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

4419

2011-2012 Regular Sessions

I N S E N A T E

April 5, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to tort claims against certain water authorities

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

Section 1. Section 1067 of the public authorities law, as amended by chapter 804 of the laws of 1990, is amended to read as follows:

S 1067. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee, agent or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter] EXCEPT IN AN ACTION FOR WRONGFUL DEATH, NO ACTION OR SPECIAL PROCEEDING SHALL BE PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER, OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS:

(A) A NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON THE AUTHORITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW;

(B) IT SHALL APPEAR BY AND AS AN ALLEGATION IN THE COMPLAINT OR MOVING PAPERS THAT AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE SERVICE OF SUCH NOTICE AND THAT ADJUSTMENT OR PAYMENT THEREOF HAS BEEN NEGLECTED OR REFUSED; AND

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

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(C) THE ACTION OR SPECIAL PROCEEDING SHALL BE COMMENCED WITHIN ONE YEAR AND NINETY DAYS AFTER THE HAPPENING OF THE EVENT UPON WHICH THE CLAIM IS BASED. AN ACTION AGAINST THE AUTHORITY FOR WRONGFUL DEATH SHALL BE COMMENCED IN ACCORDANCE WITH THE NOTICE OF CLAIM AND TIME LIMITATION PROVISIONS OF TITLE ELEVEN OF ARTICLE NINE OF THIS CHAPTER.

2. WHEREVER A NOTICE OF CLAIM IS SERVED UPON THE AUTHORITY, IT SHALL HAVE THE RIGHT TO DEMAND AN EXAMINATION OF THE CLAIMANT RELATIVE TO THE OCCURRENCE AND EXTENT OF THE INJURIES OR DAMAGES FOR WHICH CLAIM IS MADE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIFTY-H OF THE GENERAL MUNICIPAL LAW.

3. THE AUTHORITY MAY REQUIRE ANY PERSON PRESENTING FOR SETTLEMENT AN ACCOUNT OR CLAIM FOR ANY CAUSE WHATEVER AGAINST THE AUTHORITY TO BE SWORN BEFORE A MEMBER, COUNSEL, OR AN ATTORNEY, OFFICER OR EMPLOYEE THEREOF DESIGNATED FOR SUCH PURPOSE, CONCERNING SUCH ACCOUNT OR CLAIM AND WHEN SO SWORN, TO ANSWER ORALLY AS TO ANY FACTS RELATIVE TO SUCH ACCOUNT OR CLAIM. THE AUTHORITY SHALL HAVE THE POWER TO SETTLE OR ADJUST ALL CLAIMS IN FAVOR OF OR AGAINST THE AUTHORITY.

4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF ACTION OR CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSITION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICATION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUESTIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID IN THE SUPREME COURT OF THE COUNTY.

5. THE RATE OF INTEREST TO BE PAID BY THE AUTHORITY UPON ANY JUDGMENT FOR WHICH IT IS LIABLE, OTHER THAN A JUDGMENT AGAINST THE AUTHORITY ON BONDS, SHALL BE THE RATE PRESCRIBED BY SECTION FIVE THOUSAND FOUR OF THE CIVIL PRACTICE LAW AND RULES. INTEREST ON PAYMENTS OF PRINCIPAL OR INTEREST ON ANY BONDS IN DEFAULT SHALL ACCRUE AT THE RATE OR RATES SET FORTH IN SUCH BONDS FROM THE DUE DATE THEREOF UNTIL PAID OR OTHERWISE SATISFIED.

S 2. Section 1089 of the public authorities law, as amended by chapter 804 of the laws of 1990, is amended to read as follows:

S 1089. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter] EXCEPT IN AN ACTION FOR WRONGFUL DEATH, NO ACTION OR SPECIAL PROCEEDING SHALL BE PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER, OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS;

(A) A NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON THE AUTHORITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW;

(B) IT SHALL APPEAR BY AND AS AN ALLEGATION IN THE COMPLAINT OR MOVING PAPERS THAT AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE SERVICE OF SUCH

NOTICE AND THAT ADJUSTMENT OF PAYMENT THEREOF HAS BEEN NEGLECTED OR REFUSED; AND

(C) THE ACTION OR SPECIAL PROCEEDING SHALL BE COMMENCED WITHIN ONE YEAR AND NINETY DAYS AFTER THE HAPPENING OF THE EVENT UPON WHICH THE CLAIM IS BASED. AN ACTION AGAINST THE AUTHORITY FOR WRONGFUL DEATH SHALL BE COMMENCED IN ACCORDANCE WITH THE NOTICE OF CLAIM AND TIME LIMITATION PROVISIONS OF TITLE ELEVEN OF ARTICLE NINE OF THIS CHAPTER.

