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## MEMORANDUM

DATE: September 16, 2022

RE: Proposed Amendments to the New York State General Municipal Law

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Firefly Admin Inc. specializes in the administration of length of service award programs (LOSAPs), which are authorized by Article 11-A of the New York State General Municipal Law (GML). The employees and consultants of Firefly Admin Inc. each have at least ten years of experience consulting with local governments and fire departments participating in New York State LOSAPs. The recommendations in this Memorandum reflect the combined insights gained by the Firefly Admin Inc. team during our time working with LOSAPs.

Questions about this Memorandum should be sent to Anthony Hill, Firefly Admin Inc., 6 Brunswick Road, Suite #8, Troy, NY 12180, or by email to [ahill@fireflyadmin.com](mailto:ahill@fireflyadmin.com).

### **Justification**

#### A. Point System – Calls and Duty-Crews

The COVID-19 pandemic paved the way for permanent changes to the way fire departments operate. These changes in operations accentuate a challenge that municipal sponsors, fire departments, and the professionals that serve them have been managing through for some time – that Section 217 of the GML, which outlines the point system criterion, has stayed relatively the same since it was first adopted. There have been a few minor changes, but the fire service is undergoing more significant changes that require more flexibility in drafting a point system.

The purpose of a LOSAP is to assist the fire department to recruit and retain volunteer firefighters. The volunteers earn points under the point system for certain activities as defined in the GML. As fire departments change the way they operate, the point system must provide a more flexible framework to adapt to these new or changed activities.

Specifically, fire departments are starting to change how they respond to alarms. Traditionally, fire departments operate under a system whereby all available volunteers respond to a call. With the number of volunteers dwindling, this often creates uncertainty about how many volunteers will be available to respond. The COVID-19 pandemic heightened this problem, as many volunteers were asked not to respond due to health risks or made their own decision not to respond. As a result, some fire departments moved to an “on-call” system, where groups of volunteers were assigned specific periods of time in which it is their responsibility to respond to the calls during that period. These are sometimes called “duty crews”.

This approach was utilized frequently by fire departments during the COVID-19 pandemic to ensure there is adequate staffing to respond to calls, and feedback we have received indicate this approach is likely to continue. However, it creates two challenges when it comes to the volunteers earning points under the LOSAP point system:

- 1) There is not an appropriate category in which to credit volunteers with points for participating in a “duty crew” or being “on-call” during a period of time. The law does provide for points while on stand-by, but that is traditionally a department-wide activity and not specific to certain volunteers that are assigned to a specific period.
- 2) In order to earn points under the Participation in Department Responses category, a volunteer must respond to a certain minimum percentage of the fire department’s calls for the year. If a volunteer is only able to respond to calls during his/her assigned duty-crew period, it is possible there may not be opportunity to respond to enough calls to meet or exceed that minimum percentage and thereby earn the 25 points.

We believe the statute should be changed to allow municipal sponsors the flexibility needed to ensure that the individuals volunteering their time can properly be awarded points for that time.

#### B. Vesting at Entitlement Age

The GML provides that a participating volunteer firefighter obtains a non-forfeitable right to his/her accrued service award upon the attainment of the entitlement age. In other words, the service requirement is waived once a volunteer has attained the entitlement age; the volunteer need only earn one year of service credit, not five. This is largely seen as being inequitable, and many have argued that all participants should have to earn the same number of years of service credit before becoming 100% vested and being eligible for a benefit from the LOSAP.

#### C. September 11<sup>th</sup> Related Illnesses

Twenty-one years after the events of September 11, 2001, volunteer firefighters that responded are developing cancer and other illnesses due to their exposure at the various sites. Due to these illnesses, fire department physicians are not able to clear these individuals for continued active volunteer firefighter service with the fire department. The current general municipal law requires that the workers’ compensation board certify the disability to be total and temporary or partial and permanent. Insurance carriers that provide coverage under the volunteer firemans’ benefit law are, in some instances, denying or not considering potential claims due to the time lapse, or the current carrier was not the carrier on September 11, 2001, or for other reasons. For these reasons, the fire department is not always able to easily obtain the proper classification from the worker’s compensation board. A change in the legislation will make it possible to provide individuals who selflessly gave their time and energy when it was needed most, continued points as similarly covered line of duty disabilities.

### **Firefly Admin Inc. Proposal**

Articles 11-AA and 11-AAA of the GML govern LOSAPs sponsored for ambulance squads. These Articles include the following:

- 1) An “alternative participation in company responses” option. Under this alternative, a political subdivision can opt to award up to one-half a point per response. By allowing an active volunteer firefighter to earn up to one-half a point per response, it eliminates the pressure felt by a volunteer to respond to a minimum number of calls when such volunteer is restricted from responding to such calls. It also would fit nicely with a “duty-crew” type response tactic. Since this alternative already exists in the GML for volunteer ambulance company LOSAPs, it

may be advantageous at this time to allow this same alternative in volunteer fire department LOSAPs. This could give more direct incentive for responding to emergencies.

