

MEMORANDUM

TO: New York State Professional Firefighters Association

FROM: Hinman Straub P.C.

RE: 2012 Legislative Session Report

DATE: August 22, 2012

The information provided in this memorandum is intended to summarize the 2012 Legislative Session.

Overview

The Senate and Assembly concluded the 2012 regular legislative session on June 21st.

In contrast to some recent legislative sessions, the 2012 session ended in a very orderly manner, without suspense and according to the legislative session calendar.

In a press conference held on the 21st, Governor Cuomo characterized the quiet end-of-session as a “dramatic turnaround” for state government which “wasn’t working.” He said that the two-year 2011-12 legislative session (which happens to coincide with his term as Governor) could go down as “one of the most successful legislative sessions in modern political history.”

Now that the Legislature has concluded its work in Albany, Senators and Assembly members return to their districts to begin to focus on the fall elections. The two houses are not likely to return until after the November elections.

The Legislature took action on several proposed legislative measures of interest to the NYSPFFA and its members. Below please find a summary of such initiatives and the action taken:

Passed Both Houses Awaiting Delivery to the Governor

Support

1. A. 9943-C (Brindisi)/ S. 7013-C (Little) Municipal Ambulance Bill

Section 3008 of the Public Health Law provides a two-year presumption in favor of municipalities and fire districts acting to establish and operate advanced life support and municipal ambulance services to the public. However, upon the expiration of the two-year presumption, these municipalities and fire districts must file an application with the regional council for a determination of “public need” to continue the operation of such services.

Applying for this certificate of need, however, has caused municipalities to be at a distinct disadvantage. Pursuant to statutory authority, the regional councils responsible for approving the certificates of need are comprised of not less than one-third industry representatives. As a result, it is difficult for these municipalities to prove that the current services available to the municipality are inadequate.

Specifically, this legislation addresses the immediate need of the City of Utica and the City of Glens Falls, whose continued operation of their existing ambulance services are in jeopardy of being terminated absent this legislation.

Last year the City of Utica’s municipal ambulance service resulted in \$959,000 being placed in the City’s general fund after all expenses were paid to offset emergency first responder services. 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 regional council and its municipal ambulance is only operating pending the outcome of its appeal.

Further, the City of Glens Falls has operated its ambulance service since 2009. In 2011 it applied to its regional council for permanent operating authority. Its application was challenged by a private ambulance service after it was unanimously approved by its regional council and is now on administrative appeal. Through the operation of its municipal ambulance service in 2011, \$370,323 in revenue was generated to decrease municipal taxes.

Not only have the cities of Utica and Glens Falls demonstrated that they are subject to an undue burden of proving “public need,” but these municipalities have spent a great deal of time and expense in training, building and maintaining the advanced life support services they provide. Accordingly, this legislation extends specifically to the City of Utica and the City of Glens Falls, prescribing that instead of applying to a regional council that is comprised of industry representatives, these municipalities instead apply directly to the Commissioner of Health upon the expiration of the two-year presumption. Moreover, the legislation provides that if the cities demonstrate that they exceed the appropriate training, staffing and equipment standards, there will be a strong presumption in favor of approving their application. This legislation upholds the procedural, safety and substantive requirements of continued service, eliminating the undue scrutiny and challenge by private representatives and entities.

We have submitted a letter in support of this measure to the Governor.

2. A. 5739-A (Abbate)/ S. 7209 (Libous) MRSA Disability

The MRSA Disability bill extends accidental disability benefits to those police officers and firefighters that have contracted methicillin resistant staphylococcus aureus while on the job.

Currently, police officers and firefighters that suffer from similar employment-related blood borne illnesses such as tuberculosis, hepatitis, or HIV, are eligible to receive three-quarters of their accidental disability benefits. However, prior to this legislation, such benefits were not extended to those that contracted methicillin resistant staphylococcus aureus.

Due to the increased exposure that police officers and firefighters have to those individuals that have methicillin resistant staphylococcus aureus, this legislation provides that a police officer or firefighter that has contracted methicillin resistant staphylococcus aureus while performing or discharging his/her duties is presumed to be disabled as a result of the illness. Accordingly, contracting methicillin resistant staphylococcus aureus is considered an employment-related accident and allows affected police officers and firefighters to be eligible for three-quarters of their final average salary.

