



**A Report on
County Government Structure
in New York State**

April 11, 2006

Western New York Coalition For Progress

www.wnyprogress.org

Table of Contents

<u>I.</u>	<u>Introduction</u>	1
<u>II.</u>	<u>Laws Governing the Creation and Governance of New York Counties</u>	1
<u>1.</u>	<u>New York’s Constitution</u>	1
<u>2.</u>	<u>New York’s Statutes</u>	2
<u>A.</u>	<u>Statute of Local Governments</u>	2
<u>B.</u>	<u>County Law</u>	3
<u>C.</u>	<u>Municipal Home Rule Law</u>	4
<u>III.</u>	<u>Governance of New York Counties – Three WNY Examples</u>	6
<u>1.</u>	<u>Erie County</u>	6
<u>2.</u>	<u>Niagara County</u>	9
<u>3.</u>	<u>Chautauqua County</u>	10
<u>IV.</u>	<u>Recommendations for Erie County’s Charter Revision Commission</u>	11
<u>V.</u>	<u>Conclusion</u>	15
	<u>APPENDIX</u>	i
	<u>Endnotes</u>	iii

Copyright 2006
the Western New York Coalition for Progress
All Rights Reserved.

No part of this report may be reproduced or used without the prior permission of the Western New York Coalition for Progress, and the proper citation of the report’s authors.

Report on County Government Structure in New York State

I. Introduction

According to the U.S. Census Bureau, New York's estimated 2004 population was 19,227,088.¹ Like virtually every other state, New York has a form of government in which its counties provide its residents many of the necessary day-to-day services.² Yet those 19 million citizens of New York live not only in over 60 different counties, but counties based on different styles of government. Unlike many other states, New York does not have one standard, uniform structure for its counties.

This report will examine the laws that create and govern counties in New York, the powers delegated to the counties, as well as retained by the state, and the various forms of county government structures in New York. Additionally, this paper will offer some recommendations on how New York residents can be better served through the running of efficient county organizations.

There are 62 counties in New York, 57 outside of New York City.³ While there seems to be a misconception among many in the public that counties are independent entities from the state, each county is actually a subdivision of the State.⁴ In other words, no county can exist without state approval. Therefore, if we are to review the various forms of county government in New York, we must examine the basic laws that create and govern counties.

II. Laws Governing the Creation and Governance of New York Counties

1. New York's Constitution.

New York State is governed by its constitution and the resulting laws passed by the state legislature created by the constitution. The constitution has gone through five (5) different versions since its initial adoption in 1777, the latest being adopted in 1938 by a statewide referendum. Though it has been amended since, the present version is roughly the same as adopted in 1938 as it applies to counties.

New York's Constitution sets the parameters for all local governments. Article IX, § 1 of the constitution creates a "Bill of rights for local governments." That section grants local governments the following rights, powers, privileges and immunities:

- Right to an elective legislative body, except a county located wholly within a city (New York City);
- The election or local appointment of officials;
- Act jointly with another municipality, with legislature permission;
- No local government or any territory thereof can be annexed without consent of voters by referendum;
- Power of eminent domain;
- Power to receive payment for property utilized by utilities; and

- Counties have the power to adopt, amend or repeal alternative forms of government.

In addition to these powers, the constitution also provides that the state “legislature shall 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 the constitution.⁵ The constitution further provides for the implementation of these powers by requiring the state legislature to enact “a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration...”⁶ These powers can only be repealed or lessened by the state legislature through the enactment of a local law, signed by the Governor, during two successive legislative session years.⁷

Additionally, the constitution grants to all local governments the “power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government...”⁸ Because this provision is not an absolute provision, the state retains wide discretion over issues related to local governments.

2. New York’s Statutes.

A. Statute of Local Governments.

As noted above, New York’s constitution grants the legislature the power to create laws in order to secure local governments “the rights, powers, privileges and immunities granted to them.”⁹ The legislature has done that through the passage of many laws, including those codified as the “Statute of Local Governments.”¹⁰ That statute provides in part that the following powers are granted to local governments,¹¹ but “*subject to such purposes, standards and procedures as the legislature may have heretofore prescribed or may hereafter prescribe*”:¹²

- The power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties;
- The power to acquire real and personal property or any interest therein for its purposes, and to construct, reconstruct, equip, maintain, repair and operate the same for such purposes;
- The power to acquire, establish, construct, reconstruct, equip, maintain, repair and operate recreational facilities on park or other lands, including but not limited to self-supporting, self-sustaining or revenue-producing recreational facilities;
- The power to dispose of its real or personal property or any interest therein when no longer required for its purposes, except that this power shall not be applicable to inalienable real or personal property or any inalienable interest therein;

- The power to fix, levy, impose, collect and administer rents, charges, rates and fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon; and
- The power to perform comprehensive or other planning work relating to its jurisdiction.

