



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

November 27, 2010

TO THE HONORABLE, THE HOUSE OF REPRESENTATIVES
OF THE COMMONWEALTH OF PENNSYLVANIA:

I am returning herewith, without my approval, House Bill 1231, Printer's Number 4393. I regret doing so, as I respect the sacrifices made by our firefighters; and our Administration has greatly expanded state aid to our wonderful volunteer firefighter companies. However, this legislation threatens public safety by raising the specter of cuts to essential services, or of forcing local governments to raise property taxes at the same time that Pennsylvania families are struggling economically.

Unlike most occupational injuries or diseases, HB 1231 would establish a presumption that any cancer diagnosis would be a result of firefighting activities – and the benefit provider, in this case local government, would bear the almost impossible burden to prove otherwise. The current printer number of HB 1231 would only permit employers to rebut the presumption of occupationally caused cancer by attempting to essentially prove a negative by requiring “proof of conduct or activities outside of firefighting duties that posed a substantial risk of causing the cancer.” This legislation also drastically differs from every other state cancer-presumption law, both because of this flawed rebuttable standard and because it would create the presumption for virtually every form of cancer when medical science simply does not know what causes most cancers.

While the total cost of this legislation is unknown – which is a problem in itself – experts predict that it would be significant, and the burden would be felt through tax hikes, cuts to local services, or both and, even worse, those cuts could be to firefighting activities. Municipal workers' compensation insurance trusts predict drastic rate increases and question their ability to even underwrite coverage of occupational cancer claims under this flawed bill. If municipalities lose this coverage, it could create a catastrophic financial situation.

As the Pennsylvania State Association of Township Supervisors wrote in their letter urging me to veto this bill, “Reduce commitment to public safety or raise property taxes? Those are the choices left to local governments if HB 1231 (PN 4393) becomes law.” And the Pennsylvania League of Cities and Municipalities concluded that, “The stark reality is that passage of this legislation will have a severe impact on the ability of municipalities to continue funding the current level of active and volunteer firefighters' services.” The league strongly urged me to veto in a letter signed by 20 mayors, Republicans and Democrats alike, from some of our largest cities to some smaller boroughs.¹

¹ Altoona, Allentown, Reading, Lock Haven, Scranton, Pottsville, Lancaster, York, Erie, Washington, Greensburg, Williamsport, Lebanon, Warren, Meadville, Philadelphia and the Boroughs of Edinboro, Carlisle, West Chester and Indiana.

An analysis done by the Pennsylvania League of Cities and Municipalities shows an increase of \$362 million in workers' compensation claims for Pennsylvania local governments over a five year period. The Delaware Valley Workers' Compensation Trust, which represents 54 municipalities in Southeastern Pennsylvania, warns of the "severe adverse potential fiscal impact" of the bill, and estimates a \$50 million workers' compensation premium increase over five years.

The proponents of this legislation, such as Richard Bloomingdale, President of the Pennsylvania AFL-CIO, a leader I have enormous respect for, have contended that this bill will not increase costs to municipalities. However, the studies and analyses that I have seen simply do not agree with that assertion. Secondly, they point out that the legislation applies to a focused set of group 1 carcinogens. That is correct, but carcinogens are just the potential cause of cancers, and the bill does not limit the *type* of cancers that it would apply to. So, for example, a firefighter who contracts prostate or brain cancer would be entitled to this new presumption. There is no scientific evidence that suggests that conduct or outside activities of a firefighter could be the cause of such cancers. Clearly, there are genetic reasons people get prostate or brain cancer but since they are not caused by the "conduct or activities" of the firefighter, they could not be used to rebut this flawed presumption.

During the legislative process, my Administration encouraged compromise language that would have protected firefighters and local governments. Our proposed amendment would have expanded workers' compensation cancer coverage for firefighters while providing municipalities with the ability to defend against cancer claims that are not occupationally related. We suggested the expansion of the presumption beyond lung cancer, but allowing municipalities to rebut the new presumption by a preponderance of the evidence that the cancer was not caused by the occupation of firefighting. Unfortunately, the Legislature chose to reject these efforts and instead sent me an untenable bill that I am forced to veto in order to protect Pennsylvania's taxpayers and public safety.

