

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 municipi-  
pal 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 resi-  
dences

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

1 Section 1. Subdivision (c) of section 41.34 of the mental hygiene law,  
2 as amended by chapter 1024 of the laws of 1981, subparagraph (C) of  
3 paragraph 1 as amended by chapter 823 of the laws of 1992, is amended to  
4 read as follows:  
5 (c) (1) When a site has been selected by the sponsoring agency, it  
6 shall notify the chief executive officer of the municipality in writing  
7 and include in such notice the specific address of the site, the type of  
8 community residence, the number of residents and the community support  
9 requirements of the program. Such notice shall also contain the most  
10 recently published data compiled pursuant to [section four hundred  
11 sixty-three of] the social services law which can reasonably be expected  
12 to permit the municipality to evaluate all such facilities affecting the  
13 nature and character of the area wherein such proposed facility is to be  
14 located. The municipality shall [have forty days after the receipt of  
15 such notice to:  
16 (A) approve the site recommended by the sponsoring agency;  
17 (B) suggest one or more suitable sites within its jurisdiction which  
18 could accommodate such a facility; or  
19 (C) object to the establishment of a facility of the kind described by  
20 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.

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

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

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

19 (3) If the municipality approves the site recommended by the sponsor-  
20 ing agency, the sponsoring agency shall seek to establish the facility  
21 at the approved site.

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

30 If the municipality suggests a site or sites which are not satisfac-  
31 tory to the sponsoring agency, the agency shall so notify the municipi-  
32 pality which shall have fifteen days to suggest an alternative site or  
33 sites for the proposed community residential facility.

34 (5) In the event the municipality objects to establishment of a facil-  
35 ity in the municipality because to do so would result in such a concen-  
36 tration of community residential facilities for the mentally disabled or  
37 combination of such facilities and other facilities licensed by other  
38 state agencies that the nature and character of areas within the municipi-  
39 pality would be substantially altered; or the sponsoring agency objects  
40 to the establishment of a facility in the area or areas suggested by the  
41 municipality; or in the event that the municipality and sponsoring agen-  
42 cy cannot agree upon a site, either the sponsoring agency or the municipi-  
43 pality may request an immediate hearing before the commissioner to  
44 resolve the issue. The commissioner shall personally or by a hearing  
45 officer conduct such a hearing within fifteen days of such a request.

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

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

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

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

13 (a) Real property owned by a not-for-profit corporation organized  
14 pursuant to the not-for-profit corporation law and the provisions of  
15 article two of the private housing finance law, used exclusively to  
16 provide housing and auxiliary facilities for faculty members, students,  
17 employees, nurses, interns, resident physicians, researchers and other  
18 personnel and their immediate families in attendance or employed at  
19 colleges, universities, educational institutions, child care insti-  
20 tutions, hospitals and medical research institutes, or for handicapped  
21 or aged persons of low income, or owned by non-profit nursing home  
22 companies organized pursuant to the not-for-profit corporation law and  
23 the provisions of article twenty-eight-A of the public health law, used  
24 exclusively to provide facilities for nursing care to sick, invalid,  
25 infirm, disabled or convalescent persons of low income, or to provide  
26 health-related service as defined in article twenty-eight of the public  
27 health law to persons of low income, or any combination of the forego-  
28 ing, and in addition thereto, to provide nursing care and health-related  
29 service, or either of them, to persons of low income who are not occu-  
30 pants of the project, or owned by housing development fund companies  
31 organized pursuant to the not-for-profit corporation law and article  
32 eleven of the private housing finance law, used exclusively to provide  
33 housing for handicapped or aged persons of low income, and financed by a  
34 federally-aided mortgage as defined in said article eleven, [or owned by  
35 companies organized pursuant to the not-for-profit corporation law and  
36 the provisions of article seventy-five of the mental hygiene law, used  
37 exclusively to provide care, treatment, training, education and residen-  
38 tial accommodations for operation as hostels for the mentally ill or  
39 mentally retarded,] or owned by companies organized pursuant to the  
40 membership corporations law and the provisions of article seven-A of the  
41 private housing finance law, used exclusively to provide programs,  
42 services and other facilities for the aging, shall be exempt from taxa-  
43 tion and exempt from special ad valorem levies and special assessments  
44 to the extent provided in section four hundred ninety of this chapter,  
45 provided, however, that in a city having a population of one million or  
46 more real property owned by any such corporation which is to provide  
47 housing accommodations, substantially all of which are or are to be  
48 assisted by rent subsidies made or to be made available by the Federal  
49 government pursuant to a contract under section eight of the United  
50 States Housing Act of nineteen hundred thirty-seven, as amended, or  
51 pursuant to a project rental assistance contract under section two  
52 hundred two of the United States Housing Act of nineteen hundred fifty-  
53 nine, as amended, or pursuant to a project rental assistance contract  
54 under section eight hundred eleven of the National Affordable Housing  
55 Act of nineteen hundred ninety, as amended, shall from and after the  
56 commencement of construction be subject to taxation or exempt therefrom

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

20 S 3. This act shall take effect on the first of January next succeed-  
21 ing the date on which it shall have become a law.