While the state legislature granted counties the power to perform their daily functions, including the power to establish ordinances and fix, levy, impose and collect rates, charges and fees, it retained certain rights for the state. These retained rights include not only those prescribed at the time of the statute's adoption, but also those the legislature "may hereafter prescribe." Thus, in granting local governments certain basic powers the state legislature also ensured that counties, as well as other municipalities, would be subject to the future standards prescribed by the state.

Additionally, on issues that are generally local in nature, courts have relied upon the provisions of the Statutes of Local Governments to hold that where a local zoning law conflicts with a state law, the local law is preempted.¹³

B. County Law.

Most New York statutes that directly relate to counties are found in the "County Law."¹⁴ When enacted in 1950, most counties in New York followed a "Board of Supervisors" format. As such, New York's "County Law" is predicated on a county following such a structure. Yet, not all counties in New York follow such a format - twenty (20) have adopted a county charter form of government, and in those counties, the County Law doesn't apply. However, the majority of counties still follow the basic structures delineated under the County Law.

As stated, the County Law is the codification of numerous prior laws as they relate directly to counties. The statute provides that the County Law applies to all counties except those (1) wholly contained within a city, or (2) those that have elected "an optional or alternative form of county government" pursuant to state law.¹⁵

A "County" is defined by the statute as being "a municipal corporation comprising the inhabitants within its boundaries and formed for the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as may be imposed or conferred upon it by law."¹⁶ The County Law provides that every county shall be governed by a "Board of Supervisors" made up of the executive officials of every city and town.¹⁷ However, it also provides that "[a]ll the functions, powers, obligations and duties which by law are possessed by or vested in the board of supervisors of a county may be exercised by an elected county legislative body..."¹⁸ Thus, the powers of a Board of Supervisors can be shifted to a separate elected legislature if the county so chooses.

The County Law does not provide for an independently elected executive. Instead, it states that the board of supervisors shall select a chairman, and may select a

vice-chairman.¹⁹ If the board is unable to select a chairman by February 1st, the clerk of the county shall choose a member of the board as chairman, and the selected person shall serve in that capacity through the remainder of the calendar year.²⁰

While New York's County Law does not provide for an elected executive, it does require the election of a sheriff, clerk, district attorney and treasurer, as well as other appointed positions.²¹ Additionally, the passage, amendment or repeal of all local laws/resolutions must be passed by a majority vote of the board of supervisors.²²

Of the fifty-seven (57) counties outside of New York City, thirty-seven (37) follow the structural format prescribed by the County Law. However, a majority of those counties have an elected county legislature, not a board of supervisors, and have provided for the day-to-day administration of the county by a retained county administrator or manager.

Figure 1, which can be found at page i of the attached Appendix, shows the counties in New York that follow the basic structure presented in the County Law (non-chartered counties), but note the variances in how these counties are administered.

Of the above thirty-seven (37) counties, seventeen (17) have a board of supervisors form of legislative body, nineteen (19) have replaced the board of supervisors with an independently elected county legislature, and one (1) county, Otsego, has replaced its board with an independently elected board of representatives.

Of the counties that employ a board of supervisors form of government, eight (8) select a chairman from a member of the board, seven (7) have hired a county administrator, and two (2) employ a county manager.

Of the counties that have replaced their board of supervisors with an independently elected legislature/board of representatives, thirteen (13) employ a county administrator, two (2) counties, Cayuga and Otsego, select a chair from the legislative body, and five (5) counties employ a county manager.

In other words, among the thirty-seven counties that follow the County Law, many different forms of government exist. Some counties have not changed their form of government.

C. Municipal Home Rule Law.

The other prime source of laws governing counties and other municipalities in New York is the "Municipal Home Rule Law."²³ That law grants to all local governments many of the powers that are associated with government, including, but not limited to, the following powers:²⁴

- To adopt and amend local laws;

- To set the duties, qualifications, compensation and other terms of work of officers and employees;
- Transact business;
- Acquire, care and maintain highways and roads; and
- Levy, administration and collection of local taxes and assessments approved by the legislature.

Additionally, the Municipal Home Rule Law provides counties with an important power – the ability to adopt, amend or repeal a county charter.²⁵ The charter adopted by the county forms the basis of its structure, unlike the structure provided by the County Law. Because a county charter is an “optional or alternative form of county government,” the County Law does not apply to a chartered county.²⁶

While a county is granted tremendous discretion on the contents of its charter, the charter must provide for the following:²⁷

- A legislature to exercise the power of legislation or appropriation;
- The agencies and officers responsible for the performance of the counties functions, as well as the manner of election or appointment, terms of office, and, if any, removal of such officers; and
- The equalization of real property taxes consistent with state legislature standards.

Unlike the County Law, the Municipal Home Rule Law contemplates, but does not require, an elected or appointed county executive. The Municipal Home Rule Law provides that a charter may:²⁸

- (a) Assign executive or administrative functions, powers and duties to elective or appointive officers.
- (b) Empower an executive officer elected on a countywide basis to veto actions of the board of supervisors,²⁹ with provision for overriding of such vetoes by a specified percentage or percentage of votes of such board.

