

1051

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEINSTEIN -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil practice law and rules, the general municipal law and the New York city health and hospitals corporation act, in relation to the filing of notices of claim prior to the commencement of a cause of action against any state or municipal entity, public authority or public benefit corporation; and to amend chapter 500 of the laws of 2012, amending the civil practice law and rules and other laws, relating to establishing a uniform process and requirement for the filing of notices of claim prior to the commencement of a cause of action against any state or municipal entity, public authority or public benefit corporation, in relation to the effectiveness thereof

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

1 Section 1. Section 217-a of the civil practice law and rules, as added
2 by chapter 500 of the laws of 2012, is amended to read as follows:
3 S 217-a. Actions to be commenced within one year and ninety days.
4 Notwithstanding any other provision of law to the contrary, and irre-
5 spective of whether the relevant statute is expressly amended by
6 [sections three through seventy-nine of] the uniform notice of claim
7 act, every action for damages or injuries to real or personal property,
8 or for the destruction thereof, or for personal injuries or wrongful
9 death, against any political subdivision of the state, or any instrumen-
10 tality or agency of the state or a political subdivision, any public
11 authority or any public benefit corporation that is entitled to receive
12 a notice of claim as a condition precedent to commencement of an action,
13 shall not be commenced unless a notice of claim shall have been served
14 on such governmental entity within the time limit established by SECTION
15 FIFTY-E OF THE GENERAL MUNICIPAL LAW, and SUCH ACTION MUST BE COMMENCED
16 in compliance with all the requirements of section fifty-e AND SUBDIVI-

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

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SION ONE OF SECTION FIFTY-I of the general municipal law. Except in an action for wrongful death against such an entity, an action for damages or for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law, whichever is longer. Nothing herein is intended to amend the court of claims act or any provision thereof.

S 2. Paragraph (f) of subdivision 3 of section 50-e of the general municipal law, as added by chapter 500 of the laws of 2012, is amended to read as follows:

(f) Service of a notice of claim on the secretary of state as agent of any public corporation, AS DEFINED IN SUBDIVISION ONE OF SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, whatsoever created or existing by virtue of the laws of the state of New York upon whom service of a notice of claim is required as a condition precedent to being sued, may be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at [any] THE office of the department of state in the city of Albany [or at one of his or her regularly established offices], duplicate copies of such notice of claim together with the statutory fee, which fee shall be a taxable disbursement BUT ONLY IN THE AMOUNT EQUAL TO THE PORTION OF THE FEE COLLECTED BY THE PUBLIC CORPORATION IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION. Service on such public corporation shall be complete when the secretary of state is so served. [The secretary of state shall promptly] WITHIN TEN DAYS AFTER RECEIVING A NOTICE OF CLAIM, THE SECRETARY OF STATE SHALL EITHER: (1) send one of such copies by certified mail, return receipt requested, to such public corporation, at the post office address[,] on file in the department of state, specified for the purpose; OR (2) ELECTRONICALLY TRANSMIT A COPY TO SUCH PUBLIC CORPORATION AT THE ELECTRONIC ADDRESS ON FILE WITH THE DEPARTMENT OF STATE SPECIFIED FOR THAT PURPOSE; OR (3) TRANSMIT A COPY TO SUCH PUBLIC CORPORATION BY ANY OTHER SUCH MEANS OR PROCEDURE ESTABLISHED BY THE SECRETARY OF STATE, PROVIDED THAT SUCH OTHER MEANS OR PROCEDURE OF TRANSMITTAL MUST BE VERIFIABLE.

