



## New York State Professional Fire Fighters Association, Inc.

174 Washington Avenue, Albany, NY 12210

Phone: 518-436-8827 • 1-800-238-8827 • Fax: 518-436-8830

E Mail: profire@nyspffa.org

www.nyspffa.org

February 10, 2014

MICHAEL T. McMANUS  
President

SAMUEL A. FRESINA  
Secretary-Treasurer

**EXECUTIVE BOARD**  
Executive V.P.  
FRANK DEMART

1st District V.P.  
JOE PEDULLA  
Niagara Falls  
Local 714

2nd District V.P.  
THOMAS AMEDIO  
Oswego  
Local 2707

3rd District V.P.  
ANDY HIRSCH  
Albany  
Local 2007

4th District V.P.  
MARTY MEANEY  
Johnson City  
Local 921

5th District V.P.  
SHAWN STEWART  
Eastchester  
Local 916

7th District V.P.  
JAMES SLEVIN  
New York City  
Local 94

8th District V.P.  
JAMES J. MCGOWAN  
New York City  
Local 854

### CHAPLAIN

REV. GERALD J. BUCKLEY  
68 Seminary Avenue  
Binghamton, NY 13905  
607-771-6207

RE: An act to amend the public health law, in relation to eliminating the requirement to prove public need for the establishment and operation of advanced life support services or municipal ambulance services by a municipality or fire district

A. 8617 (Steck)  
S. 6515 (Little)

### MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Firefighters Association.

**The New York State Professional Firefighters Association (NYSPPFA), I.A.F.F. AFL-CIO**, a not-for-profit association representing approximately 18,000 firefighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation, which would eliminate the requirement to prove public need for either the establishment or continued operation of advanced life support services or municipal ambulance services by a municipality or fire district.

### Overview

Since the inception of Article 30, the Legislature has amended the provisions related to a municipality or fire district's demonstration of public need to ensure the establishment and continued operation of municipal advanced life support and ambulance services ("ambulance service"). This bill represents the logical progression of Article 30, removing the limited presumption of public need for municipalities and fire districts in favor of a permanent presumption.

As outlined in the foregoing, this bill is necessary to protect the establishment and continued provision of municipal and fire district ambulance services; preserve municipal home rule; ensure the fastest response times to emergent situations; ensure a permanent source of municipal revenue to offset the cost of professional first responders, and prevent unnecessary tax increases.



## Background

Pursuant to Article 30 of the Public Health Law, before an operating certificate for ambulance service can be issued, the applicant must show “public need.” Such need is determined by Regional Emergency Medical Services Councils (REMSCO).

Since 1997, municipalities and fire districts seeking to establish a municipal ambulance service have been granted an automatic two-year presumption of public need.

Unfortunately, after expending significant resources to establish a municipal ambulance service, at the expiration of the automatic two-year period, municipalities and fire districts must apply to their respective REMSCO and establish public need in order to continue operation.

Since its inception, neither Article 30 nor regulations promulgated by the Department of Health (“DOH”) or the State Emergency Medical Services Council (“SEMSCO”) contain a definition of “public need.” Instead, DOH’s Bureau of Emergency Medical Services (“Bureau”) defined “public need” in a “policy statement” in or about 1993 and subsequently in the Bureau’s Policy Statement 06 06. The policy statement defines “public need” as:

The demonstrated absence, reduced availability, or an inadequate level of care in ambulance or emergency medical services available to a geographical area which is not correctable through the reallocation or improvement of the existing resource.

## Legislative History of Article 30

The demonstration of public need required by Article 30 prior to 1993 proved to be a significant hurdle for municipalities and fire districts that sought to establish an ambulance service for their respective citizens. As a result, in 1992, the Legislature amended §3008 of the Public Health Law to add a new subdivision (6). L. 1992, Ch. 850. The new subdivision promulgated a presumption in favor of granting a municipality or fire district’s application for a certificate of public need.

However, after the issuance of the Bureau’s definition of public need outlined above, municipalities and fire districts continued to experience difficulty demonstrating public need through the REMSCO process.

Citing these continued difficulties, in 1997 the Legislature responded in a stronger fashion to aid municipalities. Specifically, through the enactment of subdivision (7) to §3008 of the Public Health Law municipalities were afforded an automatic two-year certificate of need and a strong presumption in favor of a subsequent permanent application.