Lastly, it is important to note our firefighters already have substantial protection if their work exposed them to the risks of lung cancer – which science has shown is directly linked to many of the carcinogens they are exposed to in firefighting. In those instances, a presumption is created that can only be rebutted by "substantial evidence showing the cancer is not occupationally related" – that is a strong presumption that is fair and just and protects our firefighters from the deadliest of all cancers.

For all these reasons, I must conclude that this legislation is critically flawed. At a time when our local governments are already feeling the strains of the economy on their operating budgets and families across the Commonwealth can least afford higher property taxes, the provisions in this legislation represent a harmful unfunded mandate. Because this may jeopardize the local government's ability to adequately fund fire protections services, I must withhold my signature from this bill.

Sincerely,



Edward G. Rendell
Governor



Log

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

November 15, 2010

The Honorable Edward G. Rendell
Governor of Pennsylvania
225 C Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

Reduce commitment to public safety or raise property taxes? Those are the choices left to local governments if HB 1231 (*PN 4393*) becomes law. While the Association recognizes the valuable services provided by firefighters and the inherent risks that are involved with such activity, we respectfully request that you veto HB 1231 as recently passed by the General Assembly.

The current version of HB 1231, which would amend the Workers' Compensation Act (*Act 338 of 1915*) relating to claims made by firefighters, would expand the definition of "occupational disease" to include cancer arising out of providing firefighting services over a period of at least four years that may have come as a result of exposure to a known carcinogen. Under the bill, an individual would be enabled to claim disability on account of incurring cancer from such activity at any time in the future up to 600 weeks. Currently, occupational disease claims must be made within 300 weeks after the last date of employment in the occupation to which an individual was last exposed to its hazards. HB 1231 would inexplicably exempt cancer from this time constraint.

Townships are required to provide workers' compensation coverage insurance to all volunteer firefighters serving within its boundaries. We are concerned with language that places the burden on the township to prove that a claimant's cancer was not caused by engaging in firefighting activities. Also, as opposed to most workers' compensation claims, administering potential requests years after a firefighter has left the service would present unique and problematic complications for local governments.

While the enacted version of HB 1231 seeks to establish conditions whereby the firefighter's claims could be substantiated (i.e. a passed physical examination prior to evidence of cancer and the use of tobacco products), the bill still places the burden of proof on the municipality to show that the employee's cancer was caused by some factor other than firefighting.

The use of the term "cancer," in the bill is too broad. There are dozens of different types of neoplasia, many of which can be caused by a wide range of factors, not just exposure to firefighting activities. Based on a number of reports, firefighters are more prone to experience multiple melanomas, prostate cancer, and lung carcinoma than

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Trustees Insurance Fund ■ Unemployment Compensation Group Trust ■ Telephone: (800) 382-1268 ■ Fax: (717) 730-0209

oppose

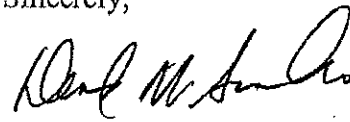
The Honorable Edward G. Rendell
November 15, 2010
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the general public. Unfortunately, according to the Centers for Disease Control, these cancers are also the three most common forms of cancer experienced by *all* men in the United States. Effectively separating legitimate disability claims from unfounded ones would be difficult and costly for local governments to undertake.

Local governments have long demonstrated their commitment to volunteer firefighters. According to the most up-to-date information provided by the Department of Community and Economic Development, townships of the second class spend nearly \$95 million annually on fire protection. In fact, data shows that 97 percent of all townships provide financial support to volunteer fire companies, in addition to mandated worker's compensation coverage. However, we feel that the provisions of HB 1231 would be too onerous for local governments to bear and will open them up to unfounded and costly workers' compensation claims. The additional costs of workers' compensation coverage and the associated expenses to defend such claims will undoubtedly decrease the amount of funding local governments can devote to fire protection services or will necessitate the increase in property taxes to ensure the current appropriations are maintained.

