Bill as Introduced

SB 97 – AS AMENDED BY THE SENATE

03/27/03 0921s

2003 SESSION

03-1061
06/01

SENATE BILL ***97***

AN ACT limiting the liability of firefighters working for certain private firefighting units.

SPONSORS: Sen. Clegg, Dist 14

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill declares that firefighters working for a private firefighting unit which has contracted with a local governing body are agents of the municipality and enjoy the same privileges and immunities as the employees of the municipality.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 97 – AS AMENDED BY THE SENATE

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06/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT limiting the liability of firefighters working for certain private firefighting units.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Status of Firefighters who are Members of Private Firefighting Units Which Contract with a Municipality. Amend RSA 154:1-d, II to read as follows:

II. Any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the elected or appointed fire chief, or designee, of a municipal fire department organized in accordance with RSA 154:1, ***or who is a member of a not for profit private firefighting unit which has contracted with a municipality or other political subdivision and is organized in accordance with RSA 154:1-c,*** or who is participating in a fire department activity sanctioned by the local governing body or its designee, shall be an agent of the municipality, enjoying the same privileges and immunities as the municipality or employees of the municipality. Such privileges and immunities include, but are not limited to, indemnification for civil rights damages to the extent set forth in RSA 31:106, and indemnification for any other accidental damages to the extent set forth in RSA 31:105, if the municipality has adopted that section.

2 Effective Date. This act shall take effect 60 days after its passage.

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 97

BILL TITLE: limiting the liability of firefighters working for certain private firefighting units.

DATE: Apr. 15, 2003

LOB ROOM: 208 **Time Public Hearing Called to Order:** 1:40 p.m.

Time Adjourned: 3:07 p.m.

(please circle if present)

Committee Members: Reps. Mock, Rowe, Jacobson, Ford, Dudley, Soltani, Woods, Rice, Souza, Desmarais, Haytayan, Mooney, Morris, Sorg, J. Wheeler, Wall, J. Pratt, Craig, Lasky, Potter and Franklin.

Bill Sponsors: Sen. Clegg

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Robert Clegg, Hudson, Prime Sponsor- Supports. Appeared to open the hearing and testify in favor. Wants to protect firefighters in Candia.

Rep. Wall asked about coverage under existing statutes.
Rep. Rowe asked about volunteer firefighters.
Rep. Rice asked if volunteers were covered under the Good Samaritan act
A: no.
Rep. Rice also asked if this creates a 28:A problem
Rep. Franklin asked about difference between a "not for profit org." and a volunteer organization.
Rep. Mock was in ED&A- voice vote-unanimous; also asked about amendment
Rep. Rowe asked about further amendment
Rep. Wall asked if they get paid
Rep. Craig asked Sen. Clegg about the current statute
A: Candia is unique
Rep. Mock asked if Waterville was the same.
Rep. Souza asked if org. could buy more ins. than the private individuals could
Rep. Lasky asked if they could be paid as part-time employees.
Rep. Franklin asked if it would be easier to have the non-profit become a part of the municipality

Gary York, Town of Candia Board of Selectmen- Opposes.
**Written testimony in file*
Fire department is a 75-year-old volunteer department, now is a non-profit volunteer corps. Some members within the department are opposed to this proposal. They have the "Hatfields and McCoys."

Rep. Craig asked if he was speaking on behalf of the town
A: yes
Rep. Souza asked who wanted to bring forth bill-they don't know
Rep. Franklin questioned about equipment
Rep. Wall asked if this would make situation worse
A: yes
Rep. Craig asked if this would create an unfunded mandate

James Demers, Professional Firefighters of NH, Concord- Dover turned over firefighting to a private corporation- Wachenhot Corp.- which caused a lot of problems.

Rep. Wall asked if town is giving money to fire dept. shouldn't they have their say? They are still giving money.
Rep. Craig questioned whether the immunity statute covers Candia firefighters
A: They don't support the term "contract" in the statute

Judy Silva, New Hampshire Municipal Association, Concord- Opposed. Amendment that applies only to Candia and would be better, but they are still opposed. HB 224- state's authority is unclear. RSA 154:1c requires certification but they are not certified. She thinks it will cause an increase in town expenses- they have their own insurance so they are asking us not to pass on this bill.

