

2208

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

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:

1 Section 1. Section 1067 of the public authorities law, as amended by
2 chapter 804 of the laws of 1990, subdivision 1 as amended by chapter 500
3 of the laws of 2012, is amended to read as follows:
4 S 1067. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon
5 tort a notice of claim shall be required as a condition precedent to the
6 commencement of an action or special proceeding against the authority or
7 any officer, appointee, agent or employee thereof, and the provisions of
8 section fifty-e of the general municipal law shall govern the giving of
9 such notice. Except in an action for wrongful death, an action against
10 the authority for damages for injuries to real or personal property, or
11 for the destruction thereof, or for personal injuries, alleged to have
12 been sustained, shall not be commenced more than one year and ninety
13 days after the cause of action therefor shall have accrued.
14 2. An action against the authority for wrongful death shall be
15 commenced in accordance with the notice of claim and time limitation
16 provisions of title eleven of article nine of this chapter] EXCEPT IN AN
17 ACTION FOR WRONGFUL DEATH, NO ACTION OR SPECIAL PROCEEDING SHALL BE
18 PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR
19 DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY
20 REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER,
21 OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS:
22 (A) A NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON THE AUTHOR-
23 ITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF
24 THE GENERAL MUNICIPAL LAW;

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

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(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 2. Section 1089 of the public authorities law, as amended by chapter 804 of the laws of 1990, subdivision 1 as amended by chapter 500 of the laws of 2012, 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. Except in an action for wrongful death, an action against the authority for damages 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.

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

1 PROSECUTED OR MAINTAINED AGAINST THE AUTHORITY FOR PERSONAL INJURY OR
2 DAMAGE TO REAL OR PERSONAL PROPERTY ALLEGED TO HAVE BEEN SUSTAINED BY
3 REASON OF THE NEGLIGENCE OR WRONGFUL ACT OF THE AUTHORITY OR ANY MEMBER,
4 OFFICER, AGENT OR EMPLOYEE THEREOF, UNLESS;

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

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

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

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

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

29 4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE
30 STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF
31 THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF ACTION OR
32 CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE
33 STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL
34 BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSI-
35 TION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICA-
36 TION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUES-
37 TIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED
38 TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID
39 IN THE SUPREME COURT OF THE COUNTY.

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

47 S 3. Section 1109 of the public authorities law, as amended by chapter
48 804 of the laws of 1990, subdivision 1 as amended by chapter 500 of the
49 laws of 2012, is amended to read as follows:

50 S 1109. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon
51 tort a notice of claim shall be required as a condition precedent to the
52 commencement of an action or special proceeding against the authority or
53 any officer, appointee or employee thereof, and the provisions of
54 section fifty-e of the general municipal law shall govern the giving of
55 such notice. Except in an action for wrongful death, an action against
56 the authority for damages for injuries to real or personal property, or

1 for the destruction thereof, or for personal injuries, alleged to have
2 been sustained, shall not be commenced more than one year and ninety
3 days after the cause of action therefor shall have accrued.

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

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

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

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

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

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

36 4. AN ACTION OR PROCEEDING TO WHICH THE AUTHORITY OR THE PEOPLE OF THE
37 STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF
38 THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF CAUTION OR
39 CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE
40 STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL
41 BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSI-
42 TION ON THE CALENDAR. THE SAME PREFERENCE SHALL BE GRANTED UPON APPLICA-
43 TION OF THE AUTHORITY OR ITS COUNSEL IN ANY ACTION OR PROCEEDING QUES-
44 TIONING THE VALIDITY OF THIS TITLE IN WHICH THE AUTHORITY MAY BE ALLOWED
45 TO INTERVENE. THE VENUE OF ANY SUCH ACTION OR PROCEEDING SHALL BE LAID
46 IN THE SUPREME COURT OF THE COUNTY.

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

54 S 4. Section 1169 of the public authorities law, as amended by chapter
55 804 of the laws of 1990, subdivision 1 as amended by chapter 500 of the
56 laws of 2012, is amended to read as follows:

1 S 1169. Actions AGAINST THE AUTHORITY. 1. [In any case founded upon
2 tort a notice of claim shall be required as a condition precedent to the
3 commencement of an action or special proceeding against the authority or
4 any officer, appointee or employee thereof, and the provisions of
5 section fifty-e of the general municipal law shall govern the giving of
6 such notice. Except in an action for wrongful death, an action against
7 the authority for damages for injuries to real or personal property, or
8 for the destruction thereof, or for personal injuries, alleged to have
9 been sustained, shall not be commenced more than one year and ninety
10 days after the cause of action therefor shall have accrued.

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

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20 ITY WITHIN THE TIME LIMIT BY AND IN COMPLIANCE WITH SECTION FIFTY-E OF
21 THE GENERAL MUNICIPAL LAW;

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

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

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

36 3. THE AUTHORITY MAY REQUIRE ANY PERSON PRESENTING FOR SETTLEMENT AN
37 ACCOUNT OR CLAIM FOR ANY CAUSE WHATEVER AGAINST THE AUTHORITY TO BE
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39 THEREOF DESIGNATED FOR SUCH PURPOSE, CONCERNING SUCH ACCOUNT OR CLAIM
40 AND WHEN SO SWORN, TO ANSWER ORALLY AS TO ANY FACTS RELATIVE TO SUCH
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44 STATE MAY BE PARTIES, IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF
45 THIS TITLE, SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES OF ACTION OR
46 CASES, EXCEPT ELECTION CAUSES OF ACTION OR CASES, IN ALL COURTS OF THE
47 STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL
48 BUSINESS PENDING THEREIN EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSI-
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1 CIVIL PRACTICE LAW AND RULES. INTEREST ON PAYMENTS OF PRINCIPAL OR
2 INTEREST ON ANY BONDS IN DEFAULT SHALL ACCRUE AT THE RATE OR RATES SET
3 FORTH IN SUCH BONDS FROM THE DUE DATE THEREOF UNTIL PAID OR OTHERWISE
4 SATISFIED.

5 S 5. This act shall take effect on the same date and in the same
6 manner as chapter 500 of the laws of 2012, as amended.