While there are a number of ways a county charter can be formulated, the final version must be presented to the voters for a referendum, and the charter will only take effect if a majority of voters approve the referendum during a special election or the next general election.³⁰ Thus, in the end it is the voters of the county that will decide the form of governance over the county.

Figure 2, which can be found at page ii of the attached Appendix, shows the counties in New York that have adopted county charters, as well as the ways these counties are administered.

Among the twenty (20) counties that are chartered counties, all have an independently elected legislature, as compared to a board of supervisors. Also, sixteen (16) have an independently elected county executive, two (2) employ a county manager and two (2) employ a county administrator. Thus, in the counties that have adopted a charter, almost all have a strong independent executive office.

III. Governance of New York Counties – Three WNY Examples

1. Erie County

The County of Erie, named after the Great Lake to which it is adjacent, is the most populous county in upstate New York. Buffalo, its county seat, is New York's second largest city. Erie County was created out of what was then Niagara County in 1821. For most of Erie County's existence, a board of supervisors governed it. In 1960, county voters passed Erie County's first charter, which created an independently elected county executive. That charter initially continued the board of supervisors as the county's legislative body, but starting in 1968 the board of supervisors form was eliminated and replaced with an independently elected legislature. While the size of the legislature has changed, that general format is still in existence today.

Erie County's executive is truly the chief executive officer of the county. Elected to a four (4) year term,³¹ the executive is empowered with most administrative functions. Specifically, the charter assigns the following powers and duties to the executive:³²

- Be the chief executive officer and administrative head of the county government;
- Appoint to serve during his pleasure the head of every department and other administrative unit of the county and the officers and employees in his own office;
- Supervise and direct the internal organization and reorganization of each department or other administrative unit the head of which he has power to appoint;
- Be the chief budget officer of the county;
- Determine and fix real property tax equalization rates among the various taxing districts of the county for county purposes and file the same with the county legislature;
- Have authority to appoint and terminate one or more temporary advisory boards of citizens of the county;
- Annually designate one or more depositories located within the county for the deposit of all moneys received by the commissioner of finance;
- Examine and approve or disapprove the sufficiency of sureties on official bonds and undertakings;
- Appoint a member of the county legislature to serve as chairman of such legislature (1) for the remainder of the calendar year in case

the county legislature has failed to select a chairman on or before February first, or (2) for the unexpired term of the previous chairman in case the county legislature has failed to select a chairman within thirty days after a vacancy has occurred in the office of the chairman;

- Perform such other duties and have such other powers as may be prescribed for him by law, administrative code, county ordinance or resolution; and
- In addition to the powers set forth in this charter, have and be responsible for the exercise of all executive and administrative powers in relation to any and all functions of county government not otherwise specified in this charter.

Thus, the executive in Erie County is granted the power to set the agenda, as the chief budget officer, and manage its day-to-day operations. However, while the executive is a powerful position in Erie County, it is not all-powerful. Erie County's Charter provides for an independently elected comptroller, who acts as Erie County's chief fiscal, accounting, reporting and auditing officer,³³ and more importantly, Erie County's Legislature is not without its own law making and budgetary powers.

Erie County's legislature, a fifteen (15) person body, is granted the following powers and duties:³⁴

- To make appropriations, levy taxes and incur indebtedness;
- To exercise all powers of local legislation in relation to enacting, amending, repealing or rescinding local laws, legalizing acts, ordinances or resolutions, subject to veto by the county executive in such instances as are specifically provided in this charter
- By local law to adopt, amend and repeal an administrative code which shall set forth the details of administration of the county government in harmony with the provisions of this charter and may contain revisions, simplifications, consolidations, codifications and restatements of special laws, local laws, ordinances, resolutions, rules and regulations consistent with this charter;
- By local law to create, alter, combine or abolish county administrative units not headed by elective officers;
- To adopt by resolution all necessary rules and regulations for its conduct and procedure;
- To fix the compensation of all officers and employees paid from county funds, except members of the judiciary;
- To fix the amount of bonds of officers and employees paid from county funds; and
- To make such studies and investigations as it deems to be in the best interest of the county, and in connection therewith to obtain professional and technical advice, appoint temporary advisory boards of citizens, subpoena witnesses, administer oaths and

require the production of books, papers and other evidence, deemed necessary or material to the study or inquiry.