Rep. Rowe- based on how they are operating, wouldn't court agree they have a quasi-contract?
A: Yes, might consider
Rep. Wall questioned whether Candia could even be helped by this since Candia's volunteer dept. is not certified.
Rep. Craig questioned whether us granting immunity to Candia would be a disincentive to them being certified.

David Minnis, NH Association of Fire Chiefs, Concord- Thinks that we have to explain to these groups that they are not certified and they are receiving funds and equipment.

Selectman Gary York- Testified again to answer questions.

Rep. Lasky- Questioned why some of those involved didn't go to Senate hearing.
Rep. Franklin- Questioned about the town's budgeting and capitol reserve.
Rep. Mock- Are fire trucks registered as government vehicles?

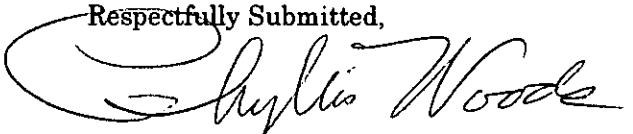
Selectman York says dispute is not between firefighters and the town! Not the town's issue, this is between those volunteers in the fire dept.- the conservatives and the progressives. They aren't opposed but don't think this is appropriate.

Questions:
Rep. Rowe
Rep. Lasky
Rep. Souza
Rep. Franklin

Subcommittee Formed:
Chairman: Rep. Wall
Rep. Lasky

Rep. Craig
Rep. Rowe
Rep. Souza

Respectfully Submitted,



Rep. Phyllis L. Woods for Rep. Terri C. Dudley, Clerk

Sub-Committee Minutes

State of New Hampshire

HOUSE OF REPRESENTATIVES
Legislative Office Building, 33 North State Street
Concord, NH 03301-6328

TEL: (603) 271-3184
TDD Access: Relay NH 1-800-735-2964

COMMITTEE ON JUDICIARY

MEMORANDUM

DATE: **April 18, 2003**

TO: **Members of the Subcommittee re: SB 97, limiting the liability of firefighters working for certain private firefighting units:**

Rep. Robert H. Rowe
Rep. Bette R. Lasky
Rep. Kathleen F. Souza
Rep. James W. Craig

FROM: **Rep. Janet G. Wall**
4 Pudding Hill Road, Madbury NH 03820-7001
(603) 749-3051

SUBJECT: **Subcommittee Meeting**

Please mark your calendars and plan to attend a subcommittee meeting to discuss SB 97, relative to eligibility requirements for property tax credits for disabled veterans and veterans' surviving spouses, scheduled for:

Wednesday, April 23, 2003
at 10:00 a.m. in LOB Room 208

A copy of the bill is enclosed for your review and to help you prepare for that meeting.

If you have any questions or concerns, please don't hesitate to give me a call. Looking forward to seeing you on the 23rd.

JGW:co
cc: Rep. Henry P. Mock, Chairman, Judiciary Committee

SB 97 – AS AMENDED BY THE SENATE

03/27/03 0921s

2003 SESSION

03-1061
06/01

SENATE BILL *97*

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2 Effective Date. This act shall take effect 60 days after its passage.

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON SB 97

BILL TITLE: limiting the liability of firefighters working for certain private firefighting units.

DATE: April 23, 2003

Subcommittee Members: Reps. Wall, Rowe, Lasky, Souza, Craig

Comments and Recommendations: Need more information. See attached notes of the meeting

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Janet G. Wall
Subcommittee Chairman

Subcommittee Work Session
SB 97 limiting the liability of firefighters working for certain private firefighting units.
10:00 am
April 23, 2003

Rep. Janet G. Wall opened meeting

State Fire Marshal Donald Bliss- Bill will have no impact on town of Candia or Fire Department. Alex., Winnisquam, and Meadowood would be affected. Would help these 3 towns. For liability purposes, department functions as separate entity- allowed by adopted warrant article and given liability protection. Outside this committee's purview. Only career firefighters need to be certified. Volunteers not required to be certified. Will be dialogue with firefighters.

Selectman Gary York- presented documents, referenced by Rep. Wall. Mr. York not aware previously of these documents. Town meeting minutes and contract documents. 1993 contract and corresponding Attorney advised town to put article in warrant- town assumes liability and should set policy. Agreement drafted and signed by Select. 1993, Fire Chief, and Fireman's Association. Summed up agreement. Imposed no liability on Association other than under state laws. Article 13- town meeting adopted- 1994 to adopt association.

