S T A T E O F N E W Y O R K

1362

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. RABBITT, KOLB, McKEVITT -- Multi-Sponsored by -- M. of A. BARCLAY, MOLINARO -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to expanding the jurisdiction of the court of claims; to amend the real property tax law, in relation to the exemption of tax districts from obligation or liability with respect to pre-existing environmental contamination or pollution; and to amend the general municipal law, in relation to liability of public entities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 2, 3 and 4 of section 9 of the court of claims act, subdivision 2 as amended by chapter 40 of the laws of 1977, are amended to read as follows:

2. To hear and determine a claim of any person, corporation or municipality against the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, for the appropriation of any real or personal property or any interest therein, for the breach of contract, express or implied, or for the torts of its officers or employees while acting as such officers or employees, providing the claimant complies with the limitations of this article. For the purposes of this act only, a real property tax lien shall be deemed to be an interest in real property.

3. To hear and determine any claim in favor of the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, against the claimant, or against his assignor at the time of the assignment.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD04078-01-9

4. To render judgment in favor of the claimant or the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, for such sum as should be paid by or to the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW.

S 2. The court of claims act is amended by adding a new section 9-a to read as follows:

S 9-A. CONSTRUCTION OF "STATE". FOR PURPOSES OF THIS ACT, THE TERM "STATE" SHALL BE DEEMED TO INCLUDE A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, WHENEVER SUCH A CONSTRUCTION IS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS ACT WITH RESPECT TO THE JURISDICTION CONFERRED BY SECTION NINE OF THIS ARTICLE PERTAINING TO SUCH ENTITIES; PROVIDED THAT SUCH A CONSTRUCTION SHALL NOT BE GIVEN WHEN IT WOULD CONFLICT WITH THE PROVISIONS OF THE GENERAL MUNICIPAL LAW.

S 3. The real property tax law is amended by adding a new section 1181 to read as follows:

S 1181. EXEMPTION OF TAX DISTRICT FROM OBLIGATION OR LIABILITY WITH RESPECT TO PRE-EXISTING ENVIRONMENTAL CONTAMINATION OR POLLUTION. A TAX DISTRICT SHALL NOT INCUR ANY OBLIGATION OR LIABILITY FOR (1) THE ASSESSMENT, REGISTRATION, CLEANUP, REMOVAL, ABATEMENT, DISPOSAL OR TREATMENT OF ANY HAZARDOUS SUBSTANCE OR WASTE, PETROLEUM DISCHARGE, BURIED TANK OR CONTAINER, TOXIC SUBSTANCE OR WASTE, ASBESTOS, LEAD PAINT, PESTICIDE, RADIOACTIVE SUBSTANCE, OR OTHER ENVIRONMENTAL CONTAMINANT OR POLLUTANT WHICH WAS PRESENT UPON, IN THE AIR ABOVE, OR IN THE GROUND BELOW A PARCEL OF REAL PROPERTY OR (2) ANY INJURY OR DAMAGE TO PERSON OR PROPERTY RESULTING THEREFROM WHICH OCCURRED PRIOR TO THE TIME TITLE TO SUCH PARCEL WAS ACQUIRED BY SUCH TAX DISTRICT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, UNLESS THE PRESENCE OF SUCH ENVIRONMENTAL CONTAMINANT OR POLLUTANT OR SUCH PRIOR INJURY OR DAMAGE RESULTING THEREFROM WAS PHYSICALLY CAUSED OR CONTRIBUTED TO BY SUCH TAX DISTRICT. NOR SHALL A TAX DISTRICT HAVING ACQUIRED TITLE TO SUCH ENVIRONMENTALLY CONTAMINATED OR POLLUTED PARCEL OF REAL PROPERTY PURSUANT TO THE PROVISIONS OF THIS ARTICLE INCUR ANY SUCH OBLIGATION OR LIABILITY AS A RESULT OF THEREAFTER (A) TAKING ANY ACTION TO SECURE, PRESERVE, STABILIZE, MAINTAIN, OR COLLECT FROM ANY HOLDOVER OCCUPANT THEREOF THE FAIR VALUE OF THE TEMPORARY USE AND OCCUPANCY OF SUCH PARCEL OR (B) TRANSFERRING TITLE TO SUCH PARCEL TO ANY OTHER PERSON OR ENTITY, UNLESS SUCH ACTION OR TRANSFER OF TITLE PHYSICALLY CONTRIBUTES TO SUCH PRE-EXISTING ENVIRONMENTAL CONTAMINATION OR POLLUTION OR PRIOR INJURY OR DAMAGE TO PERSON OR PROPERTY.

