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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

OSC No. 19R-1

MEMORANDUM  
RE  
AN ACT

to amend the town law and the village law, in relation to fire protection contracts with incorporated fire companies

PURPOSE: The purpose of the bill is to increase transparency relating to the contract negotiation process for fire protection contracts between incorporated fire companies and fire districts, towns or villages.

SUMMARY OF PROVISIONS: Section 1 of this bill amends Subdivision 22 of Section 176 of the Town Law to provide that, prior to commencing the negotiation process for a fire protection contract between a fire district and an incorporated fire company, the incorporated fire company must file with the fire district board of fire commissioners a statement itemizing the estimated costs of the fire company attributable to the provision of services under the prospective contract. If the fire company is required to prepare an annual report of directors pursuant to 519 of the Not-For-Profit Corporation Law (NFPCL), a verified certificate pursuant to Subdivision f of Section 1402 of the NFPCL, Internal Revenue Service Form 990, or annual report on foreign fire insurance premium tax funds pursuant to Section 30-a of the General Municipal Law, copies of the most recent documents must be included with the statement. The statement and copies are not required when the contract is deemed renewed in accordance with Subdivision 22 of Section 176 of the Town Law. For good cause shown, the board of fire commissioners may waive by resolution, in whole or in part, the filing requirement.

Sections 2 and 3 of this bill make analogous amendments, respectively, to Section 184 of the Town Law, relating to fire protection contracts between incorporated fire companies and towns on behalf of fire protection districts and Paragraph 9 of Subdivision 3 of Section 4-412 of the Village Law relating to fire protection contracts between incorporated fire companies and villages.

Section 4 provides for an effective date of January first next succeeding the date on which it shall have become a law and provides that it shall apply to contracts with a term commencing after March first of the year in which it shall have become a law.

JUSTIFICATION: Fire districts, villages, and towns on behalf of fire protection districts are authorized to enter into fire protection contracts with, among other entities, certain incorporated fire companies. The Town Law and the Village Law require that the fire protection contract specify a “definite sum” to be paid each year for all fire protection services to be rendered under the contract. The “definite sum” consideration under the contract is established through a negotiation process between the parties to the contract. In most cases, it is believed that there is a free exchange of information during the negotiation process as to the cost of providing fire protection. However, over the years, the Office of the State Comptroller (OSC) has received a number of inquiries from local governments which have had difficulty in eliciting cost information from the fire company. In those situations, OSC has made several recommendations, such as including provisions in the contract to allow the local government access to fire company records pertaining to the cost of fire protection, making access to such information a condition of approving fire company fund raising activities pursuant to Section 204-a of the General Municipal Law, and obtaining copies of various financial filings of the fire company.

Rather than remediating the problem on a case by case basis, this bill would provide for a standard statutory process to ensure that the necessary cost information is provided at the outset of the negotiations. The submission of an itemized statement of estimated costs will help promote a more transparent negotiation process that can better result in the parties to the contract reaching a fair and equitable price for fire protection services. This is especially appropriate since both the local government and the fire company are discharging a function for the benefit of the public in providing for fire protection. A waiver provision is included for situations when, for good cause shown, a board of fire commissioners, town board, or village board of trustees determines to waive the filing requirement, in whole or in part. Such waiver may be accomplished by resolution of the governing board.

The State Comptroller urges passage of this legislation.

LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATIONS: None to the State. There may be minimal fiscal implications to incorporated fire companies, which should have the required information readily available.

EFFECTIVE DATE: The bill would take effect on January first next succeeding the date on which it shall have become a law and shall apply to contracts with a term commencing after March first of the year in which it shall have become a law.