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

3932

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. RAIA, BARRA, CALHOUN, FINCH, McDONOUGH, WALKER -- Multi-Sponsored by -- M. of A. ALFANO, CONTE, CROUCH, THIELE, TOWNSEND -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to requiring municipal approval of community residential facility site selection and to require a public hearing on such siting and to amend the real property tax law, in relation to removing the tax exemption for community residences

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

Section 1. Subdivision (c) of section 41.34 of the mental hygiene law, as amended by chapter 1024 of the laws of 1981, subparagraph (C) of paragraph 1 as amended by chapter 823 of the laws of 1992, is amended to read as follows:

(c) (1) When a site has been selected by the sponsoring agency, it shall notify the chief executive officer of the municipality in writing and include in such notice the specific address of the site, the type of community residence, the number of residents and the community support requirements of the program. Such notice shall also contain the most recently published data compiled pursuant to [section four hundred sixty-three of] the social services law which can reasonably be expected to permit the municipality to evaluate all such facilities affecting the nature and character of the area wherein such proposed facility is to be located. The municipality shall [have forty days after the receipt of such notice to:

(A) approve the site recommended by the sponsoring agency;

(B) suggest one or more suitable sites within its jurisdiction which could accommodate such a facility; or

(C) object to the establishment of a facility of the kind described by the sponsoring agency because to do so would result in such a concen-

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

LBD06596-01-9

tration of community residential facilities for the mentally disabled in the municipality or in the area in proximity to the site selected or a combination of such facilities with other community residences or similar facilities licensed by other agencies of state government, including all community residences, intermediate care facilities, residential care facilities for adults and residential treatment facilities for individuals with mental illness or developmental disabilities operated pursuant to article sixteen or article thirty-one of this chapter and all similar residential facilities of fourteen or less residents operated or licensed by another state agency, that the nature and character of the areas within the municipality would be substantially altered.

Such response shall be forwarded to the sponsoring agency and the commissioner. If the municipality does not respond within forty days, the sponsoring agency may establish a community residence at a site recommended in its notice.

(2) Prior to forwarding a response to the sponsoring agency and the commissioner, the municipality may hold a public hearing pursuant to local law.

(3) If the municipality approves the site recommended by the sponsoring agency, the sponsoring agency shall seek to establish the facility at the approved site.

(4) If the site or sites suggested by the municipality are satisfactory with regard to the nature, size and community support requirements of the program of the proposed facility and the area in which such site or sites are located does not already include an excessive number of community residential facilities for the mentally disabled or similar facilities licensed by other state agencies, the sponsoring agency shall seek to establish its facility at one of the sites designated by the municipality.

If the municipality suggests a site or sites which are not satisfactory to the sponsoring agency, the agency shall so notify the municipality which shall have fifteen days to suggest an alternative site or sites for the proposed community residential facility.

(5) In the event the municipality objects to establishment of a facility in the municipality because to do so would result in such a concentration of community residential facilities for the mentally disabled or combination of such facilities and other facilities licensed by other state agencies that the nature and character of areas within the municipality would be substantially altered; or the sponsoring agency objects to the establishment of a facility in the area or areas suggested by the municipality; or in the event that the municipality and sponsoring agency cannot agree upon a site, either the sponsoring agency or the municipality may request an immediate hearing before the commissioner to resolve the issue. The commissioner shall personally or by a hearing officer conduct such a hearing within fifteen days of such a request.

In reviewing any such objections, the need for such facilities in the municipality shall be considered as shall the existing concentration of such facilities and other similar facilities licensed by other state agencies in the municipality or in the area in proximity to the site selected and any other facilities in the municipality or in the area in proximity to the site selected providing residential services to a significant number of persons who have formerly received in-patient mental health services in facilities of the office of mental health or the office of mental retardation and developmental disabilities. The commissioner shall sustain the objection if he determines that the nature and character of the area in which the facility is to be based

would be substantially altered as a result of establishment of the facility. The commissioner shall make a determination within thirty days of the hearing] CONDUCT A PUBLIC HEARING CONCERNING THE LOCATION OF SUCH FACILITY WITHIN THIRTY DAYS OF RECEIPT OF SUCH NOTICE.

