



New York State Professional Fire Fighters Association, Inc.

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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. 9943-A (Brindisi)
S. 7013 (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 102 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 the 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 its 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. 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 advanced life support and ambulance services as well as 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 advanced life support services 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 advanced life support services, or a municipal ambulance service to provide lifesaving care to their citizens, have been granted an automatic two-year presumption of public need.

However, at the expiration of the automatic two-year period, municipalities and/or fire districts must apply to their respective REMSCO and prove public need in order to continue operation. This requirement is both problematic and counterintuitive as such municipality and/or fire district has expended significant resources to establish their advanced life support services or a municipal ambulance service.

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, the New York State Department of Health, 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 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.

Moreover, after the inception of the Bureau's definition of public need outlined above, municipalities and fire districts were experiencing increased difficulty demonstrating public need through the REMSCO process.

Citing these continued difficulties for municipalities in obtaining ambulance service operating certificates through the REMSCO process, the Legislature responded in a stronger fashion in 1997, adding subdivision (7) to §3008 of the Public Health Law to aid municipalities in the establishment of an ambulance service granting an automatic two-year certificate of need and a strong presumption in favor of a subsequent 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 for 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 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 Control 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 Commissioner Barbara A. DeBuono, MD, M.P.H. of the DOH 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.

Justification for Permanent Presumption of Public Need

Once again, municipalities find themselves at a distinct disadvantage when applying for a certificate of need to continue the provision of advanced life support first response service and operate their municipal ambulance service. Specifically, municipalities or fire districts seeking to continue established operation apply to their REMSCO, which by statute is made up of not less than two-thirds 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 advanced life support and municipal ambulance services provide an invaluable benefit to municipalities. Not only does such operation help retain and offset the costs of the brave first responders employed by municipalities and fire districts, but results in the additional benefit of preventing tax increases above the recently enacted tax cap.

For instance, last year the operation of the City of Utica's municipal ambulance service resulted in \$959,000, after all expenses were paid, being placed in the City's general fund. This revenue saved the City's taxpayers a 5% tax increase.

However, the City of Utica's application for a permanent certificate was denied by its REMSCO and SEMSCO based on lack of public need and its municipal ambulance is only operating pending the outcome of its appeal currently in the New York State Appellate Division, Third Department.

Moreover, the City of Glens Falls has operated its ambulance service since 2009. In 2011 it applied to its REMSCO for permanent operating authority. While it received approval of its application at the REMSCO, the decision was challenged by a private ambulance service and is on administrative appeal. Through the operation of its municipal ambulance service in 2011, \$370,323 in revenue was generated to mitigate potential tax increases.

Conclusion

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

Respectfully submitted,



Michael T. McManus, President

New York State Professional Firefighters Association