



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

**BEFORE THE
HOUSE LABOR & INDUSTRY
AND
VETERANS AFFAIRS & EMERGENCY PREPAREDNESS
COMMITTEES**

ON

THE IMPACT OF ACT 46 OF 2011

PRESENTED BY

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Chairmen Scavello and Barrar and members of the House Labor and Industry and Veterans Affairs and Emergency Preparedness Committees:

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 in July 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 cost and liability imposed by Act 46. Since then, nearly all providers of workers' compensation coverage are declining to renew that coverage for our firefighters, which is forcing most townships into the State Workers Insurance Fund (SWIF) at extraordinary cost increases.

This has happened with only 8 petitions filed by volunteer fire companies, with an additional 6 from mixed volunteer/paid companies. In the 2.5 years since the enactment of Act 46, we have only seen potentially 14 cases filed by volunteers out of 110 total cases filed. Yet with this low occurrence rate, municipalities are facing substantial premium increases or the loss of WC coverage.

We continue to field regular calls and questions on this issue from our members, generally after being confronted with a cost increase of more than 50 percent in some cases for coverage or a notice that their workers' compensation coverage for their volunteer firefighters is being dropped. As you are aware, renewal periods happen throughout the year, leading to the ongoing questions and concerns.

Since last year's hearing, we conducted two electronic surveys of our members in an attempt to document and quantify the actual impact of Act 46. We decided to conduct the second survey after the timing of the first found many townships were unable to answer our questions as they were waiting, as late as November and December 2012, on

quotes for coverage and were unsure of these costs as they attempted to finalize their 2013 budgets.

In June to July 2013, we conducted an online survey of our members. The survey was sent to the 1,315 townships with known email addresses. We found that 65 percent of the responding townships saw the cost of workers' compensation coverage for volunteer firefighters increase from their prior renewal cycle; 8 percent were not affected; 8 percent decreased from the prior cycle; and 19 percent did not know the impact.

Of those who saw their costs increase, 20 percent reported an increase of more than 50 percent; 23 percent reported an increase between 26 percent and 50 percent; and 57 percent of these saw an increase of between 1 percent and 25 percent.

It should be noted that not every municipality is a host to a volunteer fire company. Therefore, the 19 percent who did not know their potential costs are likely **not** hosts for a volunteer fire company. Only host municipalities receive the bill for workers' compensation coverage and they then bill other municipalities that rely on that volunteer fire company as a primary responder for a portion of the coverage based on the total population served by that company. As such, the non-hosts do not appear to be as aware of this issue as the host municipalities, which are responsible for acquiring coverage.

To quantify the increase in costs, we asked for the workers' compensation premium for volunteer fire during the 2011-2012 renewal cycle and again during the 2012-2013 renewal cycle and averaged the results from those who responded. We found that the average cost in the 2011-2012 renewal cycle was \$11,283, while the average for 2012-2013 was \$13,445, an average increase of 19 percent. Based on this information, we estimate a more than \$2 million increase in premiums just for townships from 2011-2012 to 2012-2013.

One of the findings in our recent survey is that a small group of municipalities have seen their workers' compensation costs decrease. In the few instances where this is the case, it appears that the municipality received notice that their coverage would be dropped for volunteer firefighters, went on an extensive search, and was able to secure coverage from AmeriHealth, a nonrated provider, at a reduced rate over their prior coverage.

In our 2013 survey, 44 percent of the responding townships indicated that they have a separate policy for their volunteer fire coverage. Of these, 63 percent indicated that SWIF has become their provider. While we had respondents also note that their coverage was provided by EMC Insurance and Selective, it is our understanding that neither of these providers are currently renewing workers' compensation coverage for firefighters. AmeriHealth was named the insurer for 3 percent of these respondents.

In addition, 56 percent of the respondents indicated that they had a single workers' compensation policy for all covered classes of employees. More than 60 percent of these respondents indicated at the time that they were covered by EMC Insurance,

Selective Insurance, or Erie Insurance. It is our understanding that none of these companies are currently renewing policies that cover firefighters. Of those remaining, 20 percent are covered by AmeriHealth and 13 percent by SWIF.

One concern that has been raised by every township that has faced dropped coverage but which we have not yet been able to quantify is that of the time and effort costs for township officials and employees to seek out workers' compensation coverage. This has been quite an effort in numerous cases, particularly when the officials often receive the notice mid-budget year and have a limited time between the receipt of the notice and the dropped coverage. During the initial wave, SWIF appears to have been inundated and several townships noted a significant delay in receiving pricing during a time the township was trying to finalize its budget for the next year as required by the Township Code.

The issue is even worse for those who receive a notice of dropped or increased cost for coverage in the middle of the budget year and have little time to react. In this case, townships are left scrambling to find a provider, while trying to divert limited funds from other allocated and very necessary purposes. Some townships have even tried to be proactive and asked their former provider if their workers' compensation coverage for volunteer fire departments would be dropped. In several cases, the provider insisted that it would not be dropped...until 30 days or so before the end of the policy year when the township received a notice that they were about to lose coverage.

Due to the impact that Act 46 has had on the insurance market and municipalities that are charged with providing workers' compensation coverage, we believe that this issue needs to be carefully examined and acted on in the very near future to provide relief from the financial burden imposed on local governments and to ensure that coverage is available for our volunteers. Legislative fixes are needed to manage this risk and expense to avoid further burdening municipalities and their taxpayers while appropriately providing coverage for our firefighters.

Below are a few concepts that we believe are worth examining in the near future. There will certainly be other suggestions and we are willing to discuss any reasonable option to reduce the cost and liability to our townships, while providing for reasonable protection of volunteer firefighters as prescribed in the law.

Strengthen the municipal codes to allow minimum 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.

Reduce the liability and cost of individual claims by limiting the types of cancer covered; prohibiting the filing of new claims if a third party (*such as Medicare*) is currently paying for the individuals' medical expenses; and/or cap medical expenses and/or other costs on a per claim basis.

Clarify “substantial competent evidence” for rebuttal of the presumption that cancer was caused by firefighting activities to further provide for the types of evidence that are permitted by the act and decrease the need to litigate this issue.

Given the increased risks and exposures of career firefighters, **consider insuring them as a separate classification.**

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 claims. Perhaps the Commonwealth should consider providing coverage during this exposure period.

In addition, based on the recent 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 quantify this issue and develop 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.