Less public safety or higher property taxes are both unacceptable outcomes of allowing this bill to become law. Therefore, we respectfully request that you **veto HB 1231**. If you have any questions, or wish to discuss this bill in detail, please do not hesitate to contact me.

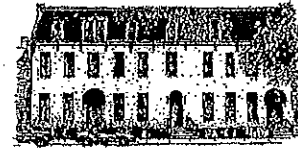
Sincerely,



David M. Sanko
Executive Director



The Pennsylvania League of Cities and Municipalities



A Century of Commitment

November 16, 2010

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Veto Request - House Bill 1231 (PN 4393) - Firefighter Cancer Presumption

Dear Governor Rendell:

We write on behalf of our municipalities to ask that you veto House Bill 1231. This bill imposes a substantial unfunded mandate that Pennsylvania Municipalities simply cannot afford.

House Bill 1231 will unduly burden our already strained budgets and may jeopardize our ability to adequately sustain the effectiveness of our fire companies, both paid and volunteer. The cancer compensation claims permitted by this legislation will also radically increase the disability pension liability of Cities that have full-time, paid fire departments.

We value our firefighters and believe that they should be fairly compensated for work-related injuries, including any occupationally caused cancers. However, this legislation is seriously flawed because it creates a conclusive presumption that cancer contracted by active or retired firefighters is work-related and unfairly restricts our ability to defend against cancer compensation claims that can be filed over eleven and one-half years after the claimant last served as a firefighter.

Once a retired or active firefighter with cancer shows that he was previously exposed to any one of 100+ "known carcinogens" while firefighting, House Bill 1231 creates a presumption that the firefighter's cancer is work-related. Although we may then attempt to rebut this presumption, the bill's rebuttal standard - requiring a municipal employer to prove that the firefighter engaged in conduct or activities outside of firefighting duties that posed a substantial risk of causing the cancer - is completely unworkable because it erroneously presumes that all cancers unrelated to firefighting are caused by a firefighter's "conduct or activities."

A good example of this flawed standard is prostate cancer. Medical science does not recognize any causal connection between that cancer and any "conduct or activities." Therefore, House Bill 1231's flawed rebuttal standard effectively prohibits municipalities from defending against many classes of cancer claims including prostate cancer. This rebuttal standard is much more

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Clifford "Kip" Allen, Councilmember, Edinboro, President • John A. Garner, Jr., Executive Director
Est. 1900 • Member, National League of Cities
Official Publication - Municipal Reporter

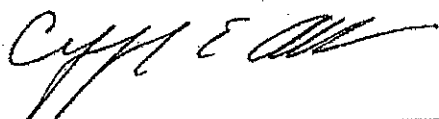
oppose

restrictive than the statutory standard which applies to all other occupational diseases under the Pennsylvania Workers' Compensation Act, a standard which allows municipal employers to present all relevant evidence as to whether the claimant's disease is in fact work-related.

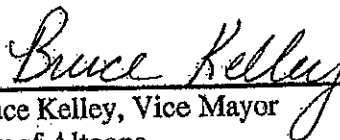
House Bill 1231 unfairly denies our municipalities a meaningful opportunity to defend against costly cancer compensation claims and will cause the costs of such claims to skyrocket. For those of us with full-time, paid fire departments this legislation will also further deplete our already distressed pension funds because firefighters' workers' compensation claims, under the flawed evidentiary standards of House Bill 1231, will most likely result in additional awards of service-connected disability pensions. House Bill 1231 lacks any offset provisions, so Cities will be forced to pay both workers' compensation and disability pension benefits to occupational cancer claimants.

The stark reality is that passage of this legislation will have a severe impact on the ability of municipalities to continue funding the current level of active and volunteer firefighters' services. We therefore respectfully request that you veto House Bill 1231 for all of the above stated reasons.

