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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/09
 LAST UPDATED 03/19/09 HB _____

SPONSOR Sanchez, M.

SHORT TITLE Firefighter Occupational Diseases SB 303/aHJC

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Offices of the Courts (AOC)
 Public Regulation Commission (PRC)
 Department of Health (DOH)
 Workers' Compensation Administration (WCA)
 New Mexico Municipal League

No Response Received From

Association of Counties

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 303 clarifies that the “presumptions” created in Subsection B “and Subsection D” of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described disease. The amendment also clarifies “when any” presumptions created in this section “do not apply, it” shall not preclude a firefighter from demonstrating a causal connection between employment and disease or injury by a preponderance of evidence in a court of competent jurisdiction.

Synopsis of Original Bill

Senate Bill 303 enacts a new section of the New Mexico Occupational Disease Disablement Law to create a presumption of proximate cause when a firefighter is diagnosed with one or more specific diseases after the period of employment indicated, which disease was not revealed during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act (OHSA) and rules promulgated pursuant to the Act.

The presumption is that the disease was proximately caused by employment as a firefighter. The proposed legislation provides that the presumption may be rebutted by a preponderance of evidence showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described disease. The proposed legislation further provides that a firefighter's heart injury or stroke, while involved with or following specified work situations, shall be presumed to be proximately caused by employment as a firefighter, but, only if the firefighter's employer has a current physical training program and the firefighter has a current medical screening examination or review pursuant to the OHSA. The proposed legislation provides that these presumptions shall not preclude a firefighter from demonstrating a causal connection between employment and disease or injury by a preponderance of the evidence.

Medical treatment based on these presumptions must be provided by an employer as for a job-related illness or injury unless a court determines that the presumption does not apply, in which case, the employer's workers' compensation insurance provider shall be reimbursed by the medical or health insurance plan or benefit provided for the firefighter by the employer. Also, the proposed legislation defines firefighter to mean a non-volunteer firefighter employed full-time by a state or local government entity who has taken the oath prescribed for firefighters.

FISCAL IMPLICATIONS

AOC noted there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. It is conceivable that the creation of this rebuttable presumption could lead to a decrease in court time necessary to prove proximate cause. On the other hand, the presumption will most likely be vigorously rebutted, perhaps even leading to an increased court time and use of judicial resources.

PRC noted that it does not know what the fiscal implications might be for local governments.

NM Municipal League reported that state, municipalities and counties will face higher premiums for workers' compensation coverage for firefighters if the proposed legislation becomes law. According to a study by the National Council on Compensation Insurance (NCCI) that was conducted for the Workers' Compensation Advisory Council, rates per \$100 of payroll for firefighters will increase in a range from 1.4 percent to 17 percent.

NM Municipal League stated in a report on the adoption of presumption legislation by states reported in the publication Business Insurance on June 2, 2008 a representative of the Connecticut Interlocal Risk Management Association was quoted as saying that a Heart/Hypertension presumption provision in the states Workers' Compensation law that was adopted in 1977 has resulted in \$98 million in incurred losses for about 25 municipalities in the

state. NM Municipal League noted because of a lack of experience with presumption legislation the level of losses that will be incurred as a result of adoption of this proposed legislation is not accurately predictable.

NM Municipal League noted the proposed legislation requires that a baseline be established during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Safety and Health Act. Municipalities are concerned that the cost of the initial medical exam will be significant because of the tests that will be necessary to establish that the diseases enumerated in the legislation are not present at the time of the exam. While the cost cannot be accurately estimated it could negatively impact a municipality's ability to recruit firefighters.

WCA noted the proposed legislation provides a presumption that certain diseases are work-related. These include cancers, heart attacks and some infectious diseases. There are strict guidelines for eligibility. National Council on Compensation Insurance and the WCA have studied the impact to the workers' compensation system. Overall, the number of potential claims from the change in Section 52-3-1 NMSA 1978 would be minimal to the workers' compensation administrative system and so the impact on WCA agency resources would not be affected.

WCA reported the change to the Occupational Disease and Disablement would affect state and local governments' risk management operational resources. Currently there are approximately 1,300 firefighters and support staff in New Mexico that would be impacted under this Act. These numbers come from the Department of Workforce Solutions under their occupations projections dataset for 2007-2009. The current estimated annual loss-costs for firefighter claims are approximately 1.5 million dollars. This number is based on the WCA accident database open and close claim information and also from loss-cost data from the National Council on Compensation Insurance for firefighter class code 7710. The National Council on Compensation Insurance estimated loss-costs increase based on this bill was calculated at between 2.4 percent to 7.3 percent of current costs.

