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

3959--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 28, 2015

Introduced by M. of A. FITZPATRICK -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to requiring the prior approval of a municipality with respect to site selection for adult care facilities

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

Section 1. Section 461-b of the social services law is amended by adding a new subdivision 11 to read as follows:

11. (A) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(I) "ADULT CARE FACILITY" MEANS AN ADULT CARE FACILITY AS DEFINED UNDER SUBDIVISION TWENTY-ONE OF SECTION TWO OF THIS CHAPTER.

(II) "SPONSORING AGENCY" MEANS AN AGENCY OR UNIT OF GOVERNMENT, A VOLUNTARY AGENCY OR ANY OTHER PERSON OR ORGANIZATION WHICH INTENDS TO ESTABLISH OR OPERATE AN ADULT CARE FACILITY.

(III) "MUNICIPALITY" MEANS AN INCORPORATED VILLAGE IF A FACILITY IS TO BE LOCATED THEREIN, A TOWN IF THE FACILITY IS TO BE LOCATED THEREIN AND NOT SIMULTANEOUSLY WITHIN AN INCORPORATED VILLAGE, OR A CITY, EXCEPT THAT IN THE CITY OF NEW YORK, THE COMMUNITY BOARD WITH JURISDICTION OVER THE AREA IN WHICH SUCH A FACILITY IS TO BE LOCATED SHALL BE CONSIDERED THE MUNICIPALITY.

(IV) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF THE DEPARTMENT RESPONSIBLE FOR ISSUANCE OF LICENSE AND OPERATING CERTIFICATE TO THE PROPOSED ADULT CARE FACILITY.

(B) IF A SPONSORING AGENCY INTENDS TO ESTABLISH AN ADULT CARE FACILITY WITHIN A MUNICIPALITY BUT DOES NOT HAVE A SPECIFIC SITE SELECTED, IT MAY NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING OF ITS

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

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INTENTIONS AND INCLUDE IN SUCH NOTICE A DESCRIPTION OF THE NATURE, SIZE AND COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM. PROVIDED, HOWEVER, NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE PROPOSED ESTABLISHMENT OF A SITE PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

(C) (I) WHEN A SITE HAS BEEN SELECTED BY THE SPONSORING AGENCY, IT SHALL NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING AND INCLUDE IN SUCH NOTICE THE SPECIFIC ADDRESS OF THE SITE, THE TYPE OF COMMUNITY RESIDENCE, THE NUMBER OF RESIDENTS AND THE COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM. SUCH NOTICE SHALL ALSO CONTAIN THE MOST RECENTLY PUBLISHED DATA COMPILED PURSUANT TO SECTION FOUR HUNDRED SIXTY-THREE-A OF THIS ARTICLE WHICH CAN REASONABLY BE EXPECTED TO PERMIT THE MUNICIPALITY TO EVALUATE ALL SUCH FACILITIES AFFECTING THE NATURE AND CHARACTER OF THE AREA WHEREIN SUCH PROPOSED FACILITY IS TO BE LOCATED. THE MUNICIPALITY SHALL HAVE FORTY DAYS AFTER THE RECEIPT OF SUCH NOTICE TO:

(1) APPROVE THE SITE RECOMMENDED BY THE SPONSORING AGENCY;

(2) SUGGEST ONE OR MORE SUITABLE SITES WITHIN ITS JURISDICTION WHICH COULD ACCOMMODATE SUCH A FACILITY; OR

(3) OBJECT TO THE ESTABLISHMENT OF A FACILITY OF THE KIND DESCRIBED BY THE SPONSORING AGENCY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCENTRATION OF ADULT CARE FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED OR A COMBINATION OF SUCH FACILITIES WITH OTHER COMMUNITY RESIDENCES OR SIMILAR FACILITIES LICENSED BY OTHER AGENCIES OF STATE GOVERNMENT, INCLUDING ALL COMMUNITY RESIDENCES, INTERMEDIATE CARE FACILITIES, RESIDENTIAL CARE FACILITIES FOR ADULTS AND RESIDENTIAL TREATMENT FACILITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR DEVELOPMENTAL DISABILITIES OPERATED PURSUANT TO ARTICLE SIXTEEN OR ARTICLE THIRTY-ONE OF THE MENTAL HYGIENE LAW AND ALL SIMILAR RESIDENTIAL FACILITIES OF FOURTEEN OR FEWER RESIDENTS OPERATED OR LICENSED BY ANOTHER STATE AGENCY, THAT THE NATURE AND CHARACTER OF THE AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED.

SUCH RESPONSE SHALL BE FORWARDED TO THE SPONSORING AGENCY AND THE COMMISSIONER. IF THE MUNICIPALITY DOES NOT RESPOND WITHIN FORTY DAYS, THE SPONSORING AGENCY MAY ESTABLISH AN ADULT CARE FACILITY AT A SITE RECOMMENDED IN ITS NOTICE.

(II) PRIOR TO FORWARDING A RESPONSE TO THE SPONSORING AGENCY AND THE COMMISSIONER, THE MUNICIPALITY MAY HOLD A PUBLIC HEARING PURSUANT TO LOCAL LAW.