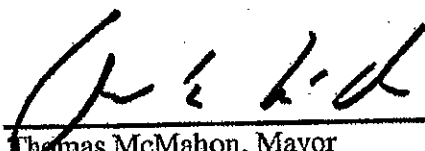
Sincerely,



Clifford "Kip" Allen, Councilmember
Borough of Edinboro
PLCM President



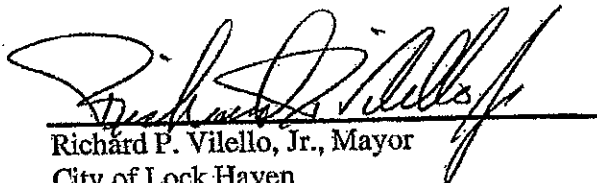
Bruce Kelley, Vice Mayor
City of Altoona
PLCM Legislative Committee Co-chair



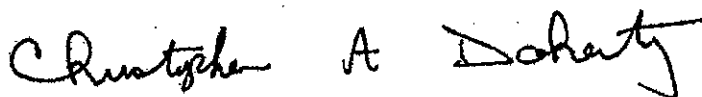
Thomas McMahon, Mayor
City of Reading
PLCM First Vice President



Ed Pawlowski, Mayor
City of Allentown
PLCM Legislative Committee Co-chair



Richard P. Vilello, Jr., Mayor
City of Lock Haven
PLCM Second Vice President



Christopher A. Doherty, Mayor
City of Scranton

Kirk R. Wilson

Kirk R. Wilson, Mayor
Borough of Carlisle

John D. W. Reiley

John D. W. Reiley, Mayor
City of Pottsville

J. Richard Gray

J. Richard Gray, Mayor
City of Lancaster

C. Kim Bracey

C. Kim Bracey, Mayor
City of York

Joseph E. Sinnott

Joseph E. Sinnott, Mayor
City of Erie

L. Anthony Spossey

L. Anthony Spossey, Mayor
City of Washington

Karl E. Eisaman

Karl E. Eisaman, Mayor
City of Greensburg

Gabriel J. Campana

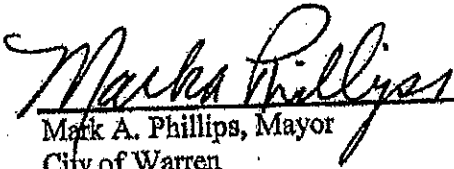
Gabriel J. Campana, Mayor
City of Williamsport


Sherry L. Capello


Sherry L. Capello, Mayor
City of Lebanon

Carol T. Comitta

Carolyn T. Comitta, Mayor
Borough of West Chester


Mark A. Phillips, Mayor
City of Warren


George Hood, Mayor
Borough of Indiana


J. Christopher Soff, Mayor
City of Meadville



CITY OF PHILADELPHIA

OFFICE OF THE MAYOR
215 City Hall
Philadelphia, PA 19107
(215) 686-2181
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MICHAEL A. NUTTER
Mayor

November 16, 2010

Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: HB 1231 (Municipal Liability for Firefighters' Cancer)

Dear Governor Rendell:

I am writing to urge you to veto HB 1231 (P.N. 4393). This legislation passed the Senate on October 14, 2010, and the House on November 15, 2010.

HB 1231 would create a presumption, under the workers' compensation laws that create liability for municipal and other local governments, that cancer contracted by a firefighter was caused by a workplace exposure to a carcinogen.

As reflected in letters I have sent to the Senate advocating for changes in this bill, the City of Philadelphia is not opposed to compensating firefighters who contract cancer as a result of workplace exposure. The current legislation is improved from the version of the bill originally passed in the House, through amendments made in the Senate, and in particular the hard work of the Senate Committee on Labor and Industry. The City remains concerned, however, about how the bill would limit the evidence the City would be permitted to provide to rebut the presumption of the City's liability.

Local governments that are being asked to pay for the care of firefighters should not have to compensate employees who contract a disease based on factors that have nothing to do with the firefighter's employment. For this reason, we must be able to provide evidence to the trier of fact to prove, in rebuttal of the presumption afforded the firefighter, that workplace exposure was not, in fact, the cause of the firefighter's disease.

oppose

Hon. Edward G. Rendell
November 16, 2010
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The bill currently under consideration would significantly limit the evidence that may be provided by the municipal employer to rebut the presumption that workplace exposure caused the firefighter's cancer. The bill would only allow rebuttal of the presumption with evidence that the firefighter's behavior outside of firefighting posed a substantial risk of causing the cancer. It does not appear to allow for the City to provide evidence, for example, that the type of cancer at issue either cannot be caused by the type of exposure experienced by the firefighter or is almost certainly hereditary.