2. WHEREVER A NOTICE OF CLAIM IS SERVED UPON THE AUTHORITY, IT SHALL HAVE THE RIGHT TO DEMAND AN EXAMINATION OF THE CLAIMANT RELATIVE TO THE OCCURRENCE AND EXTENT OF THE INJURIES OR DAMAGES FOR WHICH CLAIM IS MADE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIFTY-H OF THE GENERAL MUNICIPAL LAW.

3. THE AUTHORITY MAY REQUIRE ANY PERSON PRESENTING FOR SETTLEMENT AN ACCOUNT OR CLAIM FOR ANY CAUSE WHATEVER AGAINST THE AUTHORITY TO BE SWORN BEFORE A MEMBER, COUNSEL, OR AN ATTORNEY, OFFICER OR EMPLOYEE THEREOF DESIGNATED FOR SUCH PURPOSE, CONCERNING SUCH ACCOUNT OR CLAIM AND WHEN SO SWORN, TO ANSWER ORALLY AS TO ANY FACTS RELATIVE TO SUCH ACCOUNT OR CLAIM. THE AUTHORITY SHALL HAVE THE POWER TO SETTLE OR ADJUST ALL CLAIMS IN FAVOR OF OR AGAINST THE AUTHORITY.

4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF ACTION OR CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSITION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICATION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUESTIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID IN THE SUPREME COURT OF THE COUNTY.

5. THE RATE OF INTEREST TO BE PAID BY THE AUTHORITY UPON ANY JUDGMENT FOR WHICH IT IS LIABLE, OTHER THAN A JUDGMENT AGAINST THE AUTHORITY ON BONDS, SHALL BE THE RATE PRESCRIBED BY SECTION FIVE THOUSAND FOUR OF THE CIVIL PRACTICE LAW AND RULES. INTEREST ON PAYMENTS OF PRINCIPAL OR INTEREST ON ANY BONDS IN DEFAULT SHALL ACCRUE AT THE RATE OR RATES SET FORTH IN SUCH BONDS FROM THE DUE DATE THEREOF UNTIL PAID OR OTHERWISE SATISFIED.

S 3. Section 1109 of the public authorities law, as amended by chapter 804 of the laws of 1990, is amended to read as follows:

S 1109. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter] EXCEPT IN AN ACTION FOR WRONGFUL DEATH, NO ACTION OR SPECIAL PROCEEDING SHALL BE PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER, OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS:

(A) A NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON THE AUTHORITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW;

(B) IT SHALL APPEAR BY AND AS AN ALLEGATION IN THE COMPLAINT OR MOVING PAPERS THAT AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE SERVICE OF SUCH NOTICE AND THAT ADJUSTMENT OR PAYMENT THEREOF HAS BEEN NEGLECTED OR REFUSED; AND

(C) THE ACTION OR SPECIAL PROCEEDING SHALL BE COMMENCED WITHIN ONE YEAR AND NINETY DAYS AFTER THE HAPPENING OF THE EVENT UPON WHICH THE CLAIM IS BASED. AN ACTION AGAINST THE AUTHORITY FOR WRONGFUL DEATH SHALL BE COMMENCED IN ACCORDANCE WITH THE NOTICE OF CLAIM AND TIME LIMITATION PROVISIONS OF TITLE ELEVEN OF ARTICLE NINE OF THIS CHAPTER.

2. WHEREVER A NOTICE OF CLAIM IS SERVED UPON THE AUTHORITY, IT SHALL HAVE THE RIGHT TO DEMAND AN EXAMINATION OF THE CLAIMANT RELATIVE TO THE OCCURRENCE AND EXTENT OF THE INJURIES OR DAMAGES FOR WHICH CLAIM IS MADE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIFTY-H OF THE GENERAL MUNICIPAL LAW.

3. THE AUTHORITY MAY REQUIRE ANY PERSON PRESENTING FOR SETTLEMENT AN ACCOUNT OR CLAIM FOR ANY CAUSE WHATEVER AGAINST THE AUTHORITY TO BE SWORN BEFORE A MEMBER, COUNSEL, OR AN ATTORNEY, OFFICER OR EMPLOYEE THEREOF DESIGNATED FOR SUCH PURPOSE, CONCERNING SUCH ACCOUNT OR CLAIM AND WHEN SO SWORN, TO ANSWER ORALLY AS TO ANY FACTS RELATIVE TO SUCH ACCOUNT OR CLAIM. THE AUTHORITY SHALL HAVE THE POWER TO SETTLE OR ADJUST ALL CLAIMS IN FAVOR OF OR AGAINST THE AUTHORITY.

