing the tax burden on local taxpayers.

Several counties have begun comprehensive reviews and are in the process of entertaining new approaches to county government. Several counties are exploring the adoption of a county charter to define the operational procedures of their county government more clearly.

Discussions on whether to create a position of county administrator or manager are ongoing in several counties. Many counties are also looking to consolidate local services and combine units of local government to provide greater efficiencies.

All these important decisions local county officials will have to make in the months and years ahead are affected by state laws that can oftentimes seem confusing and overlapping in their intent. There are several places where county officials can obtain information that will be helpful in your deliberations on your county's future.

The publications of the New York State Department of State, Division of Local Government, particularly the Local Government Handbook and the publications of the James A Coon Local Government Technical Series can be a great resource to county officials looking to learn more about the state laws and regulations that affect local governments. Many of these publications are available on-line and can be obtained through the Department of State Web Site at <http://www.dos.state.ny.us/>.

Opinions of the New York State Attorney General's Office are also available on-line at <http://www.oag.state.ny.us/lawyers/opinions/opinion.html>. Through this website, interested officials can obtain copies of opinions of the New York State Attorney General going back to 1995. The Informal Opinions of the Attorney General can provide legal background resources on a wide variety of subject areas affecting local government.

Legal opinions of the Office of the State Comptroller that affect local governments and local government financial management can be obtained at: <http://nysosc3.osc.state.ny.us/legal/index.htm>.

All these resources can assist you in obtaining background information you may need as you examine the provisions of services and administrative structures in your county. The best resource available to you, however, is the knowledge and experience available to you from your peers in county government.

Through publications such as this, and your active participation in the programs of the New York State Association of Counties and the Pelletier Institute you are able to have access to information on program and administrative best practices, technical assistance on issues of concern and the ability to share experiences with county officials from across New York State.

## End Notes

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- <sup>i</sup> New York State Constitution Research Aid, Schaffer Law Library, Albany Law School
- <sup>ii</sup> *Ibid*
- <sup>iii</sup> Bill of Rights for Local Governments, New York State Constitution, Article IX, Section 1, (a-h)
- <sup>iv</sup> *Ibid*, Article IX, Section 2
- <sup>v</sup> *Ibid*, Article IX Section 2 c (ii)
- <sup>vi</sup> Statute of Local Governments, Article 2, Section 10 Grants of Power to Local Governments
- <sup>vii</sup> *Ibid*, Article 2, Section 11
- <sup>viii</sup> *Ibid*, Article 2, Section 10
- <sup>ix</sup> Local Government Handbook, Chapter V County Government, pg. 8, New York State Department of State, 5th Addition, Jan. 2000
- <sup>x</sup> *Ibid*
- <sup>xi</sup> NYS County Law, Article 4 Board of Supervisors, Section 153, (1)
- <sup>xii</sup> NYS Municipal Home Rule Law, Article 1, Section 2 Definitions (1)
- <sup>xiii</sup> *Ibid*, Article 2 General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions, Section 10
- <sup>xiv</sup> *Ibid* Section 10, 1(ii)a
- <sup>xv</sup> *Ibid*, Section 10 a, 13
- <sup>xvi</sup> *Ibid*, Section 10 b
- <sup>xvii</sup> *Ibid*, Section 11 (a-j)
- <sup>xviii</sup> Local Law No. 3 of 1999, Schuyler County, Creating the Position of County Administrator
- <sup>xix</sup> *Ibid*, Section 7
- <sup>xx</sup> Schuyler County Legislature Resolution No. 199, Rule 22 paragraph 3, Regular Meeting May 10, 2004
- <sup>xxi</sup> Local Law No. 1 of 1987, A Law to Establish the Office of County Administrator, Yates County
- <sup>xxii</sup> *Ibid*, Section 7
- <sup>xxiii</sup> Local Law No. 3 of 1988, A Local Law to Establish the Position of County Administrator of the County of Livingston August 10, 1988
- <sup>xxiv</sup> *Ibid*, Section 5
- <sup>xxv</sup> Local Law # 7 of 1995, a Local Law to Create the Position of County Manager, Seneca County, October 10, 1995
- <sup>xxvi</sup> *Ibid*, Section 6 powers and duties
- <sup>xxvii</sup> Sullivan County Charter, Article III the County Manager, C3.01 appointment, suspension, and removal
- <sup>xxviii</sup> *Ibid*, section C3.03 Qualifications
- <sup>xxix</sup> Local Law No. 1 of 1987, Yates County, Section 2 County Administrator; term, minimum qualifications
- <sup>xxx</sup> Local Law No. 3 of 1999, Schuyler County, Section 3 Qualifications
- <sup>xxxi</sup> Local law No. 7 of 1995, Seneca County, Section 3 Qualifications
- <sup>xxxii</sup> Local Government Handbook, Chapter V County Government, pg. 7, New York State Department of State, 5th addition, January 2000
- <sup>xxxiii</sup> NYS Municipal Home Rule Law, Article 2 Section 10 General Powers to Adopt and Amend Local Laws, 1(i)
- <sup>xxxiv</sup> *Ibid*, Section 10 (ii)a ,1
- <sup>xxxv</sup> Opinions of the Attorney General, (Opn. No. 95-11)
- <sup>xxxvi</sup> Local Government Handbook, Chapter X Citizen Participation and Involvement, Referenda, pg. 4, New York State Department of State, 5th addition, January 2000
- <sup>xxxvii</sup> NYS Municipal Home Rule Law, Article 4, Part 1, The County Charter Law
- <sup>xxxviii</sup> *Ibid*, Article 4, Part 1, Section 33, (4)
- <sup>xxxix</sup> *Ibid*, Article 4, Part 1, Section 34 limitations and restrictions, (2)
- <sup>xl</sup> *Ibid* Article 4, Part 1, Section 33 (5)
- <sup>xli</sup> *Ibid*, Article 4, Part 1, Section 33, (6)
- <sup>xlii</sup> *Ibid*, Article 4, Part 1, section 33, (7)
- <sup>xliii</sup> *Ibid*, Article 4, Part 1, Section 33-a (2)
- <sup>xliv</sup> Erie County Charter, Article II Legislative Branch, Section 202 Powers and Duties



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- xlv *Ibid*, Article 3 Executive Branch, section 302 Powers and Duties
  - xlvi Schenectady County Charter, Article III County Manager, Section 3.01 Powers and Duties
  - xlvii *Ibid*, Article VII Financial Procedures, Section 7.01 (b)
  - xlviii Tompkins County Charter, Article 3 Department of County Administration, C-3.03 County Administrator; powers and duties
  - xlix *Ibid*, Article 5 Financial Procedures and Control, C. 5.05 (b)
  - <sup>1</sup> Herkimer County Charter, Article I, Section 100 Title and Purpose
  - li *Ibid*, Article II Legislative Branch, Section 200, County Legislature; Status and Title
  - lii Local Law No. 3 of 1976, Herkimer County Legislature, Section 3



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