S 4. The general municipal law is amended by adding a new article 4-A to read as follows:

ARTICLE 4-A

LIABILITY OF PUBLIC ENTITIES

SECTION 60. DEFINITIONS.

61. APPLICATION.

62. LIABILITY OF PUBLIC ENTITIES FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES.

S 60. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "PUBLIC ENTITY" MEANS (A) A COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OR CIVIL DIVISION OF THE STATE; (B) A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR ANY OTHER GOVERNMENTAL ENTITY OR COMBINATION OR ASSOCIATION OF GOVERNMENTAL ENTITIES OPERATING A PUBLIC SCHOOL, COLLEGE OR COMMUNITY COLLEGE OR UNIVERSITY, EXCEPT A STATE UNIVERSITY; (C) A PUBLIC IMPROVEMENT OR SPECIAL DISTRICT

OR DISTRICT CORPORATION; (D) A PUBLIC BENEFIT CORPORATION; (E) A MUNICIPAL HOUSING AUTHORITY; OR (F) ANY OTHER PUBLIC CORPORATION OR POLITICAL SUBDIVISION OF THE STATE.

2. "OPERATOR" MEANS A PERSON OR PERSONS UNDER CONTRACT WITH A PUBLIC ENTITY TO PROVIDE FOR THE OPERATION, MAINTENANCE OR BOTH OF A PUBLIC RECREATIONAL FACILITY.

3. "PUBLIC RECREATIONAL FACILITY" MEANS A FACILITY OWNED BY A PUBLIC ENTITY FOR THE USE OF THE GENERAL PUBLIC AS SPECTATORS OR PARTICIPANTS IN RECREATION ACTIVITIES INCLUDING, BUT NOT LIMITED TO, SKIING, GOLFING, SWIMMING, TENNIS, ICE SKATING OR ICE HOCKEY FACILITIES, TOGETHER WITH ALL BUILDINGS, STRUCTURES, MACHINERY, EQUIPMENT, FACILITIES AND APPURTENANCES THERETO.

S 61. APPLICATION. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ALL CAUSES OF ACTION FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH AGAINST A PUBLIC ENTITY.

S 62. LIABILITY OF PUBLIC ENTITIES FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES. IN ORDER TO ENCOURAGE THE GRANTING OF ACCESS TO PUBLIC RECREATIONAL FACILITIES, IT IS HEREBY DECLARED THAT USE BY THE PUBLIC OF SUCH FACILITIES INCLUDES AN ASSUMPTION OF RISK BY THE USER. NOTWITHSTANDING THE PROVISIONS OF SECTION 5-326 OF THE GENERAL OBLIGATIONS LAW, ACTIONS FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES, INCLUDING EQUIPMENT, DEVICES, ATTRACTIONS, RIDES OR OTHERWISE, SHALL BE ALLOWED ONLY IF SUCH INJURIES AROSE FROM WILLFUL, WANTON OR GROSS NEGLIGENCE ON THE PART OF THE PUBLIC ENTITY OR OPERATOR.

S 5. This act shall take effect immediately; provided, however, the provisions of sections one and two of this act shall take effect on the one hundred eightieth day after it shall have become a law; and provided further, that the provisions of this act shall apply only to causes of action commenced on or after the effective date of each applicable section.