WCA reported a study developed by Wiley-Liss, Inc, "Cancer Incidence Among Male Massachusetts Firefighters, 1987-2003" showed an elevated risk among firefighters for colon cancer and brain cancers. In using the probability matrix in this study for firefighter's cancer rates and the potential incidences of heart-attacks per 1000 cases, the WCA staff applied this information to the 1,300 firefighter population. Overall it is estimated that loss-costs annually would increase from \$283,281 to \$369,605. This estimate is higher than the National Council on Compensation Insurance's original projections in October 2008 and is the result of reviewing loss-costs of firefighter claims and studies of medical treatment costs of various cancer-related illnesses (see progressreport.cancer.gov).

WCA stated that generally, public employers that employ firefighters may see their overall claim expenses increase slightly as a result of this bill. It is not expected that any one public entity would be burdened with excessive costs related to this statutory change. Additionally, the administrative costs, attorney fees and expense of litigating causation could be avoided. Currently, firefighters have the burden of proving that a specific incident, carcinogen or contact caused the illness.

SIGNIFICANT ISSUES

DOH reported that the proposed legislation is a Governor's bill. Under the proposed legislation, a full-time non-volunteer firefighter employed by state or local government who has taken the prescribed firefighter's oath is presumed to have a proximately caused work-related compensable disease if diagnosed after the period of employment indicated for the following: brain cancer after 10 years, bladder cancer after 12 years, kidney cancer after 15 years, colorectal cancer after 10 years, non-Hodgkin's lymphoma after 15 years, leukemia after 5 years, ureter cancer after 12 years, testicular cancer after 5 years (if diagnosed prior to age 40 and in the absence of anabolic steroid or human growth hormone history), breast cancer after 5 years (if diagnosed prior to age 40 and in the absence of breast cancer 1 or 2 genetic predisposition), esophageal cancer after 10 years, multiple myeloma after 15 years and hepatitis, tuberculosis, diphtheria, meningococcal disease and methicillin-resistant staphylococcus aureus appearing and diagnosed after initiation of employment. If the firefighter is diagnosed with a heart injury or stroke that occurs within stated time and work conditions, the firefighter is presumed to have a compensable work-related injury.

DOH noted during the course of their work, firefighters are exposed to highly stressful physical demands and are exposed to harmful substances such as gases, mists, particulates, organic and inorganic fumes, and metals such as lead, uranium, and cadmium. Research has shown that firefighters are at a 50 percent increased risk for multiple myeloma, a 100 percent increased risk for testicular cancer, a 28 percent increased risk for prostate cancer and have a probable association for increased risk of non-Hodgkin lymphoma (LeMasters et. al Journal of Occupational & Environmental Medicine 2006, Bates et. al American Journal of Industrial Medicine 2001). Research has also shown that firefighters are 12 to 136 times more likely to die of heart disease when putting out a fire, are 3 to 14 times more likely to die of heart disease while responding to an alarm, are 2 to 10.5 times more likely to die of heart disease while returning from an alarm, and are 3 to 7 times more likely to die of heart disease during physical training (Kales, New England Journal of Medicine, 2007).

DOH reported the proposed legislation could improve recruiting and retention of full-time firefighters, who are an integral part of the emergency medical service system across the state.

NM Municipal League reported that New Mexico is one of 8 states that have not adopted some form of presumptive legislation. The vast majority of the 42 states that have adopted some form of presumptive legislation have adopted their laws in the aftermath of the tragedies of September 11, 2001. This results in the inability of insurers' to accurately predict the potential losses that the law would subject the state and local governments to.

NM Municipal League noted of significant concern to many municipalities is the potential for extension of the benefits of this proposal to volunteer firefighters. If that extension occurred, it would be a major change to the workers' compensation system because currently volunteers are not covered under workers' compensation. Also, if the extension occurred, there would be a significant cost increase to many municipalities. Sixty-four percent of incorporated municipalities are under 3,500 in population and most if not all rely on volunteers for fire protection.

WCA reported 42 states have enacted similar legislation. The proposed legislation, if enacted, will allow firefighters to focus on treatment and care as opposed to litigating causation. The proposed legislation has been approved by the Advisory Council on Workers' Compensation and Occupational Diseases.

PERFORMANCE IMPLICATIONS

AOC reported the proposed legislation may have an impact on the following measures for district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

NM Municipal League stated that adoption of the proposed legislation will increase the amount of litigation in the workers' compensation system. Adoption will also result in employers having to delve into the private, non-duty activities of those covered by the presumption. Also, there is the potential that the cost of pre-employment physicals for those covered will increase so that the baseline clearance of the absence of the cancers and diseases is established.

OTHER SUBSTANTIVE ISSUES

WCA noted the effective date contained in the bill is July 1, 2010. The version of this bill presented to the Advisory Council had an effective date of July 1, 2009; however, subsequently the drafters presented the sponsor with a bill with an effective date of July 1, 2010 so that public employers would be able to plan for a possible increase in claims and would be able to set appropriate reserves.

ALTERNATIVES

NM Municipal League noted firefighters currently have the ability to file a first report of injury if they believe that they have been exposed to carcinogens or other disease causing events.

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