Selectman Neil Sieminski and Chairman Clark Thyng- Town counsel pointed out liability issues and actions taken. Mr. Sieminski concerned that municipal liability extended by town, but town has no authority to impose any regulations on the association. Problem to attend to- association buys own insurance. If under town policy, could save $9,000. $94,000 given to association this year to run association. From this, $18-20,000 paid for insurance. Board of Fire Commissioners idea presented to town. Association voted to dissolve- selectmen put warrant article on town meeting. Association dropped petition due to time constraints between meeting and January. Warrant would have established Board of Fire Commissioners. Article endorsed by selectmen. Association not unified. Town meeting charged selectman to come up with an agreement by March town meeting.

Q: Rep. Rowe- Aren't the firefighters prosecuted either by town or existing law?

Mr. Sieminski- who is exposed over $250,000?
Mr. Thyng- Not on board back then.
Mr. Sieminski- Selectmen did not regulate this bill.

Deputy Fire Chief Rudolph Cartier- Noted hire dates in document not accurate. Fire marshal says, "yes, we are a municipal fire department"- great relief to our association, pleased that have liability protection. Concern that since municipal, charged with enforcing laws. Have options on town level to address issues of liability, lower cost liability insurance. RSA 508:17- comments by Mr. Bliss will alleviate concerns. Information and concerns regarding relationship with town and these issues will be discussed May 12.

Rep. Wall- once people know they have protection under Ch. 508, agreements can usually be worked out.
Mr. Cartier- Thought high probability things will be worked out.

Paul Williams, Candia Fire Department- Need to get together, get lawyer. Never heard of 508. Now been answered part of municipality.

Rep. Mock- Run on public funds- so town rules should apply?
A: I agree

Rep. Mock- everyone covered $250, 000 entity- 1 million. Town has internal problem to solve.
Rep. Wall- Way to overcome rift. Ch. 508 clear and we believe there is a way to work this out and we support your efforts.
Rep. Lasky- needed to cover 3 other volunteer fire departments?

Mr. Bliss- not spoken with other three- told Sen. Clegg wouldn't affect Candia. Don't believe major impact one way or another.

Rep. Wall- We'll wait to hear from you
Rep. Mock- Need response from them by May 14.
Mr. Cartier agrees.

Respectfully Submitted,

Rep. Kathleen F. Souza, Subcommittee Clerk

Gary H. Bernier, Esq.	NHMA		224-7447
RUDOLPH A. CARTIER JR	CANDIA FIRE (DEP. CHIEF)		483-5185
Gary W. York	Board of Selectmen		483-0850
NEIL A. SIEMINSKI	CANDIA BOS		483-5537 HOME
CLARK Thyng	Candia BOS	483-8101 WK. 483-8404 HM	483-8101 Town Office
Fire Rescue Kobel Rock. 73			W 83 8653
LEONARD WILSON	CANDIA FD		483-2097
PAUL WILLIAMS	CANDIA F.D.		483-5831
Robert Panit	Candia Emergency Mngmt		483-0712

Testimony

File Copy

Town of Candia
OFFICE OF THE SELECTMEN
74 High Street
Candia, New Hampshire 03034
(603) 483-8101

April 15, 2003

Ms. Judy Silva
NH Municipal Association
P.O. Box 617
Concord, NH 03302-0617

FILE

RE: Senate Bill 97

Dear Judy Silva,

It is our understanding you will be representing the New Hampshire Municipal Association (NHMA) a Judiciary Committee meeting scheduled for today at 1:30 p.m., to discuss NHMA's opposition to Senate I

Please be advised that the Candia Board of Selectmen discussed this proposed legislation at their meeting April 14, 2003. The Board voted unanimously to oppose the legislation. The reasons are as follows:

(1) The Candia Fire Department is not a municipal entity; rather it is a non profit organization not subject administrative and statutory procedures as the Town. If enacted, this legislation therefore has the expose the Town to excess liability claims as a result of omission or malfeasance by the private fire de
(2) The omissions referred to in item 1 above relate to civil rights damages to the extent set forth in RS well as accidental damages to the extent set forth in RSA 31:105, and as may be enacted by the Town.
(3) The Board of Selectmen and Fire Association will be working together in 2003 to put forth a warra the 2004 Town Meeting, which if enacted, will bring the Fire Department within the municipal Assuming a favorable vote by the Town Meeting, this legislation related to Candia therefo unnecessary.