The budget process evidences the powers of both the executive and legislature. Under Erie County law, the executive is required to submit to the legislature on or before October 15 the proposed budget for the following fiscal year, financial forecast for the following two (2) years, and the county's projected capital program for the next six (6) years.³⁵ The legislature is required to hold at least one public hearing, and then may delete items (except debt service payments or appropriations required by law) or add items from the proposed budget.³⁶ Any deletions from the proposed budget do not require approval from the executive prior to taking effect.³⁷

However, if the legislature passes a budget with additions or increases, that must be presented to the county executive for his consideration by no later than the Wednesday following the first Tuesday in December.³⁸ If the executive approves the legislature's additions or increases, he shall affix his signature to a statement confirming such approval, at which time the budget shall be deemed adopted.³⁹ If the budget is increased, and the executive fails to return that budget to the legislature by the Monday preceding the second Tuesday in December, the budget with the additions is deemed adopted.⁴⁰

If the executive objects to the added or increased items in the legislature's modified budget, he may veto those items, at which time the legislature may attempt to override the vetoed items by a two-thirds (2/3) vote of the members of the legislature.⁴¹

However, in addition to the above, Erie County has a unique provision that provides for the adoption of the county executive's tentative budget even if the legislature takes no action. Erie County's Charter provides that if the legislature fails to adopt a budget by the second Tuesday in December, then the tentative budget submitted by the executive shall be deemed adopted by the county as a "default budget."⁴²

This is exactly the situation that took place with the adoption of the 2005 county budget. In 2004, in response to a projected hundred million dollar deficit, the county executive submitted a budget to the legislature, the "Red Budget," which included drastic cuts to services, resulting in the deletion of hundreds of jobs. However, at the same time, the county executive presented an alternate budget to the community that retained all services, but called for a sales tax increase, the so-called "Green Budget."

The executive called on the legislature to amend his Red Budget by adding items to it so services and jobs would be restored, which would convert the Red Budget to the unofficial Green Budget. The county executive calculated that the legislature would amend his submitted Red Budget. The legislature, by a majority vote, did amend the budget - adding back many jobs and services. However, because the amended budget also called for a one percent (1.0%) sales tax increase, this required two-thirds of the legislature to vote in favor of the increase - Erie County's Charter requires a two-thirds super-majority vote by the legislature to pass any tax or fee increase.⁴³ After much debate, including initially having the votes necessary to pass the increase, the legislature

was unable to pass the proposed sales tax increase with the required two-thirds supermajority vote even though it had earlier passed a budget that required a sales tax increase in order to be balanced. Therefore, when it became apparent in early 2005 that the county's expenditures were drastically greater than revenues, major cuts were initiated to Erie County's services and jobs in order to balance the actual fiscal year to the budget.

This episode in county history exposed a flaw in the county's charter – the county executive can conceivably control the whole budget process if he presents a budget so unacceptable that the legislature cannot find the votes to amend it. Furthermore, because Erie County's Charter requires a two-thirds vote of the legislature to pass a tax or fee increase, there is a chance, as happened in the 2005 budget process, that a budget that otherwise passes with a simple majority vote will ultimately fail because legislators are unable to obtain a supermajority vote as required for a revenue increase.

Thus, while the Erie County Legislature is empowered with enacting ordinances, making budget appropriations and imposing taxes, the county executive has more than just the power to prepare the budget and run the county's daily operations, in some cases the executive can control the entire budget process.⁴⁴

2. Niagara County

Niagara County was formed in 1808. While mainly rural in nature, it includes the cities of Lockport (its county seat), Niagara Falls and North Tonawanda. Unlike Erie County, its neighbor to the south, Niagara has not adopted a county charter. In fact, as noted by Figure 1, Niagara County is the most populous county in New York to not have adopted a county charter. There have been attempts to adopt a charter form of government in Niagara County in the past, but all attempts have ultimately failed at the ballot box.⁴⁵

For example, in 2001, Niagara County voters rejected a referendum that would have replaced their current form of government with a chartered county led by an elected county executive. In that election, even though voters in the cities passed the referendum, voters in the county's towns, by an almost two-to-one margin, voted against the proposal 12,455 to 7,485.⁴⁶

Instead Niagara County follows the older form of governance as provided by New York's County Law, except it has replaced its board of supervisors with a nineteen (19) person independently elected county legislature.

While the legislature elects a chairman and vice-chairman, it is not those individuals that run the day-to-day operations of the county. Instead, following the defeat of the 2001 charter referendum, Niagara County's Legislature adopted a county manager form of government and delegated the day-to-day operations of the county to an appointed county manager.⁴⁷

Niagara County's current manager is appointed through a contract for a four (4) year term.⁴⁸ The manager is responsible for preparing the budget and running the day-to-day operations of county. Niagara County's laws do not provide a specific date for a budget submission. Instead the legislature chooses the date when the manager's budget is presented to them.

After submission of the manager's proposed budget it is the legislature that approves, rejects and then modifies the budget. Unlike Erie County, it is the legislature that is ultimately responsible for all facets of the budget.

Additionally, the manager is given the power to appoint department heads, subject to approval from the legislature. When making his appointments, the manager in Niagara County employs two (2) panels of citizens to help him in his choices – a panel of elected and county officials and second panel of non-county employees.

3. Chautauqua County

Chautauqua County is located in the most southwestern tip of New York, sitting on the banks of Lake Erie and adjacent to Erie County to the south. Incorporated in 1808, it is mostly rural in nature, with its county seat being in Mayville. For most of its existence, the county followed a board of supervisors form of government. In 1998, Chautauqua County adopted a charter under the Municipal Home Rule Law that provided for a twenty-five (25)-person legislature and an independently elected county executive, as well as other elected officials such as a county clerk, district attorney, sheriff and comptroller.