The New York State Retirement System has determined the fiscal impact of this bill to be negligible.

We have submitted a letter in support of this measure to the Governor.

3. A. 9367-A (Abbate) / S. 6436 (Golden) NYC Training Bill

The New York City Training Bill adds a new section, 209-ff to the General Municipal Law, requiring the training of NYC fire officers in changes to building and construction codes and local ordinances in NYC.

New fire and building codes took effect in NYC on July 1, 2008. Since then there has not been any significant effort to train fire officers in the numerous changes to the codes. Accordingly, this bill was enacted to ensure that new and existing fire officers have the necessary knowledge of fire codes, building and construction codes and local city ordinances to effectively carry out their duties.

Specifically, this legislation would require a minimum of 40 hours of field training and 40 hours of classroom instruction to be completed no later than July 1, 2014. The mandatory training would place an emphasis on the inspection duties of firefighters and ensure that officers are abreast of any important changes in such duties resulting from the enactment or amendment of any laws.

We have submitted a memo in support of this measure to the Legislature.

Chaptered Bills- In Support

1. A. 9116-A (Markey)/ S. 6438-A(Golden) Special Accidental Death COLA

Since 1978, the Governor has signed into law a cost of living increase and a one-year escalation for all New York State widows and widowers of police officers and firefighters killed in the line of duty. However, although the intent was to increase the amount of benefits to a level that provided for the cost of living and accounted for inflation, these benefit increases have instead fallen short. After July 1, 1979, these laws failed to reflect the impact of inflation and provide any new cost of living increase. More importantly, since 1979, the cost of living has increased more than 3% each year and, as a result, widows and widowers are no longer receiving the benefits necessary to sustain a decent lifestyle.

As a result, this bill amends the current General Municipal Law and the Retirement and Social Security Laws to extend the escalation of a cost of living increase of approximately 3% for all line of duty widows and widowers. The amendment extends the benefits to those recipients that are qualified for accidental death benefits, as well as grants an additional increase to all previous recipients of this benefit.

This bill was signed into law as Chapter 285 of the Laws of 2012.

2. A.9889-A (Abbate) / S.7074-A (Golden) Partial Lump Sum Distributions

This bill amends Chapter 735 of the Laws of 2006 that currently provides certain members of the N.Y.S. Police and Firefighters Retirement System and New York State and Local Employees the option to elect to receive a partial lump sum distribution of their retirement with a reduced service retirement allowance. The reduction of the lifetime monthly benefit is based on the amount of the lump sum payment. The lump sum distribution, based on the member's election, may be either (1) directly rolled over to an IRA, 457 Plan, Roth IRA or other eligible retirement plan, or (2) paid directly to the member.

Originally, this law was supposed to expire on April 1, 2013; however, pursuant to this amendment, the expiration date has been repealed and the Partial Lump Sum option has become a permanent option for members for the N.Y.S. Police and Firefighter Retirement System. Since its inception, the Partial Lump Sum Distribution has proven to be a viable option for retirees and revenue neutral to the Retirement System, thereby supporting its permanency into law.

This bill was signed into law as Chapter 391 of the Laws of 2012.

Chaptered Bills- No Position

1. A. 10677 (Rules/ Gabryszak)/ S. 7677 (Grisanti) Emergency Escape Systems

This legislation amends the Labor Law by addressing the limitations of prior legislation that was enacted in 2007 which required the Commissioner of the Department of Labor to promulgate regulations, practices and standards that adopted the regulations in the most recent edition of the National Fire Protection Association (“NFPA”) 1983 Standard on Fire Service Life Safety Rope and System Components. The legislation that was passed in 2007 was in response to an incident, now referred to as “Black Sunday,” in which several firefighters were caught on the fourth floor of a burning building in the Bronx and were forced to jump from the building resulting in serious injury, as they were not equipped with the proper emergency escape components.

In prior legislative sessions, the Volunteer Firefighters and certain municipalities attempted to repeal the 2007 legislation in its entirety. Through our efforts we had such proposals vetoed. This legislation represents a compromise that was the result of multiple stakeholder meetings.