S 3. Section 53 of the general municipal law, as added by chapter 500 of the laws of 2012, is amended to read as follows:

S 53. Alternative service of notice of claim upon the secretary of state. 1. In lieu of serving a notice of claim upon a public corporation as provided for in section fifty-e of this article, a notice of claim setting forth the same information as required by such section may be served upon the secretary of state in the same manner as if served with the public corporation. All the requirements relating to the form, content, time limitations, exceptions, extensions and any other procedural requirements imposed in such section with respect to a notice of claim served upon a public corporation shall correspondingly apply to a notice of claim served upon the secretary of state as permitted by this section. For purposes of this article, the secretary of state shall be deemed to be the agent for all public corporations upon whom a notice of claim may be served prior to commencement of any action or proceeding subject to the requirements of this article.

2. [The secretary of state shall designate an office within the department of state whereat persons are entitled by law to timely serve a notice of claim upon the secretary of state as the agent for a public corporation as a condition precedent to commencement of an action or

1 proceeding.] All public corporations entitled to have served upon them a
2 notice of claim as a condition precedent to commencement of an action or
3 proceeding shall, no later than thirty days after the date upon which
4 this section shall take effect, file a certificate with the secretary of
5 state designating the secretary as the agent for service of a notice of
6 claim and shall in such statement provide the secretary with the name,
7 POST OFFICE ADDRESS and ELECTRONIC MAIL address, IF AVAILABLE, of an
8 officer, person, or designee, nominee or other agent-in-fact for the
9 transmittal of notices of claim served upon the secretary as the public
10 corporation's agent. Any designated [post-office] POST OFFICE address OR
11 ELECTRONIC MAIL ADDRESS to which the secretary of state shall [mail]
12 TRANSMIT a copy of the notice of claim served upon him or her as agent
13 shall continue to be the address to which such notices shall be [mailed]
14 TRANSMITTED until the public corporation sends a notice to the secretary
15 informing him or her of a new POST OFFICE address OR ELECTRONIC MAIL
16 ADDRESS to which such notices shall be [mailed] TRANSMITTED. The initial
17 filing with the secretary of state shall also contain the applicable
18 time limit for filing a notice of claim upon that public corporation, or
19 if later changed by statute, a new filing shall be made detailing the
20 [altered] NEW time limit. Any public corporation [who] THAT does not
21 have a current and timely statutory designation filed with the secretary
22 of state shall not be entitled to the portion of the fee to which it
23 would otherwise be entitled pursuant to subdivision four of this
24 section. Failure of the public corporation to so file with the secretary
25 of state will not invalidate any service of a notice of claim upon the
26 public corporation which has been received by the secretary of state.

27 3. The secretary of state is hereby empowered to accept properly tran-
28 smitted notices of claims on behalf of a public corporation, with the
29 same effect as if served directly upon a public corporation. The secre-
30 tary of state shall accept such service upon the following terms and
31 conditions:

32 (a) the secretary of state shall set and notify the public, on his or
33 her website, [as to reasonable] OF times, places and manner of service
34 upon him or her of notices of claims NECESSARY TO COMPLY WITH THE
35 PROVISIONS OF THIS SECTION;

36 (b) upon receipt of a notice of claim, the secretary of state shall
37 issue a receipt or other document acknowledging his or her receipt of
38 such notice, and such receipt shall contain the date and time of receipt
39 of the notice, an identifying number or name particular to the notice
40 received, and the logo or seal of the department of state embossed upon
41 it. Such receipt shall be prima facie evidence of service upon the
42 secretary of state for all purposes;

43 (c) [within ten days after receiving the notice of claim, the secre-
44 tary of state shall transmit an original or a copy of the notice of
45 claim to the public corporation named in the notice;

46 (d)] nothing in this section shall be deemed to alter, waive or other-
47 wise abrogate any defense available to a public corporation as to the
48 nature, sufficiency, or appropriateness of the notice of claim itself,
49 or to any challenges to the timeliness of the service of a notice of
50 claim. Timely service upon the secretary of state shall be deemed time-
51 ly service upon the public corporation for purposes of instituting an
52 action or proceeding or other requirement imposed by law.