Chautauqua County's Charter grants the legislature "all such powers and duties conferred on County Legislatures in the State of New York by applicable law, and all powers necessarily incidental thereto."⁴⁹ Furthermore, the legislature shall have these additional powers and duties:⁵⁰

- Its rules and regulations of conduct;
- To make appropriations, incur indebtedness, adopt the budget and six (6) year capital plan, and levy taxes;
- To enact, amend, or rescind local laws, charter laws, other acts or resolutions;
- To fix the compensation of all officers and employees paid from county funds, as well as their own compensation;
- To make or cause to be made audits, studies and investigations;
- To approve all labor contracts; and
- To appoint a public defender and coroners.

While the legislature is empowered with many responsibilities, similar to Erie County, the Chautauqua County Executive is empowered with the day-to-day responsibilities of the county. The county executive, who is elected for a four (4) year

term, is “responsible for the administration of all county affairs.”⁵¹ Additionally, the county executive shall:⁵²

- Be the chief executive officer and head of the executive branch which is responsible for the administration, organization, and implementation of all functions of county government, except those associated with the legislature or other elected offices;
- Promulgate an administrative code to address all administrative functions of the county and the financial procedures;
- Exercise supervision of all executive branch entities and appoint department heads;
- Secure proper accounting of all funds;
- Execute and enforce all local laws; and
- Be responsible for the preparation and submission to the legislature of the annual budget and capital program.

As noted above, the executive is charged with drafting the county’s administrative code, which shall take effect thirty (30) days after its promulgation unless rejected by a two-thirds (2/3) majority of the legislature.⁵³

As also stated above, the county executive is responsible for the preparation and submission of the annual budget to the legislature. Chautauqua County law provides that the county executive must submit her budget by September 25 of each year.⁵⁴ The legislature has until December 1 to adopt the budget, and if the budget is not adopted by then, the tentative budget submitted by the executive is deemed adopted (a default budget).⁵⁵

Additionally, if the legislature adopts a budget but changes specific items as compared to the executive’s proposed budget, the executive may veto the specific items without vetoing the entire budget (a line item veto).⁵⁶ As with all vetoed items under the charter, the legislature may then override the executive’s veto two-thirds (2/3) of the entire legislature (not just those present for a meeting) vote for such action within thirty (30) days of receiving official notice of the veto.⁵⁷

Thus, in some ways the Chautauqua County Executive is more powerful than its neighbor to the north in Erie County, as the executive not only prepares the budget, runs the day-to-day operations of the county, but also promulgates the county’s administrative code, which code can only be overridden by the legislature upon a two-thirds super-majority vote.

IV. Recommendations for Erie County’s Charter Revision Commission

Presently, a commission has been established empowered with the task of making recommendations on the revision of Erie County’s Charter. The twenty-three (23) members of that commission are made up by appointees made by the following: three (3) appointees from the county executive, one (1) appointee each from each member of 2005

legislature, one (1) additional appointee made by the then chairman of the legislature which appointee shall be chairman of the commission, and one (1) appointee each representing the clerk, sheriff, district attorney and comptroller.⁵⁸

The commission is required to submit a report and recommendations to the legislature and county executive.⁵⁹ The legislature is required to act on the reports and recommendations of the commission within three (3) months of the report's submission by either approving or rejecting each proposal.⁶⁰ Thus, the legislature is not required to accept either in part, or in whole, any aspect of the report. It could reject outright the commission's recommendations.

In our opinion, it is essential to have an Executive and a Legislature in some opposition to each other in order that they provide a check on each other's powers and steer the county towards balance. By tending to avoid fads, factionalism and other forms of reactive politics, the form that we currently have has the greatest potential for success, and has been successful in the past.

Although on its face, a managerial form of county government might sound like a vehicle for independent decision-making, there is no guarantee that will be the case, especially if the manager is appointed solely by the county executive. The managerial form, whether the executive or legislature makes the manager's appointment, is one step further removed from the democratic process.

In our estimation, the problem with our present form (and really any form of government) is when its members become beholden to select interest groups above and beyond their ostensible role as stewards of the county and servants of its citizenry. These select interests could be moneyed or not, extrinsic or self-serving - the members of the legislature or executives themselves. When the bodies that make up county government are responsive to outside forces or their own self-interest (or some mixture of both), that is when this well formulated system of checks and balances breaks down. That is what basically happened over the past several years in Erie County. In our opinion it was not the form of government that caused Erie County's fiscal crisis, but the mismanagement of our finances by elected officials.

To simply do away with an intuitively sound form of government in order to advance a system that may be no less prone to the same mismanagement that swept through previously, seems a hasty gesture - more akin to a political gimmick than a solution.

The question that must be posed is: was the fiscal crisis a failure of the form of government itself or a failure of those elected officials who occupy its seats? We believe it was the latter. Luckily, in a democracy, the incompetent and corrupt can be voted out at the next election.