Specifically, this legislation amends the Labor Law by eliminating the provision that requires the Commissioner to specifically adhere to the NFPA 1983 Standard on Fire Service Life Safety Rope and System Components. Instead, it provides the Commissioner with the broad discretion to adopt regulations and practices of the NFPA and “other appropriate standards approved by the commissioner as are appropriate to the nature of the risk.” Further, this legislation prescribes that any city (except New York City), that employs firefighters that may be at risk of entrapment at certain elevations, provide emergency escape systems for such firefighters. It requires the Commissioner to identify whether firefighters would be exposed to the hazard of entrapment at elevated surfaces, identify those firefighters who would be exposed to the hazard and determine the appropriate emergency escape systems to address the hazard. Lastly, the legislation requires the employer to continually inspect and ensure that the emergency escape systems are functioning, ensure that firefighters are kept abreast of any limitations of the systems and ensure that there are no defects that limit their safe use.

We anticipate working closely with the Commissioner regarding the regulations.

This bill was signed into law as Chapter 360 of the Laws of 2012.

Chaptered Bills- Opposed

1. A. 10046 (Weisenberg)/ S. 7458 (Skelos) Fallen Firefighters Memorial

This bill amends the Volunteer Firefighters’ Benefit Law to create an unnecessary and exclusive standard for volunteer firefighters to be included on New York State’s Fallen Firefighters Memorial in complete disregard of the established procedures of the New York State Fallen Firefighters Memorial Committee.

This bill represented a veiled attempt to circumvent the criteria adopted by the New York State Fallen Firefighters Memorial Committee to evaluate requests for inclusion on the New York State Fallen Firefighters Memorial. In fact, through the Memorial Committee’s established

criteria, any volunteer firefighter whose death is determined to be “in the line of duty” is already placed on the Fallen Firefighters Memorial.

This bill was signed into law as Chapter 104 of the Laws of 2012.

Bills Supported Which Received Legislative Attention

1. A. 10126 (Abbate)/ S. 5378-A (Gallivan) Statewide 20 Year 384-d

In 2009, the Legislature passed Tier V for public employees. Tier V placed firefighters hired after January 2010 into the Tier V plan. Those firefighters hired between July 1, 2005 and the effective date of Tier V (January 9, 2010), working under a current collective bargaining agreement, were provided the opportunity to elect or remain in a non-contributory twenty-year plan until the expiration of their respective contracts.

However, this same protection was not afforded to firefighters working without a collective bargaining agreement. For example, Buffalo professional firefighters have operated honorably without a new collective bargaining agreement since 2001.

This bill amends the Retirement and Social Security Law by adding a new section, §334-f, to grant certain police and professional firefighters not subject to collective bargaining agreements the same rights as those subject to collective bargaining agreements with respect to electing an optional twenty-year retirement plan pursuant to RSSL Section 384-d.

The provisions of this bill do not apply to Tier VI members.

This bill passed the Assembly Governmental Employees Committee and was referred to Ways and Means. In the Senate, this bill passed the Civil Service and Pensions Committee and was committed to Rules.

2. A. 8359-B (Wright)/ S. 7026-A (Bonacic) Elevator Bill

The Elevator Bill requires the licensing of individuals that are engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators and other similar people moving devices. In addition, the bill establishes the New York State Elevator Safety and Standards Board that will create and implement licensing standards for elevator and escalator mechanics, inspectors and designers.

New York State Property Maintenance Code Section 606.1 (Code) requires that all elevators, dumbwaiters and escalators be maintained to safely carry all imposed loads, that they operate properly and that they be free from physical and fire hazards. In addition, Article 18 of the New York State Uniform Fire Prevention and Building Code Act (Article 18) requires local governments to enforce the Code and ensure that property owners meet schedules for inspections and tests set forth in the Code.

However, the Code and Article 18 do not provide an adequate enforcement procedure or mechanism to ensure that elevators and escalators are properly maintained. The use of unsafe and defective elevators and other automated conveyances expose both NYSPFFA members and the public to unsafe conditions and increase the probability of serious injury.

In fact, in 2010, the New York State Comptroller conducted a six city audit to determine whether local governments were ensuring that all elevators and related equipment were being properly inspected and tested in accordance with the Code. The audit found that five of the six cities audited were not properly ensuring that public elevators and related equipment were inspected as required by the Code.