(III) IF THE MUNICIPALITY APPROVES THE SITE RECOMMENDED BY THE SPONSORING AGENCY, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH THE FACILITY AT THE APPROVED SITE.

(IV) IF THE SITE OR SITES SUGGESTED BY THE MUNICIPALITY ARE SATISFACTORY WITH REGARD TO THE NATURE, SIZE AND COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM OF THE PROPOSED FACILITY AND THE AREA IN WHICH SUCH SITE OR SITES ARE LOCATED DOES NOT ALREADY INCLUDE AN EXCESSIVE NUMBER OF ADULT CARE FACILITIES OR SIMILAR FACILITIES LICENSED BY OTHER STATE AGENCIES, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH ITS FACILITY AT ONE OF THE SITES DESIGNATED BY THE MUNICIPALITY. IF THE MUNICIPALITY SUGGESTS A SITE OR SITES WHICH ARE NOT SATISFACTORY TO THE SPONSORING AGENCY, THE AGENCY SHALL SO NOTIFY THE MUNICIPALITY WHICH SHALL HAVE FIFTEEN DAYS TO SUGGEST AN ALTERNATIVE SITE OR SITES FOR THE PURPOSED ADULT CARE FACILITY.

(V) IN THE EVENT THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A FACILITY IN THE MUNICIPALITY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCENTRATION OF ADULT CARE FACILITIES OR COMBINATION OF SUCH FACILITIES AND OTHER FACILITIES LICENSED BY OTHER STATE AGENCIES THAT THE NATURE AND

CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED; OR THE SPONSORING AGENCY OBJECTS TO THE ESTABLISHMENT OF A FACILITY IN THE AREA OR AREAS SUGGESTED BY THE MUNICIPALITY; OR IN THE EVENT THAT THE MUNICIPALITY AND SPONSORING AGENCY CANNOT AGREE UPON A SITE, EITHER THE SPONSORING AGENCY OR THE MUNICIPALITY MAY REQUEST AN IMMEDIATE HEARING BEFORE THE COMMISSIONER TO RESOLVE THE ISSUE. THE COMMISSIONER SHALL PERSONALLY OR BY A HEARING OFFICER CONDUCT SUCH A HEARING WITHIN FIFTEEN DAYS OF SUCH A REQUEST.

(VI) IN REVIEWING ANY SUCH OBJECTIONS, THE NEED FOR SUCH FACILITIES IN THE MUNICIPALITY SHALL BE CONSIDERED AS SHALL THE EXISTING CONCENTRATION OF SUCH FACILITIES AND OTHER SIMILAR FACILITIES LICENSED BY OTHER STATE AGENCIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED. THE COMMISSIONER SHALL SUSTAIN THE OBJECTION IF HE DETERMINES THAT THE NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE BASED WOULD BE SUBSTANTIALLY ALTERED AS A RESULT OF ESTABLISHMENT OF THE FACILITY. THE COMMISSIONER SHALL MAKE A DETERMINATION WITHIN THIRTY DAYS OF THE HEARING.

(D) REVIEW OF A DECISION RENDERED BY THE COMMISSIONER PURSUANT TO THIS SECTION MAY BE HAD IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES COMMENCED WITHIN THIRTY DAYS OF THE DETERMINATION OF THE COMMISSIONER.

(E) (I) A LICENSING AUTHORITY SHALL NOT ISSUE AN OPERATING CERTIFICATE TO A SPONSORING AGENCY FOR OPERATION OF A FACILITY IF THE SPONSORING AGENCY DOES NOT NOTIFY THE MUNICIPALITY OF ITS INTENTION TO ESTABLISH A PROGRAM AS REQUESTED BY PARAGRAPH (C) OF THIS SUBDIVISION. ANY OPERATING CERTIFICATE ISSUED WITHOUT COMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE CONSIDERED NULL AND VOID AND CONTINUED OPERATION OF THE FACILITY MAY BE ENJOINED.

(II) THE DEPARTMENT OF HEALTH SHALL NOT ISSUE AN OPERATING CERTIFICATE FOR THE OPERATION OF AN ADULT CARE FACILITY IF THE AGENCY OR UNIT OF GOVERNMENT, VOLUNTARY AGENCY OR ANY OTHER PERSON OR ORGANIZATION WHICH INTENDS TO ESTABLISH OR OPERATE SUCH A FACILITY DOES NOT NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WHICH THAT FACILITY IS TO BE ESTABLISHED IN WRITING OF THE INTENTION TO ESTABLISH SUCH FACILITY AND INCLUDE IN SUCH NOTICE THE SPECIFIC ADDRESS OF THE SITE, THE TYPE OF RESIDENCE, THE NUMBER OF RESIDENTS AND THE COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS PARAGRAPH SHALL EITHER BE CONSTRUED TO REQUIRE FACILITIES OF MORE THAN FOURTEEN BEDS TO MEET ANY OTHER REQUIREMENT OF THIS SECTION, OR TO DEEM SUCH FACILITIES FAMILY UNITS FOR THE PURPOSES OF LOCAL LAWS AND ORDINANCES.

S 2. This act shall take effect immediately.