Instead of ending the present form of government, we believe it would be better to mend it. This can be done by making minor changes to strengthen our present governmental structure.

Instead of relinquishing the day-to-day managerial functions of the county to a hired professional, it should be retained in the executive branch. However, independent professionalism, often the main reason claimed by proponents for a managerial form, can be implemented in the executive branch by placing certain responsibilities in a reformed deputy county executive position and requiring specific qualifications for the deputy county executive and directors of budget and management and purchasing. Experience and competence can replace patronage and payback.

Notwithstanding whatever recommendation the commission makes on the form of government in Erie County, the Western New York Coalition for Progress makes the following recommendations as to the revision of Erie County's Charter:

1. Retain the current form of government with an independently elected county executive but strengthen the role and qualifications of the deputy county executive and make him/her subject to legislature confirmation.

The county executive should play an important role in Erie County's government. The executive acts as the steward of the county, setting the agenda for the county. The executive should also act as check on a runaway legislature through the execution of the veto power (and *vice versa*; the legislature should act as check on the executive). However, the executive branch should be strengthened by requiring a professional deputy county executive to act as the county's operating officer.

Under our current system, the deputy county executive has few duties; essentially, he stands ready to assume the county executive's duties whenever necessary. Under our recommendation, the deputy county executive, appointed by the county executive but subject to the confirmation of the legislature, should be delineated in the charter as the chief operating officer of the county and responsible to the county executive for the administration of county operations. The deputy county executive should also be required to report to the legislature on a monthly basis on the operations of the county (this is in addition to any requirement in the charter that the budget director provide monthly budget monitoring reports to the legislature and comptroller).

In order to assure professionalism in the deputy county executive, the deputy should have an appropriate education and expertise. At a minimum, the deputy should have an accredited advanced degree (masters degree or greater) in public administration and at least ten (10) years' experience in municipal or local government management in a town, city or county having at least a population of two hundred thousand (200,000).

2. Strengthen the qualifications of certain department heads and make them subject to legislature confirmation.

The directors of budget and management, purchasing, informational and support services, and other department heads should be subject to confirmation by the legislature. The directors of budget and management and purchasing should possess advanced degrees (masters degree or greater) in public or business administration and have at least five (5) years of practical experience in preparing municipal budgets and purchasing, respectively.

3. Withhold the pay of the county executive, deputy county executive and budget director if they refuse to provide the legislature and/or comptroller with monthly budget monitoring reports.

Until recently, during the years leading up to Erie County's fiscal crisis, the county executive's administration has repeatedly refused to provide the legislature and the comptroller's office with monthly budget monitoring reports. These reports are essential to determine whether the budget as passed by the legislature is being followed, and if not, provide everyone in county government the information they need to steady the county's fiscal ship. Though the legislature passed a local law requiring monthly budget submissions, it is our opinion that only by amending the charter to *require* such submission will such reports be continually provided in the future. Additionally, in order to ensure such reporting, we believe it is necessary to penalize those in the administration whose job it is to prepare and deliver such reports if such reports are not delivered.

Therefore, it is our opinion that the charter should be amended to require the department of budget and management to provide to the legislature and comptroller monthly budget monitoring reports, and if such reports are not provided, provide the legislature and/or comptroller the power to withhold the pay of the county executive, deputy county executive and director of budget and management until such reports are provided.

4. Require one member of the legislature's staff to be a qualified professional budget officer.

During the past year the Erie County legislature has repeatedly stated that it requires an independent budget office to review and confirm budgets prepared by the executive. It is our opinion that such an office is not required, but that the legislature should have at least one (1) central staff member who has an advanced degree and requisite experience in the preparation and/or review of municipal budgets.

Therefore, the charter should be amended to require the county legislature to employ at least one (1) person who possesses an advanced degree (masters degree or greater) in public administration and who has at least five (5) years of practical experience in the preparation and/or reviewing of municipal budgets. While some may criticize the creation of a new charter required position to Erie County, we believe the addition of such legislative budget position will have a positive impact on Erie County by providing the legislature an experienced budget professional without the creation of a new department.

5. Require any revenue estimates in the administration's proposed budget be reviewed and confirmed for validity by the comptroller's office.

During the past few years, questions have been raised about the validity of the county executive's proposed budgets - are his annual revenue projections based on sound fiscal numbers or on wildly inflated estimates?

It is our opinion that prior to the legislature's voting on the budget, the comptroller's office should be required to review and report in person before the legislature on the validity of the revenue estimates in the administration's budget proposal. If the comptroller's office believes the revenue estimates to be inflated, the executive must respond to the comptroller's opinion in writing to the legislature and comptroller within seven (7) days of the issuance of the comptroller's report. This will not only provide more information to the legislature on the quality of the budget before it votes on its proposals, but more transparency in the process by requiring a neutral third-party to pass judgment on the quality of the revenue projections contained in the administration's budget.