53 4. The secretary of state may impose a fee upon any person who serves
54 a notice of claim with the department. Such fee shall not exceed two
55 hundred fifty dollars for each such notice filed. One-half of the fee
56 imposed shall be retained by the secretary of state as payment for its

1 services provided in accordance with this section. The remaining one-
2 half of such fee shall be forwarded to the public corporation named in
3 the notice of claim provided, however, if more than one such public
4 corporation is named, each named public corporation shall be entitled to
5 an equal percentage of the one-half amount.

6 5. The secretary of state shall within sixty days after the effective
7 date of this section post on the departmental website a list of any
8 public corporation, including any public authority, public benefit
9 corporation or any other entity entitled to receive a notice of claim as
10 a condition precedent to commencement of an action or proceeding, and
11 that has filed, pursuant to this section, a certificate with the secre-
12 tary of state designating the secretary as the agent for service of a
13 notice of claim. The list should identify the entity, the POST OFFICE
14 address AND ELECTRONIC MAIL ADDRESS, IF AVAILABLE, of the public corpo-
15 ration to which the notice of claim shall be forwarded by the secretary
16 of state, and any statutory provisions uniquely pertaining to such
17 public corporation and the commencement of an action or proceeding
18 against it.

19 6. THE SECRETARY OF STATE IS AUTHORIZED TO PROMULGATE ANY RULES OR
20 REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

21 S 4. Subdivision 2 of section 50-h of the general municipal law, as
22 amended by chapter 254 of the laws of 1990, is amended to read as
23 follows:

24 2. The demand for examination as provided in subdivision one of this
25 section shall be made by the chief executive officer or, where there is
26 no such officer, by the chairman of the governing body of the city,
27 county, town, village, fire district or school district or by such offi-
28 cer, agent or employee as may be designated by him for that purpose.
29 The demand shall be in writing and shall be served personally or by
30 registered or certified mail upon the claimant unless the claimant is
31 represented by an attorney, when it shall be served personally or by
32 mail upon his attorney. The demand shall give reasonable notice of the
33 examination. It shall state the person before whom the examination is to
34 be held, the time, place and subject matter thereof and, if a physical
35 examination is to be required, it shall so state. If the place of exam-
36 ination is located outside the municipality against which the claim is
37 made, the claimant may demand, within ten days of such service, that the
38 examination be held at a location within such municipality. Such
39 location shall be determined by the municipality. If a physical exam-
40 ination is to be required and there is no appropriate place for such an
41 examination within the municipality, such examination shall be given at
42 a location as close to such municipality as practicable. No demand for
43 examination shall be effective against the claimant for any purpose
44 unless it shall be served as provided in this subdivision within ninety
45 days from the date of filing of the notice of claim, OR IF SERVICE OF
46 THE NOTICE OF CLAIM IS MADE BY SERVICE UPON THE SECRETARY OF STATE
47 PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, WITHIN ONE HUNDRED DAYS
48 FROM THE DATE OF SUCH SERVICE.

49 S 5. Subdivision 1 of section 50-i of the general municipal law, as
50 amended by chapter 738 of the laws of 1981, is amended to read as
51 follows:

52 1. No action or special proceeding shall be prosecuted or maintained
53 against a city, county, town, village, fire district or school district
54 for personal injury, wrongful death or damage to real or personal prop-
55 erty alleged to have been sustained by reason of the negligence or
56 wrongful act of such city, county, town, village, fire district or

1 school district or of any officer, agent or employee thereof, including
2 volunteer firemen of any such city, county, town, village, fire district
3 or school district or any volunteer fireman whose services have been
4 accepted pursuant to the provisions of section two hundred nine-i of
5 this chapter, unless, (a) a notice of claim shall have been made and
6 served upon the city, county, town, village, fire district or school
7 district in compliance with section fifty-e of this [chapter] ARTICLE,
8 (b) it shall appear by and as an allegation in the complaint or moving
9 papers that at least thirty days have elapsed since the service of such
10 notice, OR IF SERVICE OF THE NOTICE OF CLAIM IS MADE BY SERVICE UPON THE
11 SECRETARY OF STATE PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, THAT
12 AT LEAST FORTY DAYS HAVE ELAPSED SINCE THE SERVICE OF SUCH NOTICE, and
13 that adjustment or payment thereof has been neglected or refused, and
14 (c) the action or special proceeding shall be commenced within one year
15 and ninety days after the happening of the event upon which the claim is
16 based; except that wrongful death actions shall be commenced within two
17 years after the happening of the death.