The City is in agreement with advocates for other municipal governments, the insurance industry, and your Secretary of Legislative Affairs, that the following would be the most appropriate standard: the presumption should be rebuttable "by a preponderance of the evidence that shows that the firefighter's cancer was not caused by the occupation of firefighting." Such language would allow the City to provide available evidence that workplace exposure did not cause a firefighter's cancer.

This bill would create unusual worker's compensation liability protections for one class of City employee. The City estimates that, under the current language of the bill, the City's liability exposure could exceed \$5 million dollars over a five year period. Due to the unfair liability exposure and high costs passed to municipal employers, HB 1231 is sufficiently flawed that it should be vetoed and returned to the General Assembly so that the Assembly can further address the presumption rebuttal issue.

Thank you for the opportunity to provide the City's views on this important matter.

Sincerely,



Michael A. Kuffer,
Mayor

Loag

RE: VETO on House Bill 1232 (PN4393)

SUBJECT: HB 1231 - Cancer Presumption Bill

Dear Governor Rendell:

I am writing today on behalf of the Council of the Borough of Lawrenceville who are adamantly and unanimously opposed to **HB 1231 in its present form and respectfully request your VETO**. The byproduct of this legislation would impose yet another unfounded mandate upon the Borough and its tax payers.

Many municipalities, including the Borough of Lawrenceville, are faced with financial burdens including the ever increasing costs of public safety, pension obligations, health care, and the deregulation of electric utility rates. Couple this with declining revenues associated with a weak economy and we have unprecedented challenges for the 2011 budget year and beyond.

In its current form, HB 1231 states that any cancer diagnosis in a firefighter is presumed to be work-related regardless of whether the individual ended his/her career years prior to the diagnosis. This standard is much narrower than that which already applies to any and all other occupational diseases.

It would be impossible for the Borough or our insurance provider to investigate and prove that any individual's occurrence of cancer was due to other factors unrelated to firefighting activities. Consider how difficult it would be for a local government to obtain individual's medical or work history. In addition, an individual could have a risky lifestyle (tobacco use, alcohol abuse, illegal narcotics etc.) which could have lead to cancer.

It would not be possible to prove the existence of other causes of an illness unless the individual willingly disclosed the information. This places an unfair burden of proof on the municipality and their insurance provider.

Insurance providers will quickly realize the impossibility of defending against fraudulent claims and they will have no choice but to significantly increase workman's compensation premiums they charge municipalities. **These costs are passed on to our residents and businesses in the form of higher taxes.**

On behalf of the Council of the Borough of Lawrenceville and the residents and businesses they represent, I implore you to examine the financial burden passage of this bill would place on local governments and tax payers and **VETO** the current version of House Bill 1231 (PN4393).

Thank you for your consideration of this veto request and the far-reaching consequences of the passage of HB 1231 (PN4393) as currently written.

Sincerely,


- Jack Young
Council President

**Lawrenceville Borough
PO Box 287
6 Mechanic Street
Lawrenceville, PA 16929**

oppose

The Insurance Federation of Pennsylvania, Inc.

1600 Market Street
Suite 1520
Philadelphia, PA 17101
Tel: (215) 665-0500 Fax: (215) 665-0540
E-mail: mailbox@ifpenn.org

Samuel R. Marshall
President & CEO

November 16, 2010

Honorable Edward G. Rendell
Governor
Room 225, Main Capitol Building
Harrisburg, PA 17120

Re: House Bill 1231

Dear Governor Rendell:

This is to recommend that you veto House Bill 1231.

The bill amends the Workers Compensation Act to make certain forms of cancer an occupational disease for firefighters, both paid and volunteer.

First, the bill is an unfunded mandate on local governments at a time when their budgets are under pressure and when some have already had to cut back on firefighting services. Over the years, Pennsylvania has complained - legitimately - about unfunded mandates from Washington. The arguments are just as legitimate here.

