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

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:

Section 1. Section 217-a of the civil practice law and rules, as added by chapter 500 of the laws of 2012, is amended to read as follows:

S 217-a. Actions to be commenced within one year and ninety days. Notwithstanding any other provision of law to the contrary, and irrespective of whether the relevant statute is expressly amended by [sections three through seventy-nine of] the uniform notice of claim act, every action for damages or injuries to real or personal property, or for the destruction thereof, or for personal injuries or wrongful death, against any political subdivision of the state, or any instrumentality or agency of the state or a political subdivision, any public authority or any public benefit corporation that is entitled to receive a notice of claim as a condition precedent to commencement of an action, shall not be commenced unless a notice of claim shall have been served on such governmental entity within the time limit established by SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW, and SUCH ACTION MUST BE COMMENCED 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.

LBD05824-01-3

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

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

3. The secretary of state is hereby empowered to accept properly transmitted notices of claims on behalf of a public corporation, with the same effect as if served directly upon a public corporation. The secretary of state shall accept such service upon the following terms and conditions:

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

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

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

(d)] nothing in this section shall be deemed to alter, waive or otherwise abrogate any defense available to a public corporation as to the nature, sufficiency, or appropriateness of the notice of claim itself, or to any challenges to the timeliness of the service of a notice of claim. Timely service upon the secretary of state shall be deemed timely service upon the public corporation for purposes of instituting an action or proceeding or other requirement imposed by law.

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

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

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

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

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

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

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

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

school district or of any officer, agent or employee thereof, including volunteer firemen of any such city, county, town, village, fire district or school district or any volunteer fireman whose services have been accepted pursuant to the provisions of section two hundred nine-i of this chapter, unless, (a) a notice of claim shall have been made and served upon the city, county, town, village, fire district or school district in compliance with section fifty-e of this [chapter] ARTICLE, (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, OR IF SERVICE OF THE NOTICE OF CLAIM IS MADE BY SERVICE UPON THE SECRETARY OF STATE PURSUANT TO SECTION FIFTY-THREE OF THIS ARTICLE, THAT AT LEAST FORTY 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; except that wrongful death actions shall be commenced within two years after the happening of the death.

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

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

S 7. Section 79 of 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, is amended to read as follows:

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

commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law; AND PROVIDED FURTHER THAT SECTION NINE OF THIS ACT SHALL TAKE EFFECT UPON THE CONCURRENCE BY MEMBERS OF THE DELAWARE RIVER BASIN WATER COMMISSION.

S 8. This act shall take effect on the same date and in the same manner as chapter 500 of the laws of 2012 takes effect.