18 S 6. Subdivision 1 of section 20 of section 1 of chapter 1016 of the
19 laws of 1969 constituting the New York city health and hospitals corpo-
20 ration act, as amended by chapter 877 of the laws of 1973, is amended to
21 read as follows:

22 1. In every action against the corporation for damages for injuries to
23 real or personal property, or for the destruction thereof, or for
24 personal injuries or death, the complaint shall contain an allegation
25 that at least thirty days have elapsed since the demand, claim or claims
26 upon which such action is founded were presented to a director or offi-
27 cer of the corporation and that the corporation has neglected or refused
28 to make an adjustment or payment thereof for thirty days after such
29 presentment, OR IF THE DEMAND, CLAIM OR CLAIMS UPON WHICH SUCH ACTION IS
30 FOUNDED WAS PRESENTED TO A DIRECTOR OR OFFICER OF THE CORPORATION BY
31 SERVICE UPON THE SECRETARY OF STATE PURSUANT TO SECTION FIFTY-THREE OF
32 THE GENERAL MUNICIPAL LAW, THAT AT LEAST FORTY DAYS HAVE ELAPSED SINCE
33 SUCH SERVICE WAS MADE, AND THAT THE CORPORATION HAS NEGLECTED OR REFUSED
34 TO MAKE AN ADJUSTMENT OR PAYMENT THEREOF FOR FORTY DAYS AFTER SUCH
35 PRESENTMENT.

36 S 7. Section 79 of chapter 500 of the laws of 2012 amending the civil
37 practice law and rules and other laws, relating to establishing a
38 uniform process and requirement for the filing of notices of claim prior
39 to the commencement of a cause of action against any state or municipal
40 entity, public authority or public benefit corporation, is amended to
41 read as follows:

42 S 79. This act shall take effect on the one hundred eightieth day
43 after it shall have become a law and shall apply to all actions and
44 proceedings accruing on or after such date; provided, however, THAT
45 SECTION FOUR OF THIS ACT SHALL TAKE EFFECT TWO HUNDRED TEN DAYS AFTER
46 THIS ACT SHALL HAVE BECOME A LAW; AND PROVIDED, FURTHER, that section
47 seventy-eight of this act shall take effect upon the enactment into law
48 by the state of New Jersey of legislation having an identical effect as
49 section seventy-eight of this act, but if the state of New Jersey shall
50 have enacted such legislation into law prior to the first day of January
51 next succeeding the date upon which this act shall have become a law,
52 section seventy-eight of this act shall take effect on the one hundred
53 eightieth day from the date upon which it shall have become a law;
54 provided further, [however,] that the state of New Jersey shall notify
55 the legislative bill drafting commission upon the occurrence of the
56 enactment of the provisions provided for in this act in order that the

1 commission may maintain an accurate and timely effective data base of
2 the official text of the laws of the state of New York in furtherance of
3 effecting the provisions of section 44 of the legislative law and
4 section 70-b of the public officers law; AND PROVIDED FURTHER THAT
5 SECTION NINE OF THIS ACT SHALL TAKE EFFECT UPON THE CONCURRENCE BY
6 MEMBERS OF THE DELAWARE RIVER BASIN WATER COMMISSION.
7 S 8. This act shall take effect on the same date and in the same
8 manner as chapter 500 of the laws of 2012 takes effect.