The only counter-argument we've heard is that the cost will be minimal. The studies we've seen, however, suggest this will be a significant cost; attached is the most recent study we've seen of a similar law - the 2009 study of a Maine law done by the National Council of Compensation Insurance (a rating bureau, not an insurance group), projecting the cost to be between 7% to 27%. Proponents of this bill say the actual cost increase may be less - but even assuming an increase on the low side, it comes at a particularly difficult budget time for localities.

November 16, 2010

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Second, the bill comes without medical evidence that the identified cancers are unique or inherent risks in firefighting that justify being labeled as occupational diseases. The studies we have seen don't justify that presumption: To the contrary, they show the incidents of the forms of cancer identified in this bill among firefighters are roughly the same as in the general adult male population.

Third, the bill comes without having gone through a hearing in either chamber that would have allowed these concerns to be raised and questioned. From our perspective, that has been a disturbing trend in this legislative session: Too many bills have passed without the chance to consider legitimate questions, which is the purpose of committee reviews and hearings and the goal of all who want more transparency and accountability in government.

That may seem strange coming from an industry often perceived as operating "underneath the radar." Those who know the Federation, however, know that whatever our disagreements, we welcome public debate and scrutiny of our positions and of the issues we face. A more open review of this bill would have at least enabled all sides to fully consider the cost and medical support behind this.

As insurers, we appreciate and respect firefighters: They protect the lives and property we insure, our histories are inextricably linked, and much of our premium taxes are dedicated to them. Nonetheless, given the cost of this bill on localities and the lack of medical support for the presumption it creates, we believe the balances involved justify the bill's being vetoed.

The need to maintain a strong firefighting system and attract and retain firefighters - paid and volunteer - is crucial. Meeting that need requires a more comprehensive and collaborative approach than this bill has allowed. Our hope is that a veto of this bill is not an end but a beginning to that approach.

November 16, 2010
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Sincerely,

Samuel R. Marshall



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

28 West State Street, Suite 719, Trenton, NJ 08608

November 18, 2010

Honorable Edward G. Rendell
Governor
State of Pennsylvania
Main Capitol Building, Room 225
Harrisburg, PA 17120

Re: HB 1231

Dear Governor Rendell:

We are writing in opposition to HB 1231, legislation that would create a new presumption that certain forms of cancer are an occupational disease for firefighters.

The Property Casualty Insurers Association of America (or "PCI") represents over a 1,000 major property-casualty insurance carriers, including many companies that write workers' compensation insurance in Pennsylvania.

We are concerned with the legislation because it fails to identify what this change would cost at a time when budgets are thin. We believe an impact study should be considered at a minimum before creating this new burden.

While the amendments to the legislation provide some modifications to the original bill, the presumption of cancer still exists in the legislation. This presumption changes the balance between the employer and employee and makes it difficult for the employer and others to defend themselves in any legal action.

The legislation with the proposed amendment requires that the death, disability, or impairment of a firefighter shall be presumed to be work-related if the condition is caused by cancer; and the person has been employed for four or more years as a firefighter. The presumption may only be rebutted by an employer or insurance carrier upon a "preponderance of the evidence" that the cancer is not work-related. In essence, the employer is being asked to do the nearly impossible task of proving a negative that the cancer did not occur on the job.

oppose

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November 18, 2010

However, the structure and wording of the bill is such that a firefighter with a listed cancerous condition will no longer be required to prove that the cancer was work-related. Under the provisions of House Bill 1231, it will be very difficult or next to impossible for Municipalities to rebut the presumption, even for those situations where the claimant is a regular user of tobacco products or who has a history of tobacco use. In addition to tobacco use, municipalities will find it difficult to rebut the presumption on individual claims where there is evidence that other factors may be the cause of the disease including lifestyle, hereditary factors, and exposure from other employment or non-employment activities.

If the medical evidence of causal relationship is as strong as the firefighters claim, why is there a need for the presumption? They should be able to prove their claims without a presumption.

This legislation will increase costs, create greater uncertainty, and modifies the carefully balanced workers' compensation system in Pennsylvania.

Thank you for considering our views in this matter.

Sincerely,

Richard Stokes
Counsel