- 2) Allows a “tours of duty” alternative to the “sleep-in or stand-by” category. Under this alternative, a political subdivision can grant up to one-sixth of a point per hour served on a tour of duty. By allowing a sponsor of a fire department LOSAP this same option, the sponsor can reward volunteers for dedicating specific periods of time for responding to emergencies.
- 3) Something that Articles 11-AA and 11-AAA does not include is the stipulation that a participant obtains a non-forfeitable right to a service award upon the attainment of the entitlement age. Additionally, those Articles state that a benefit cannot commence until a participant obtains a non-forfeitable right to a service award and attains the entitlement age. Therefore, participants in LOSAPs adopted for volunteer ambulance squads must meet the service credit requirement (typically five years) before becoming 100% vested and eligible to be paid a service award.

We are of the opinion that the most reasonable and effective way to amend Article 11-A is to replicate what is already authorized and effective in Article 11-AA and Article 11-AAA. This creates more uniformity among the different statutes, allowing sponsors of volunteer firefighter LOSAPs the same options already provided to sponsors of volunteer ambulance worker programs. These options we’ve proposed would allow the sponsors to change the point system to align with the changing operational procedures of the fire department. Finally, these changes would not fundamentally alter the nature of Article 11-A.

Regarding September 11<sup>th</sup> related illnesses, the World Trade Center Health Program (WTCHP) is a federal program and does not classify disabilities as total and temporary or partial and permanent as required by the current statute. Linking points to an illness certified by the WTCHP would remove any ambiguity and likely eliminate the opportunity for an individual to claim an illness that was not a direct result of participation in the operations on and after September 11, 2001. Additionally, requiring that the fire department certify under oath that an individual respond as a volunteer firefighter further provides Fire Districts with some certainty that the individual was performing line of duty services.

Enclosed with this Memorandum are the specific amendments we propose to Section 217 of the GML.

We appreciate you taking the time to review and consider our suggestions.

On behalf of Firefly Admin Inc.,



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No volunteer fire department, volunteer fire company, fire district, fire protection district, village, town or city, shall be required under this article to provide service award benefits for its active volunteer firefighters. Any service awards provided to an active volunteer firefighter under this article shall be governed by the provisions of section two hundred eighteen in the case of defined contribution plans, section two hundred nineteen in the case of defined benefit plans and in either case by the provisions of sections two hundred fourteen, two hundred fifteen, two hundred sixteen and two hundred nineteen-a of this article. No service award program may be provided under this article unless the following requirements are met:

**(a)** An active volunteer firefighter must be eligible to participate in any service award program provided under this article if the active volunteer firefighter has reached the age of eighteen and has completed at least one year of firefighting service. The sponsor of the service award program may impose younger age or shorter length of service requirements for participation in the service award program.

**(b)** A participant shall have a nonforfeitable right to a percentage of a service award that is not less than the percentage determined under the following table:

Years of Firefighting Service	Nonforfeitable Percentage
Less than 5	0
5 or more	100

~~Notwithstanding the preceding table, a participant shall have a one hundred percent nonforfeitable right to his service award upon his attainment of the entitlement age under the program. A participant who attains the entitlement age under the program must first obtain a nonforfeitable right to a percentage of a service award before a service award benefit becomes payable to the participant.~~ Each sponsor may establish a percentage table that provides for a faster rate of becoming nonforfeitable. Any amounts attributable to forfeiture of a participant's service award shall be used to reduce contributions for other service award program participants and shall not in any case be used to increase benefits for other participants. The preceding shall not preclude amendment of a service award program to provide for an increase in benefits.

**(c)** A year of firefighting service shall be credited under a service award program for each calendar year after establishment of the program in which an active volunteer firefighter accumulates at least fifty points. Points shall be granted in accordance with a system adopted by the program sponsor. Such system shall provide that points shall be granted for activities designated by the program sponsor, which activities shall be selected from the following:

**(i)** Training courses — twenty-five points maximum.

**(A)** Courses under twenty hours duration — one point per hour, with a maximum of five points.

**(B)** Courses of twenty to forty-five hours duration — one point per hour for each hour over initial twenty hours, with a maximum of ten points.

**(C)** Courses over forty-five hours to one hundred hours duration — fifteen points per course.

**(D)** Courses over one hundred hours duration — twenty-five points per course.

**(ii)** Drills—twenty points maximum. One point per drill (minimum two hour drill).

**(iii)** Sleep-in or stand-by—twenty points maximum.

**(A)** Sleep-in—one point each full night.

**(B)** Stand-by—one point each. A stand-by is defined as line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories.

A service award program may not provide points pursuant to this paragraph if the program provides points for tours of duty pursuant to paragraph (iv) of this subdivision.