(2) WITHIN NINETY DAYS THE MUNICIPALITY SHALL APPROVE OR REJECT THE SITING OF SUCH FACILITY AND SUCH APPROVAL OR REJECTION SHALL BE FORWARDED TO THE COMMISSIONER. UPON DENIAL OF SUCH SITE BY THE MUNICIPALITY, THE SPONSORING AGENCY MUST WITHDRAW ITS PLANS FOR SUCH SITE AND MAY NOT SUBMIT PLANS FOR SUCH SITE AGAIN FOR AT LEAST ONE YEAR.

S 2. Paragraph (a) of subdivision 1 of section 422 of the real property tax law, as amended by chapter 409 of the laws of 1993, is amended to read as follows:

(a) Real property owned by a not-for-profit corporation organized pursuant to the not-for-profit corporation law and the provisions of article two of the private housing finance law, used exclusively to provide housing and auxiliary facilities for faculty members, students, employees, nurses, interns, resident physicians, researchers and other personnel and their immediate families in attendance or employed at colleges, universities, educational institutions, child care institutions, hospitals and medical research institutes, or for handicapped or aged persons of low income, or owned by non-profit nursing home companies organized pursuant to the not-for-profit corporation law and the provisions of article twenty-eight-A of the public health law, used exclusively to provide facilities for nursing care to sick, invalid, infirm, disabled or convalescent persons of low income, or to provide health-related service as defined in article twenty-eight of the public health law to persons of low income, or any combination of the foregoing, and in addition thereto, to provide nursing care and health-related service, or either of them, to persons of low income who are not occupants of the project, or owned by housing development fund companies organized pursuant to the not-for-profit corporation law and article eleven of the private housing finance law, used exclusively to provide housing for handicapped or aged persons of low income, and financed by a federally-aided mortgage as defined in said article eleven, [or owned by companies organized pursuant to the not-for-profit corporation law and the provisions of article seventy-five of the mental hygiene law, used exclusively to provide care, treatment, training, education and residential accommodations for operation as hostels for the mentally ill or mentally retarded,] or owned by companies organized pursuant to the membership corporations law and the provisions of article seven-A of the private housing finance law, used exclusively to provide programs, services and other facilities for the aging, shall be exempt from taxation and exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter, provided, however, that in a city having a population of one million or more real property owned by any such corporation which is to provide housing accommodations, substantially all of which are or are to be assisted by rent subsidies made or to be made available by the Federal government pursuant to a contract under section eight of the United States Housing Act of nineteen hundred thirty-seven, as amended, or pursuant to a project rental assistance contract under section two hundred two of the United States Housing Act of nineteen hundred fifty-nine, as amended, or pursuant to a project rental assistance contract under section eight hundred eleven of the National Affordable Housing Act of nineteen hundred ninety, as amended, shall from and after the commencement of construction be subject to taxation or exempt therefrom

to the extent approved by a municipality acting through its local legislative body, as such local legislative body is defined in [paragraph] SUBDIVISION twelve of section two of the private housing finance law. No such corporation or company shall pay a dividend on any of its stock or pay interest on any of its debentures. Provided further, however, in a county having a population of one million or more and having not more than three towns within such county, real property owned by housing development fund companies organized pursuant to the not-for-profit corporation law and article eleven of the private housing finance law, used exclusively to provide housing for handicapped or aged persons of low income, and financed by a federally-aided mortgage as defined in said article eleven shall from and after the commencement of construction be subject to taxation or exempt therefrom to the extent approved by a municipality acting through its local legislative body, as such local legislative body is defined in [paragraph] SUBDIVISION twelve of section two of the private housing finance law. Any tax payments and/or payments in lieu of taxes made to a municipality pursuant to the preceding sentence shall not be passed through nor become the liability of any of the occupants of such property.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.