Members of the NYSPFFA rely heavily on properly functioning elevators at fires and other emergencies. Similarly, the public relies on elevators and escalators on a daily basis. Accordingly, this legislation not only provides for a method of ensuring that inspection standards are met and utilized, but it also warrants that elevators and similar devices are properly maintained.

This bill passed the Assembly Labor Committee, passed the Assembly, and was delivered to the Senate. The bill was most recently referred to Rules.

In the Senate, this bill was referred to the Senate Labor Committee and ultimately committed to the Senate Finance Committee.

3. A. 7455-A (Rabbitt)/ S. 4239-A (Larkin) Fire Instructor No Pension Penalty

The Fire Instructor No Pension Penalty bill enables retired firefighters to receive their pension benefits without diminution while being employed as an instructor of fire science, on a compensation basis, in a program approved by the State Education Department.

As a result of years of dedicated service, retired firefighters possess the unique training, skills, and experience necessary to train future generations of fire professionals. This bill allows approved education centers to take advantage of such highly qualified retired public employees as fire science instructors without having the burden of providing additional training.

The enactment of this bill incentivizes extremely qualified retired firefighters to pass on their invaluable knowledge, experience, training and skills to a new generation of firefighters. More importantly, the bill allows retired firefighters to be employed in a capacity where they may receive compensation for their teaching without suffering a suspension or reduction of their retirement allowance or benefits.

This bill is being held for consideration by the Assembly Governmental Employees Committee. In the Senate, this bill passed the Civil Service and Pensions Committee, passed the Senate, was delivered to the Assembly and was ultimately referred to the Governmental Employees Committee.

In addition, both houses of the Legislature took action on a number of high profile bills in the final days of session, including:

A. 10721 (Ortiz)/ S. 7749 (McDonald) Protection of People with Special Needs Act

Gov. Cuomo’s proposal to create a *Justice Center for the Protection of People with Special Needs* to investigate abuse at homes for people with special needs and disabilities was his top legislative priority this past session.

This legislation establishes the strictest standards and practices in protecting individuals with special needs. Specifically, it ensures that uniform standards and safeguards are utilized with respect to caring for individuals with special needs that are served in residential facilities and day programs by provider agencies that are operated, licensed or certified by state agencies.

Moreover, the oversight and regulation of such standards will be implemented by the newly created *Justice Center for the Protection of People with Special Needs*, which will include a Special Prosecutor and Inspector General. These designated individuals will have concurrent authority with District Attorneys to prosecute abuse and neglect of people with special needs that rise to the level of criminal offense.

The *Justice Center for the Protection of People with Special Needs* will not only be a means of reporting abuse, but it will also be a way to track and analyze abuse patterns and trends to help prevent future abuse. Governor Cuomo stated that “[t]his law will help us protect the civil rights of more than one million New Yorkers with disabilities and special needs who for too long have not had the protections and justice they deserve.”

With more than 10,000 allegations of abuse and neglect against New Yorkers with special needs and disabilities in state programs last year, the *Justice Center for the Protection of People with Special Needs* is seemingly a victory on all ends.

A. 10717 (Pretlow)/ S. 7744 (Skelos) State Takeover of NYRA

The passage of the New York State Racing Franchise Accountability and Transparency Act of 2012 will enable the Governor to appoint a “re-organization board” to operate the New York Racing Association (NYRA) for the next three years. The “re-organization board” will be appointed to work in the best interests of the stakeholders of horse racing as well as manage the state racing franchise with transparency and accountability. After three years, the New York State Racing Franchise will be returned to private control in the form of a not-for-profit corporation.

A. 10786 (Jaffee)/ S. 7792 (Rules) Teacher evaluations

Despite the bill appearing to be dead earlier in the legislative session, both houses approved the Governor’s bill to limit the public disclosure of individual job performance data for thousands of teachers throughout the state. Parents will now have access to view the evaluations and effectiveness scores of their school district’s individual teachers and principals. The accessibility

of such information will be limited to parents and guardians, and will not be available to the public. This bill was passed at the request of the state's teachers' unions, and over the objections of New York City Mayor Bloomberg.

This bill was signed into law as Chapter 68 of the Laws of 2012.

If you have any questions regarding any of the above-referenced initiatives please contact Joseph M. Dougherty, Esq. at (518) 436-0751 or jdougherty@hinmanstraub.com