(iv) Tours of duty. A maximum of twenty points may be granted serving tours of duty at a rate equal to no more than one-sixth of a point per hour served as determined by the sponsor. For purposes of this paragraph, the term "tour of duty" shall mean a line of duty activity, not falling under one of the other paragraphs of this subdivision, involving a period of time scheduled or assigned by the volunteer fire department or volunteer fire company during which a active volunteer firefighter is responsible for providing services as required by the volunteer fire department or volunteer fire company, including sleep-ins, stand-bys and backup duty, by reason of being stationed at an event, as part of a rostered duty crew or as otherwise provided by the regular procedures of the volunteer fire department or volunteer fire company. A sponsor may also define two or more activities included within the meaning of the term tour of duty and provide for points to be granted for the performance of such activities at different rates, provided, that points for such activities shall not be granted at a rate in excess of one-sixth of a point per hour served and no more than twenty points shall be granted for all such activities. A service award program may not provide points pursuant to this paragraph if the program provides points for sleep-ins or stand-bys pursuant to paragraph (iii) of this subdivision.

**(iv)** Elected or appointed position (see definition)—twenty-five points maximum.

**(A)** Completion of one year term in an elected or appointed position. If the term of office for a firefighter who has been elected or appointed to a position in a fire company or fire department commences during the month of May, the participant shall receive credit for the full year notwithstanding the fact that the participant has not completed one year in the elected or appointed position at the end of the calendar year in which he or she was elected or appointed.

**(B)** An active volunteer firefighter elected to serve as a delegate to a firefighters' convention shall also be eligible to receive one point per meeting.

**(vi)** Attendance at meetings—twenty points maximum.

Attendance at any official meetings of the volunteer fire company—one point per meeting.

**(vii)** Participation in department responses—twenty-five points for responding on the minimum number of calls, as outlined below:

<b>(A)</b> Total number of calls volunteer fire company responds to annually other than emergency rescue and first aid squad calls (ambulance calls)	0 to 500	500 to 1000	1000 to 1500	1500 and up
Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit	10%	7.50%	5%	2.50%
<b>(B)</b> Total number of calls emergency rescue and first aid squad (ambulance)	0 to 500	500 to 1000	1000 to 1500	1500 and up
Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit	10%	7.50%	5%	2.50%

An active volunteer firefighter who is granted points toward a year of firefighting service pursuant to this paragraph may not be granted points toward the same year of firefighting service for alternative participation department responses pursuant to paragraph (viii) of this subdivision.

(viii) Alternative participation in department responses.

- (A) A maximum of twenty-five points may be granted for participation in department responses other than emergency rescue and first aid squad calls (ambulance calls) at a rate equal to no more than one-half point per response as determined by the sponsor.
- (B) A maximum of twenty-five points may be granted for participation in department responses that are emergency rescue and first aid squad calls (ambulance calls) at a rate equal to no more than one-half point per response as determined by the sponsor.

An active volunteer firefighter who is granted points toward a year of firefighting service pursuant to this paragraph may not be granted points toward the same year of firefighting service for participation in department responses pursuant to paragraph (vii) of this subdivision.

~~(viii)~~ Miscellaneous activities—maximum fifteen points. Participation in inspections and other activities covered by the volunteer firefighters' benefit law and not otherwise listed—one point per activity.

~~(viii)~~ In the event that any active volunteer firefighter is either totally and temporarily disabled, or partially and permanently disabled, as certified by the workers' compensation board or other competent authority approved by the sponsor of the service award program, and the disability occurs during the course of service as a volunteer, while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, the firefighter shall receive five points for each full month of such disability. Additionally, if a volunteer fire department or volunteer fire company participated in the response to the terrorist attack on 9/11/2001 and authorized active volunteer firefighters to respond either during or after the attack, and an active volunteer firefighter who responded with such volunteer fire department or volunteer fire company is certified by the federal World Trade Center Health Program to have developed a covered condition as described in Title 42, Part 88 of the Code of Federal Regulations (42 C.F.R. Part 88.15) as a result of the active volunteer firefighter's participation, the active volunteer firefighter shall be determined to have suffered a line of duty disability and shall be credited with five points per month for each full month commencing after the date the covered condition is first diagnosed and certified by the World Trade Center Health Program. The volunteer fire department or volunteer fire company is required to certify under oath that the active volunteer firefighter was responding as an active volunteer firefighter of such volunteer fire department or volunteer fire company.

~~(ix)~~ Teaching fire prevention classes—five points maximum. An active volunteer firefighter who at the direction of his company, district or department, and for no remuneration, presents a public education class on fire prevention to a school, not-for-profit corporation, or civic organization organized and existing under the laws of this state or authorized to conduct activities in this state—one point per class.

The program sponsor may designate less than all the activities specified in this subdivision as activities for which points may be earned.