4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF CAUTION OR CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE STATE AND SHALL BE HEARD AND DETERMINE IN PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSITION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICATION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUESTIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID IN THE SUPREME COURT OF THE COUNTY.

5. THE RATE OF INTEREST TO BE PAID BY THE AUTHORITY UPON ANY JUDGMENT FOR WHICH IT IS LIABLE, OTHER THAN A JUDGMENT AGAINST THE AUTHORITY ON BONDS, SHALL BE THE RATE PRESCRIBED BY SECTION FIVE THOUSAND FOUR OF THE CIVIL PRACTICE LAW AND RULES. INTEREST ON PAYMENTS OF PRINCIPAL OR INTEREST ON ANY BONDS IN DEFAULT SHALL ACCRUE AT THE RATE OR RATES SET FORTH IN SUCH BONDS FROM THE DUE DATE THEREOF UNTIL PAID OR OTHERWISE SATISFIED.

S 4. Section 1169 of the public authorities law, as amended by chapter 804 of the laws of 1990, is amended to read as follows:

S 1169. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter] EXCEPT IN AN ACTION FOR WRONGFUL DEATH, NO ACTION OR SPECIAL PROCEEDING SHALL BE PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER, OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS:

(A) A NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON THE AUTHORITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW;

(B) IT SHALL APPEAR BY AND AS AN ALLEGATION IN THE COMPLAINT OR MOVING PAPERS THAT AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE SERVICE OF SUCH NOTICE AND THAT ADJUSTMENT OR PAYMENT THEREOF HAS BEEN NEGLECTED OR REFUSED; AND

(C) THE ACTION OR SPECIAL PROCEEDING SHALL BE COMMENCED WITHIN ONE YEAR AND NINETY DAYS AFTER THE HAPPENING OF THE EVENT UPON WHICH THE CLAIM IS BASED. AN ACTION AGAINST THE AUTHORITY FOR WRONGFUL DEATH SHALL BE COMMENCED IN ACCORDANCE WITH THE NOTICE OF CLAIM AND TIME LIMITATION PROVISIONS OF TITLE ELEVEN OF ARTICLE NINE OF THIS CHAPTER.

2. WHEREVER A NOTICE OF CLAIM IS SERVED UPON THE AUTHORITY, IT SHALL HAVE THE RIGHT TO DEMAND AN EXAMINATION OF THE CLAIMANT RELATIVE TO THE OCCURRENCE AND EXTENT OF THE INJURIES OR DAMAGES FOR WHICH CLAIM IS MADE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIFTY-H OF THE GENERAL MUNICIPAL LAW.

3. THE AUTHORITY MAY REQUIRE ANY PERSON PRESENTING FOR SETTLEMENT AN ACCOUNT OR CLAIM FOR ANY CAUSE WHATEVER AGAINST THE AUTHORITY TO BE SWORN BEFORE A MEMBER, COUNSEL, OR AN ATTORNEY, OFFICER OR EMPLOYEE THEREOF DESIGNATED FOR SUCH PURPOSE, CONCERNING SUCH ACCOUNT OR CLAIM AND WHEN SO SWORN, TO ANSWER ORALLY AS TO ANY FACTS RELATIVE TO SUCH ACCOUNT OR CLAIM. THE AUTHORITY SHALL HAVE THE POWER TO SETTLE OR ADJUST ALL CLAIMS IN FAVOR OF OR AGAINST THE AUTHORITY.

4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF ACTION OR CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSITION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICATION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUESTIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID IN THE SUPREME COURT OF THE COUNTY.

5. THE RATE OF INTEREST TO BE PAID BY THE AUTHORITY UPON ANY JUDGMENT FOR WHICH IT IS LIABLE, OTHER THAN A JUDGMENT AGAINST THE AUTHORITY ON BONDS, SHALL BE THE RATE PRESCRIBED BY SECTION FIVE THOUSAND FOUR OF THE CIVIL PRACTICE LAW AND RULES. INTEREST ON PAYMENTS OF PRINCIPAL OR INTEREST ON ANY BONDS IN DEFAULT SHALL ACCRUE AT THE RATE OR RATES SET FORTH IN SUCH BONDS FROM THE DUE DATE THEREOF UNTIL PAID OR OTHERWISE SATISFIED.

S 5. This act shall take effect immediately.