



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE VETERANS AFFAIRS &
EMERGENCY PREPAREDNESS COMMITTEE**

ON

**PROPOSED CHANGES TO
ACT 46 OF 2011**

PRESENTED BY

**ELAM M. HERR
ASSISTANT EXECUTIVE DIRECTOR**

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HARRISBURG, PA

4855 Woodland Drive Enola, PA 17025-1291 Internet: www.psats.org

PSATS Pennsylvania Township News Telephone: (717) 763-0930 Fax: (717) 763-9732

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

Chairman Barrar and members of the House Veterans Affairs and Emergency Preparedness Committee:

Good morning. My name is Elam M. Herr and I am the assistant executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association.

Townships comprise 95 percent of the Commonwealth's land area and are home to over 5.5 million Pennsylvanians — 44 percent of the state's population. These townships are diverse, ranging from rural communities with fewer than 200 residents to more populated communities with more than 60,000 residents. Thank you for the opportunity to testify today on an issue that is of importance to townships across the state.

Volunteer fire departments and volunteer firefighters are the primary providers of fire protection in townships. We strongly support our volunteers for providing a valuable service, one that the government would need to provide if there weren't volunteers willing to prepare for and respond to incidents requiring rescue, fire suppression, and hazardous materials cleanup. The cost to replace our volunteer firefighters with paid fire service statewide has been estimated at nearly \$5 billion annually.

After the passage of Act 46 of 2011, there were widespread concerns from township officials over the potential financial impact of this provision. However, we had little data on the impact of this law until July 2012, when we learned that several providers had announced that they were dropping workers' compensation coverage for firefighters due to the potential cost and liability imposed by Act 46. Since then, the market for workers' compensation coverage for our firefighters has disappeared, forcing most townships into the State Workers Insurance Fund (SWIF) at extraordinary cost increases.

After passage of the Act, we fielded many calls from our members with questions on this issue, often only after being confronted with a significant cost increase, of more than 50 percent in some cases, for coverage or a notice that their workers' compensation coverage for their volunteer firefighters was being dropped.

As we have stated in prior hearings, due to the impact that Act 46 has had on the insurance market and municipalities that are charged with providing workers' compensation coverage for volunteer firemen, we believe that the time is right to carefully examine the affect this law has had on our members and to seek a solution for providing relief from the financial burden imposed on local governments while ensuring that coverage is available for our volunteers. Legislative fixes are needed to manage the risk and expense for our municipalities and their taxpayers while appropriately providing coverage for our firefighters.

The proposed language would provide some clarification for rebuttal of the presumption that cancer was caused by firefighting activities. The clarification 1) would

provide stronger wording to require the member to show direct exposure to a carcinogen that is referred to in section 108(r), and 2) would require that the Pennsylvania Fire Information Reporting System reports be used to establish that the member of the volunteer fire company was present at an event and exposed to that carcinogen. This language would be a helpful clarification that would remove some of the ambiguity from the law.

Removing prostate cancer claims made by claimants who are fifty-five years of age or older on the date of their diagnosis would remove some exposure that is outside the scope of the original act, which was meant to deal with those cancers that were a result of serving as a firefighter.

Prohibiting, to the extent possible under state law, a health insurer or similar entity from filing a claim to recover medical expenses that it is already paying on a claimant's behalf would be a proper limitation. There were concerns that such claims would be filed, increasing costs for municipalities with little or no benefit to the claimant, only to the insurer.

While we believe that all of these changes are a step in the right direction, we cannot say for certain what impact, if any, they will have on the workers' compensation market. We do not know if such changes will lead to a revived market for coverage for volunteer firefighters, but they would certainly reduce the experience rating.

It is our contention that the state needs to do all that is in its power to get private insurance carriers to again offer coverage for volunteer fireman. Only with competition will we potentially see premium cost decreases and again become available and affordable for municipalities.

In addition to the changes discussed above, below are a few concepts that we believe are also worth examining. We are willing to discuss any reasonable option to provide for reasonable protection of volunteer firefighters as prescribed in the law and reduce the cost and liability to our townships.

Strengthen the municipal codes to allow minimum fitness criteria for first responders. Currently, municipalities have difficulty managing workers' compensation costs for volunteer firefighters because the firefighters are part of a separate organization. While many fire companies manage this risk through standards and required training for their firefighters, some do not. While we are strongly supportive of the need to recruit and retain volunteers, in some cases individuals are responding who are not physically capable of doing so and become injured, which deprives our volunteer fire departments of able-bodied volunteers and drives up the townships' cost of workers' compensation. Adjustments are needed to allow municipalities to require a minimum level of fitness for these responders.

Shorten the "look back" period. Act 46 took effect on the date it was signed, which meant that claims could be filed for cancer that occurred within the prior 600

weeks. This immediate effective date did not give insurance companies or municipalities time to gather adequate cash reserves to address these potential claims. Perhaps the Commonwealth should consider providing coverage for the remaining time of this exposure period.

In addition, based on the Pennsylvania Supreme Court's recent decision in *Tooley v. AK Steel Corporation*, language should be added to clarify that claims cannot be filed after the 600 week period through a tort action or otherwise. This would provide an end point to the municipal liability under these provisions.

Finally, **require the state to provide for all or part of the additional cost and liability** imposed by Act 46 by establishing a separate fund through SWIF for firefighters or moving the cost and liability for providing this coverage to the Commonwealth directly. One option could be a program model similar to the Storage Tank Indemnification Fund, which made the state a partner in the program and allowed municipalities to participate if they paid an assessment.

We are more than willing to continue working with the committee to move forward solutions to mitigate the liability and expense of Act 46.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions that you may have.