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

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2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. ABBATE, JOHN, BOYLAND, SCHROEDER -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to liability for negligence or tort of firefighters or fire officers while acting in the performance of duty and within the scope of their employment

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

Section 1. The general municipal law is amended by adding a new section 50-j-1 to read as follows:

S 50-J-1. LIABILITY OF FIREFIGHTERS AND FIRE OFFICERS FOR NEGLIGENCE IN THE PERFORMANCE OF DUTY. 1. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER OR CODE TO THE CONTRARY, EVERY CITY, COUNTY, TOWN, VILLAGE, OR FIRE DISTRICT SHALL BE LIABLE FOR, AND SHALL ASSUME THE LIABILITY TO THE EXTENT THAT IT SHALL SAVE HARMLESS, ANY DULY APPOINTED FIREFIGHTER OR FIRE OFFICER OF SUCH MUNICIPALITY FOR ANY NEGLIGENT ACT OR TORT, PROVIDED SUCH FIREFIGHTER OR FIRE OFFICER, AT THE TIME OF THE NEGLIGENT ACT OR TORT COMPLAINED OF, WAS ACTING IN THE PERFORMANCE OF HIS OR HER DUTIES AND WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT.

2. FOR PURPOSES OF THIS SECTION, A FIREFIGHTER OR FIRE OFFICER OF ANY SUCH MUNICIPAL CORPORATION, ALTHOUGH EXCUSED FROM OFFICIAL DUTY AT THE TIME, SHALL BE DEEMED TO BE ACTING IN THE DISCHARGE OF DUTY WHEN ENGAGED IN THE IMMEDIATE AND ACTUAL PERFORMANCE OF A PUBLIC DUTY IMPOSED BY LAW AND SUCH PUBLIC DUTY PERFORMED WAS FOR THE BENEFIT OF THE CITIZENS OF THE COMMUNITY WHEREIN SUCH PUBLIC DUTY WAS PERFORMED AND THE MUNICIPAL CORPORATION, DERIVED NO SPECIAL BENEFIT IN ITS CORPORATE CAPACITY.

3. NO ACTION OR SPECIAL PROCEEDING INSTITUTED HEREUNDER SHALL BE PROSECUTED OR MAINTAINED AGAINST THE MUNICIPALITY CONCERNED OR SUCH FIREFIGHTER OR FIRE OFFICER UNLESS NOTICE OF CLAIM SHALL HAVE BEEN MADE AND SERVED UPON SUCH MUNICIPALITY, AUTHORITY OR AGENCY IN COMPLIANCE WITH

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

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SECTION FIFTY-E OF THIS ARTICLE. EVERY SUCH ACTION SHALL BE COMMENCED PURSUANT TO THE PROVISIONS OF SECTION FIFTY-I OF THIS ARTICLE.

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE CITY OF NEW YORK.

5. NOTHING IN THIS SECTION SHALL BE DEEMED TO REMOVE THE PROTECTION PROVIDED VOLUNTEER FIREFIGHTERS AND FIRE OFFICERS UNDER SECTION TWO HUNDRED FIVE-B OF THIS CHAPTER.

6. A. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, UPON DISCRETIONARY ADOPTION OF A LOCAL LAW, ORDINANCE, RESOLUTION, RULE OR REGULATION, ANY CITY, COUNTY, TOWN, VILLAGE, OR FIRE DISTRICT SHALL PROVIDE FOR THE DEFENSE OF ANY CIVIL ACTION OR PROCEEDING BROUGHT AGAINST A DULY APPOINTED FIREFIGHTER OR FIRE OFFICER OF SUCH MUNICIPALITY, AND SHALL INDEMNIFY AND SAVE HARMLESS SUCH FIREFIGHTER OR FIRE OFFICER FROM ANY JUDGMENT OF A COURT OF COMPETENT JURISDICTION WHENEVER SUCH ACTION, PROCEEDING OR JUDGMENT IS FOR PUNITIVE OR EXEMPLARY DAMAGES, ARISING OUT OF A NEGLIGENT ACT OR OTHER TORT OF SUCH FIREFIGHTER OR FIRE OFFICER COMMITTED WHILE IN THE PROPER DISCHARGE OF HIS OR HER DUTIES AND WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT. SUCH MUNICIPALITY IS HEREBY AUTHORIZED AND EMPOWERED TO PURCHASE INSURANCE TO COVER THE COST OF SUCH DEFENSE AND INDEMNIFICATION.

B. THE DETERMINATION OF WHETHER ANY SUCH FIREFIGHTER OR FIRE OFFICER PROPERLY DISCHARGED HIS OR HER DUTIES WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT SHALL BE MADE IN A MANNER WHICH SHALL BE PROMULGATED BY THE CHIEF EXECUTIVE OFFICER OR IF THERE BE NONE, THE CHIEF LEGISLATIVE OFFICER, AND ADOPTED BY THE GOVERNING BOARD OF SUCH MUNICIPALITY.

S 2. This act shall take effect immediately.