The amendment to §3008 adding subdivision (7) provided as follows:

7(a) Notwithstanding any other provision of law and subject to the provisions of this article, any municipality within this state, or fire district acting on behalf of such municipality, and acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions to establish and operate advanced life support first responder services or municipal ambulance services within the municipality, upon meeting or exceeding all standards set by the department for appropriate training, staffing and equipment, and upon filing with the New York state emergency medical services council, a written request for such authorization. Upon such filing, such municipal advanced life support first responder service or municipal ambulance service shall be deemed to have satisfied any and all requirements for determination of public need for the establishment of additional emergency medical services pursuant to this article for a period of two years following the date of such filing. Nothing in this article shall be deemed to exclude the municipal advanced life support first responder service or municipal ambulance service authorized to be established and operated pursuant to this article from complying with any other requirement or provision of this article or any other applicable provision of law.

(b) In the case of an application for certification pursuant to this subdivision for a municipal advanced life support or municipal ambulance service to serve the area within the municipality where the proposed service meets or exceeds the appropriate training, staffing and equipment standards, there shall be a strong presumption in favor of approving the application.

L. 1997, Ch. 510.

The purpose of this new provision was set forth in the Sponsor's August 14, 1997 letter to then Governor George E. Pataki's counsel, which stated:

Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first response service. Since they are applying to a regional council, which by statute is made up of not less than two-thirds industry representatives, it is difficult to prove that the current service is inadequate.

Letter of Senator Guy J. Velella.

In addition, justification for this bill contained in the Sponsor's Memorandum expanded the Legislative intent beyond REMSCO issues to include municipal expense and cost effectiveness, stating:

Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first responder service. Since they are applying to a regional council, which by statute is made up of not less than two-thirds industry representatives, it is difficult to prove that the current service is inadequate. In most cases the service may be adequate yet not be cost effective. Cost effectiveness is not a criteria for the regional council in their decision to grant or deny a certificate.

Given that many municipalities around the state have spent great time and expense in training municipal employees in advanced life support and because they may also possess the appropriate equipment and staffing they should not be subject to the additional scrutiny of the regional council.

When a municipality wishes to provide a service to its citizens we should not promote the policy of deterring them. This legislation simply gives a municipality that option to provide a service as opposed to contracting that service out.

A further examination of the Legislative Bill Jacket for L. 1997, ch. 510 clearly affirms the Legislative intent of the 1992 and 1997 amendments in the form of memoranda to then Counsel to the Governor, Michael C. Finnegan, provided by myriad stakeholders including, but not limited to the NYSPFFA, the New York State Department of State, and even the then Commissioner of DOH.

(See Legislative Bill Jacket L. 1997, ch. 510).

The following are excerpts of such memoranda:

First, the NYSPFFA stated:

Local government will now be allowed to determine how it wants to deliver EMS service to its citizens.

The prior procedure for obtaining a certificate of need was both unfair and unrealistic for local government. You have corrected this situation by allowing local government the ability to determine how it wants to function.

(Letter dated September 9, 1997 from NYSPFFA to Hon. George Pataki).

Second, in its recommendation the New York State Department of State, Office of Fire Prevention and Control and provided the following:

The Office of Fire Prevention and Control at the Department of State is concerned with legislation affecting emergency medical services, because these services are frequently an adjunct function of fire services.

Currently, it is necessary for municipalities and fire districts to apply to a regional council for a determination of public need prior to operating a first response advanced life support service or municipal ambulance service.

Because this bill removes this requirement, which has been burdensome and time consuming, delivery of crucial services to the public will be facilitated and expedited.

(Memorandum of the State of New York Department of State, dated August 18, 1997).

Most importantly, then DOH Commissioner Barbara A. DeBuono, MD, M.P.H. stated:

Many municipalities around the state have spent time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide this service. This bill empowers local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

(Memorandum of State of New York Department of Health, dated August 18, 1997).

In light of the foregoing, it is clear that the Legislative intent of the amendments made to Article 30 in 1992 and 1997 produced at least four core principles. First, municipalities may establish an ambulance service through a statutory presumption of public need regardless of the DOH Policy Statement defining public need.