V. Conclusion

While Erie County's recent history may indicate that substantial changes in the form of government are appropriate, we reject that notion as a short sighted reaction to events created by individuals, not a defect in the county's structural form of governance. As noted in this report, there are many forms of governance used by counties in New York State. No system can be claimed to be better than the others. All counties in New York face the same issues, and if managed properly, can provide the services needed by their constituents in a fiscally prudent manner.

It is our opinion that by requiring greater legislative confirmation powers over key members of the executive branch, as well as requiring key executive and legislative branch appointees to possess advanced degrees and appropriate experience, we can add professionalism to county government without destroying a system that in theory works, and has worked in the past.

The people of Erie County deserve a system of government that works, and it is our opinion that the current system, with appropriate modifications, is a good system that will, with the right leadership, serve its citizens well.

APPENDIX

Figure 1: County Law incorporated counties in New York

County	Form of Legislature	Members of Body	Chairman of Board	County Manager	County Admin.	Population (2000)
Allegany	Legislature	15	No	No	Yes	49,927
Cattaraugus	Legislature	21	No	No	Yes	83,955
Cayuga	Legislature	15	Yes	No	No	81,963
Chenango	Bd. of Sup.	23	Yes	No	No	51,401
Clinton	Legislature	10	No	No	Yes	79,894
Columbia	Bd. of Sup.	23	Yes	No	No	63,094
Cortland	Legislature	19	No	No	Yes	48,599
Delaware	Bd. of Sup.	19	Yes	No	No	48,055
Essex	Bd. of Sup.	18	No	Yes	No	38,851
Franklin	Legislature	7	No	Yes	No	51,134
Fulton	Bd. of Sup.	20	No	No	Yes	55,073
Genesee	Legislature	9	No	Yes	No	60,370
Greene	Legislature	14	No	No	Yes	48,195
Hamilton	Bd. of Sup.	9	Yes	No	No	5,379
Jefferson	Legislature	15	No	No	Yes	111,738
Lewis	Legislature	10	No	Yes	No	26,944
Livingston	Bd. of Sup.	17	No	No	Yes	64,328
Madison	Bd. of Sup.	19	Yes	No	No	69,441
Montgomery	Bd. of Sup.	15	Yes	No	No	49,708
Niagara	Legislature	19	No	Yes	No	219,846
Ontario	Bd. of Sup.	21	No	No	Yes	100,224
Orleans	Legislature	7	No	No	Yes	44,171
Oswego	Legislature	22	No	No	Yes	122,377
Otsego	Bd. of Rep.	14	Yes	No	No	61,676
St. Lawrence	Legislature	15	No	No	Yes	111,931
Saratoga	Bd. of Sup.	23	No	No	Yes	200,635
Schoharie	Bd. of Sup.	16	Yes	No	No	31,582
Schuyler	Legislature	8	No	No	Yes	19,224
Seneca	Bd. of Sup.	14	No	Yes	No	33,342
Steuben	Legislature	17	No	No	Yes	98,726
Tioga	Legislature	9	No	Yes	No	51,784
Ulster	Legislature	33	No	No	Yes	177,749
Warren	Bd. of Sup.	20	No	No	Yes	63,303
Washington	Bd. of Sup.	17	No	No	Yes	61,042
Wayne	Bd. of Sup.	15	No	No	Yes	93,765
Wyoming	Bd. of Sup.	16	Yes	No	No	43,424
Yates	Legislature	14	No	No	Yes	24,621

Figure 2: Chartered counties in New York

County	Form of Legislature	Members of Body	County Executive	County Manager	County Admin.	Population (2000)
Albany	Legislature	39	Yes	No	No	294,565
Broome	Legislature	19	Yes	No	No	200,536
Chautauqua	Legislature	25	Yes	No	No	139,750
Chemung	Legislature	15	Yes	No	No	91,070
Dutchess	Legislature	25	Yes	No	No	280,150
Erie	Legislature	15	Yes	No	No	950,265
Herkimer	Legislature	17	No	No	Yes	64,427
Monroe	Legislature	29	Yes	No	No	735,343
Nassau	Legislature	19	Yes	No	No	1,334,544
Oneida	Legislature	29	Yes	No	No	235,469
Onondaga	Legislature	19	Yes	No	No	458,336
Orange	Legislature	21	Yes	No	No	363,153
Putnam	Legislature	9	Yes	No	No	95,745
Rensselaer	Legislature	19	Yes	No	No	152,538
Rockland	Legislature	17	Yes	No	No	286,753
Schenectady	Legislature	15	No	Yes	No	146,555
Suffolk	Legislature	18	Yes	No	No	1,419,369
Sullivan	Legislature	9	No	Yes	No	73,966
Tompkins	Legislature	15	No	No	Yes	96,501
Westchester	Legislature	17	Yes	No	No	923,459

Endnotes

¹ U.S. Census Bureau Quick Facts for the State of New York: <http://quickfacts.census.gov/qfd/states/36000.html>.