Sincerely the Candia Board of Selectmen,

Clark Thyng, Chairman by: DAC

Neil Sieminski

Gary York by: DAC

CT/NS/lc
Cc: file

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 97

BILL TITLE: **limiting the liability of firefighters working for certain private firefighting units.**

DATE: May 21, 2003

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL,) Interim Study (Please circle one.)

Moved by Rep. Janet G. Wall

Seconded by Rep. Robert H. Rowe

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

JUDICIARY

Bill #: SB 97 Title: limiting the liability of firefighters working for certain private firefighting units

PH Date: 5/21/03 Exec Session Date: / /

Motion: I+L Amendment #:

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Rowe, Robert H, V Chairman	✓	
Jacobson, Alf E	✓	
Ford, Nancy M		
Dudley, Terri C, Clerk		
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Rice, Thomas E P	✓	
Souza, Kathleen F	✓	
Desmarais, Vivian J	✓	
Haytayan, Harry M	✓	
Mooney, Maureen C	✓	
Morris, Richard W	✓	
Sorg, Gregory M		
Wheeler, James E	✓	
Wall, Janet G	✓	
Pratt, John	✓	
Craig, James W	✓	
Lasky, Bette R	✓	
Potter, Frances D	✓	
Franklin, Peter E	✓	
TOTAL VOTE:	18	0

Printed: 1/23/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **SB 97**

TITLE: limiting the liability of firefighters working for certain private firefighting units.

DATE: May 21, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The sponsor of this bill brought it forward with good intent because the Candia Fire Department believed they were being held to a different standard than other fire departments in the state. The bill became a catalyst for bringing together the selectmen from the town of Candia and their fire department to discuss and attempt to resolve longtime misunderstandings. The selectmen did not want this bill. A 1994 contract between the town and the fire department was discovered in records; said contract binding the town to expend funds for fire equipment and other expenses. The fire department was purchasing separate liability insurance because they didn't consider themselves a municipal fire department. Now the town and fire department together with attorneys and the state fire marshall are working on an agreement verifying that the fire department is a municipal fire department with all the rights and protections under current laws as other municipal volunteer fire departments.

Vote 18-0.

Rep. Janet G. Wall
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

CONSENT CALENDAR

Judiciary

SB 97, limiting the liability of firefighters working for certain private firefighting units. **INEXPEDIENT TO LEGISLATE**

Rep. Janet G. Wall for Judiciary: The sponsor of this bill brought it forward with good intent because the Candia Fire Department believed they were being held to a different standard than other fire departments in the state. The bill became a catalyst for bringing together the selectmen from the town of Candia and their fire department to discuss and attempt to resolve longtime misunderstandings. The selectmen did not want this bill. A 1994 contract between the town and the fire department was discovered in records; said contract binding the town to expend funds for fire equipment and other expenses. The fire department was purchasing separate liability insurance because they didn't consider themselves a municipal fire department. Now the town and fire department together with attorneys and the state fire marshall are working on an agreement verifying that the fire department is a municipal fire department with all the rights and protections under current laws as other municipal volunteer fire departments. **Vote 18-0.**

SB97 - (ITL 18-0)

The sponsor of SB97 brought forward the bill with good intent because the Candia Fire Dept. believed they were being held to a different standard from other fire departments in the state. The bill became a catalyst for bringing together the selectmen from the town of Candia and their fire department to discuss and attempt to resolve longtime misunderstandings. The selectmen did not want this bill. A 1994 contract between the town and the fire department was discovered in records; said contract binding the town to expend funds for fire equipment and other expenses. The fire department was purchasing separate liability insurance because they didn't consider themselves a municipal. Now the town and fire department together with attorneys and the State Fire Marshall are working on an agreement verifying that the fire department is a municipal fire department with all the rights and protections under current laws as other volunteer fire departments.

Janet G. Wall

(*) Henry - Feel free to edit this as you wish! Thank you, Janet