Second, municipalities must be shielded from the REMSCO process with regard to the demonstration of public need due in part to the composition of the regional councils.

Third, given that municipalities across the state have spent great time and expense in training municipal employees, to acquire the appropriate equipment and hire necessary personnel, they should not be subject to the additional scrutiny of a regional council and challenges from the private sector when seeking permanent certification.

Fourth, as stated by the then Commissioner of the DOH, §3008(7) sought to empower local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

Unfortunately, even after the 1997 amendment of §3008 adding the strong presumption in favor of granting a municipality a permanent certificate of need at the conclusion of its two-year period of operation, several municipalities which provided faithful and high-quality ambulance services to their respective localities were again impeded by the REMSCO process. The City of Utica spent seven (7) years in the administrative and judicial appeals process resulting in significant legal expense. In fact, the denial of their application was set to be heard by the Court of Appeals before the Legislature stepped in and amended §3008 during the 2012 legislative session to correct the inherent unfairness that the REMSCO process imposed on the City of Utica. The 2012 amendment of §3008 authorized the City of

Utica to apply for a permanent operating certificate directly to the Commissioner of Health, thereby circumventing the REMSCO process.

The City of Utica was not the only municipality affected. This process also proved difficult for the City of Glens Falls, which applied for its permanent certificate of need in 2011. While the City of Glens Falls received a favorable ruling from its REMSCO, an interested private ambulance company simply sent in a letter of appeal which threatened to start Glens Falls on the same administrative and judicial appeals path suffered by the City of Utica. Thankfully, the Legislature, again citing the difficulties that municipalities face in the REMSCO process, included the City of Glens Falls in the 2012 amendment of §3008.

### *Justification for Permanent Presumption of Public Need*

Despite the amendments to §3008, municipalities still find themselves at a distinct disadvantage when applying for a certificate of need to continue the provision of ambulance services, as evidenced by the 2012 City of Utica and Glens Falls legislation. Specifically, municipalities or fire districts seeking to continue established operations must apply to their REMSCO, which by statute is made up of not less than one-third private industry representatives. Pursuant to the REMSCO process and the definition of public need contained in the Bureau's Policy 06 06, any entity, private or otherwise, can challenge the application for continued operation of the municipality or fire district based on public need through a simple statement that such challenging entity is ready, willing, and able to take over the municipality or fire district's current territory.

Given that many municipalities around the state have spent great time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide services in compliance with DOH safety requirements, they should not be subject to the additional scrutiny of their requisite REMSCO and challenges from the private sector.

The operation of ambulance services has proven to provide an invaluable benefit to municipalities. Indeed, municipal ambulance services have shown to provide faster response times by virtue of their knowledge of the communities and by the mere fact that they are already responding to emergency calls. Nor should it be discounted that firefighters are generally members and residents of the communities they serve.

Additionally, when the municipality is providing both treatment and transportation, the responders provide a continuity of care as opposed to waiting for another provider to arrive on scene before transporting the patient to a treatment facility. This continuity results in more efficient patient care, limits the need to hand off patients to another provider and saves lives.

Moreover, municipal ambulance services have proven to be cost effective for the areas served. Not only does such operation help offset the costs of the brave first responders employed by municipalities and fire districts, but it has resulted in the additional benefit of preventing tax increases above the recently enacted tax cap.

Indeed, the City of Utica reported municipal revenues equaling \$1,774,705 for 2010 through the end of 2011 and the City of Glens Falls reported \$679,724 for the same period. The revenue generated by the City of Utica saved its taxpayers a 5% tax increase.

Despite the recognized achievements by these municipalities in providing ambulance services through their firefighters, the opposition is likely to argue that the removal of the RESMCOs from the application process will prevent the private sector from providing adequate services, leading to the loss or reluctance of the private sector to establish ambulance services in certain regions. This same argument was made by the opponents to the 1992, 1997, and 2012 amendments of §3008. Yet, they have not shown any adverse effect that has prevented the private industry from similarly providing services in these areas.

To the contrary, municipalities and the private entities are collectively operating in areas throughout the State for the health and safety of the citizenry.

### Conclusion

Therefore, the New York State Professional Firefighters Association strongly supports enactment of this legislation.

Respectfully submitted,



Michael T. McManus, President  
New York State Professional Firefighters Association