²² According to the National Association of Counties, 48 states have operational county governments in some form, Connecticut and Rhode Island being the only states without them. Massachusetts has recently provided for the elimination of counties as the provider of most services, with most, but not all, counties accepting such reduced form. *See* National Association of Counties, *A Brief Overview of County Government*, August 2003.

³ For purposes of this report, the five (5) counties that comprise New York City (New York, Kings (Brooklyn), Queens, Bronx, and Richmond (Staten Island)) will not be discussed.

⁴ New York Constitution, Article IX § 2.

⁵ New York Constitution, Article IX § 2(a).

⁶ New York Constitution, Article IX § 2(b)(1).

⁷ New York Constitution, Article IX § 2(b)(1).

⁸ New York Constitution, Article IX § 2(c).

⁹ New York Constitution, Article IX § 2(a).

¹⁰ Chapter 58-A of the Consolidated Laws of the State of New York.

¹¹ “Local Government” is defined as a “county, city, town or village.” *See* New York Statute of Local Governments § (3)(2).

¹² New York Statute of Local Governments § 10 (emphasis added).

¹³ *See Benderson Develop. Co., Inc. v. City of Utica*, 5 Misc.3d 467, 781 N.Y.S.2d 880 (2004)

¹⁴ Chapter 11 of the Consolidated Laws of the State of New York.

¹⁵ New York County Law § 2.

¹⁶ New York County Law § 3.

¹⁷ New York County Law § 150.

¹⁸ New York County Law § 150-a.

¹⁹ New York County Law § 151(1).

²⁰ New York County Law § 151(5).

²¹ New York County Law § 400.

²² New York County Law § 151(1).

²³ Chapter 36-a of the Consolidated Laws of the State of New York.

²⁴ New York Municipal Home Rule Law § 10(1)(ii)(a).

²⁵ New York Municipal Home Rule Law § 10(1)(ii)(b)(1).

²⁶ New York County Law § 2.

²⁷ New York Municipal Home Rule Law § 33(3).

²⁸ New York Municipal Home Rule Law § 33(4).

²⁹ New York Municipal Home Rule Law § 32(1) defines “board of supervisors” as being: “The board of supervisors or other elective governing body of a county.”

³⁰ New York Municipal Home Rule Law § 7.

³¹ Erie County Charter, Article III § 301.

³² Erie County Charter, Article III § 302.

³³ Erie County Charter Article XII § 1202 (a).

³⁴ Erie County Charter, Article II § 202.

³⁵ Erie County Charter, Article XVIII § 1802.

³⁶ Erie County Charter, Article XVIII § 1803(A).

³⁷ *Id.*

³⁸ Erie County Charter, Article XVIII § 1803(B).

³⁹ *Id.*

⁴⁰ Erie County Charter, Article XVIII § 1803(D).

⁴¹ Erie County Charter, Article XVIII § 1803(C).

⁴² Erie County Charter, Article XVIII § 1803(E).

⁴³ Erie County Charter, Article XVIII § 1812.

⁴⁴ Erie County is presently going through a process to revise its charter. An independent commission was appointed in April of 2005, and is required to report back to the legislature with its findings and recommendations by July 15, 2006.

⁴⁵ One semi-recent attempt to adopt a charter in Niagara County ultimately led to a case being heard before the U.S. Supreme Court on the constitutionality of New York's law requiring both city and non-city residents to vote in favor of the proposed charter. Lockport v. Citizens for Community Action, 430 U.S. 259 (1977). The facts behind the case were as follows: a 1972 vote to adopt a charter in Niagara County was rejected when a majority of residents from the towns voted against the measure, even though a greater majority of voters from the cities voted in favor of it. The plaintiffs in the case sought a declaration that the charter had in fact been passed because a majority of voters from across the county voted in favor of the measure. The court ruled New York's law did not violate the Equal Protection Clause of the 14th Amendment, and thus the law was valid and the charter was defeated.

⁴⁶ See http://elections.niagara.ny.us/ge2001_official.html.

⁴⁷ Niagara County Local Law 15-4 (August 6, 2002).

⁴⁸ The current Niagara County Manager, Greg Lewis, was appointed on May 27, 2003 to a four (4) year term. His contract provides that may be terminated for cause without payment of a severance package, and if terminated without cause he receives a full severance package.

⁴⁹ Chautauqua County Charter § 2.04.

⁵⁰ Chautauqua County Charter § 2.05.

⁵¹ Chautauqua County Charter § 3.01 & 3.02.

⁵² Chautauqua County Charter § 3.02.

⁵³ Chautauqua County Charter § 3.03(b).

⁵⁴ Id.

⁵⁵ Chautauqua County Charter § 2.05(b).

⁵⁶ Chautauqua County Charter § 3.03(b).

⁵⁷ Chautauqua County Charter § 2.07.

⁵⁸ Erie County Local Law No. 4 – 2005 § 5.

⁵⁹ Erie County Local Law No. 4 – 2005 § 3.

⁶⁰ Erie County Local Law No. 4 – 2005 § 7.