

5556

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 13, 2009

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Introduced by M. of A. V. LOPEZ, SCHROEDER -- 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 a mandatory public hearing prior to the site selection for a "community residential facility" and repealing certain provisions of such law relating thereto

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

1     Section 1. Paragraph 1 of subdivision (a) of section 41.34 of the  
2     mental hygiene law is REPEALED and a new paragraph 1 is added to read as  
3     follows:  
4     (1) "COMMUNITY RESIDENTIAL FACILITY" MEANS ANY FACILITY OPERATED OR  
5     SUBJECT TO LICENSURE BY THE STATE WHICH PROVIDES A SUPERVISED RESIDENCE  
6     FOR MENTALLY, EMOTIONALLY, PHYSICALLY, OR SOCIALLY DISABLED PERSONS OR  
7     FOR PERSONS IN NEED OF SUPERVISION OR JUVENILE DELINQUENTS. THIS TERM  
8     INCLUDES, BUT IS NOT LIMITED TO, COMMUNITY RESIDENCES FOR THE MENTALLY  
9     DISABLED OPERATED OR LICENSED BY THE OFFICES OF MENTAL HEALTH OR MENTAL  
10    RETARDATION AND DEVELOPMENTAL DISABILITIES OR BY THE OFFICE OF ALCOHOL-  
11    ISM AND SUBSTANCE ABUSE SERVICES, AGENCY OPERATED BOARDING HOMES, GROUP  
12    HOMES OR PRIVATE PROPRIETARY HOMES FOR ADULTS OPERATED OR LICENSED BY  
13    THE DEPARTMENT OF FAMILY ASSISTANCE, GROUP HOMES, CONTRACT HOMES AND  
14    URBAN HOMES OPERATED OR LICENSED BY THE OFFICE OF CHILDREN AND FAMILY  
15    SERVICES AND HALF-WAY HOUSES OPERATED OR LICENSED BY THE OFFICE OF ALCO-  
16    HOLISM AND SUBSTANCE ABUSE SERVICES.  
17    S 2. Paragraph 2 of subdivision (a) of section 41.34 of the mental  
18    hygiene law, as amended by chapter 1024 of the laws of 1981, is amended  
19    to read as follows:  
20    (2) "Sponsoring agency" means an agency or unit of government, a  
21    voluntary agency or any other person or organization which intends to

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

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1 establish or operate a community residential facility [for the disa-  
2 bled].

3 S 3. Subdivision (b) of section 41.34 of the mental hygiene law, as  
4 amended by chapter 1024 of the laws of 1981, is amended to read as  
5 follows:

6 (b) If a sponsoring agency intends to establish a residential facility  
7 [for the disabled] within a municipality but does not have a specific  
8 site selected, it [may] SHALL notify the chief executive officer of the  
9 municipality in writing NINETY DAYS PRIOR TO THE TAKING OF ANY OTHER  
10 ACTION RELATED THERETO, INCLUDING BUT NOT LIMITED TO, THE SELECTION OF  
11 THE SPECIFIC SITE, of its intentions and include in such notice a  
12 description of the nature, size and community support requirements of  
13 the program. Provided, however, nothing in this subdivision shall  
14 preclude the proposed establishment of a site pursuant to subdivision  
15 (c) of this section.

16 S 4. Subdivision (c) of section 41.34 of the mental hygiene law, as  
17 amended by chapter 1024 of the laws of 1981 and subparagraph (C) of  
18 paragraph 1 as amended by chapter 823 of the laws of 1992, is amended to  
19 read as follows:

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

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

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

34 (C) object to the establishment of a facility of the kind described by  
35 the sponsoring agency because to do so would result in such a concen-  
36 tration of community residential facilities [for the mentally disabled]  
37 in the municipality or in the area in proximity to the site selected or  
38 a combination of such facilities with other community residences or  
39 similar facilities licensed by other agencies of state government,  
40 including all community residences, intermediate care facilities, resi-  
41 dential care facilities for adults and residential treatment facilities  
42 for individuals with mental illness or developmental disabilities oper-  
43 ated pursuant to article sixteen or article thirty-one of this chapter  
44 and all similar residential facilities of fourteen or less residents  
45 operated or licensed by another state agency, that the nature and char-  
46 acter of the areas within the municipality would be substantially  
47 altered.

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

52 (2) Prior to forwarding a response to the sponsoring agency and the  
53 commissioner, the municipality [may] SHALL hold a public hearing pursu-  
54 ant to local law.

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

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

12 If the municipality suggests a site or sites which are not satisfac-  
13 tory to the sponsoring agency, the agency shall so notify the munici-  
14 pality which shall have fifteen days to suggest an alternative site or  
15 sites for the proposed community residential facility.

16 (5) In the event the municipality objects to establishment of a facil-  
17 ity in the municipality because to do so would result in such a concen-  
18 tration of community residential facilities [for the mentally disabled]  
19 or combination of such facilities and other facilities licensed by other  
20 state agencies that the nature and character of areas within the munici-  
21 pality would be substantially altered; or the sponsoring agency objects  
22 to the establishment of a facility in the area or areas suggested by the  
23 municipality; or in the event that the municipality and sponsoring agen-  
24 cy cannot agree upon a site, either the sponsoring agency or the munici-  
25 pality may request an immediate hearing before the commissioner to  
26 resolve the issue. The commissioner shall personally or by a hearing  
27 officer conduct such a hearing within fifteen days of such a request.

28 In reviewing any such objections, the need for such facilities in the  
29 municipality shall be considered as shall the existing concentration of  
30 such facilities and other similar facilities licensed by other state  
31 agencies in the municipality or in the area in proximity to the site  
32 selected and any other facilities in the municipality or in the area in  
33 proximity to the site selected providing residential services to a  
34 significant number of persons who have formerly received in-patient  
35 mental health services in facilities of the office of mental health or  
36 the office of mental retardation and developmental disabilities. The  
37 commissioner shall sustain the objection if he OR SHE determines that  
38 the nature and character of the area in which the facility is to be  
39 based would be substantially altered as a result of establishment of the  
40 facility. The commissioner shall make a determination within thirty  
41 days of the hearing.

42 S 5. This act shall take effect immediately and shall apply to the  
43 siting of community residential facilities on or after such date.