



Municipal Excess Liability Joint Insurance Fund

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LEGISLATIVE ALERT

Three bills are pending action that will cause major increases in municipal insurance budgets. Please contact your legislators and adopt the attached resolution

Firefighter Cancer Presumption (S-716):

Research has established that firefighters incur cancer at a rate 9% higher than the general public. Over the last decade, the MEL has urged amendments that will balance the needs of both the first responders and the taxpayers. S-716 as currently worded will be prohibitively expensive.

- \$40 million per year assuming that the bill is adopted as currently written. The cost to New Jersey's cities could be considerably higher based on the experience of Los Angeles.
- \$13 million per year if S-716 is amended to include the controls adopted by other states with cancer presumptions in workers' compensation. This projection is based on the experience of Pennsylvania.

The problem is that S-716 as currently written does not include any of the controls adopted by other states to prevent the costs from becoming unaffordable.

Types of cancers included in the presumption: The presumption should be based on scientific evidence that establishes those cancers that firefighters develop at a higher rate than the general population. S-716 includes all cancers.

Statute of limitations: Of 24 states currently with workers' compensation cancer presumptions, in five of these states the firefighter must be currently employed when the cancer is diagnosed. In the other states, the most common cutoff for the presumption is five years from the date an individual retires from the fire service, or age 65 when the firefighter becomes eligible for Medicare. Under S-716, Firefighters can file claims at any age.

Legal standard to rebut the presumption: S-716 as written will make it almost impossible to question claims. Under current New Jersey law, the standard to rebut a presumption is "preponderance of the evidence". In S-716, the standard is raised to "clear and convincing" evidence that equates to blanket compensability. No expert will be able to say that exposures to dusts, fumes, chemical odors, etc. had de Minimis contributions to a given cancer because there

are no scientific studies that focus on “de Minimis” levels of contribution. The effect of the legal standard in S-716 is to make all cancers compensable.

Impact on cities: During a three-year study, Los Angeles with 2,850 career firefighters reported 170 cancer presumption claims, or 56.6 claims per year. If New Jersey’s cities incur claims at this rate, New Jersey’s 7,287 career firefighters will report 148 claims per year at a projected cost of \$66.4 million, not including volunteers. The cities are almost universally self-insured.

We again reiterate our willingness to work with supporters to find a fair balance between the concerns of firefighters as well as local government.

Statute of Limitations in Civil actions for Sexual Abuse (S-477):

Sexual abuse of a child is a terrible crime that can have repercussions for years. We agree that the current statute of limitations of 2 years on all claims is too short. The MEL supports extending the statute of limitations from 2 to 7 years for suits against public bodies, and removing the statute of limitations entirely on the actual perpetrators.

However, we oppose S-477 as currently drafted. Under this legislation, any claim of sexual abuse, no matter how far in the past, can proceed. The bill exposes public officials, employees and volunteers to personal liability for the actions committed by other employees or volunteers. Under the act, both officials and volunteers can be sued personally by someone claiming that they failed to exercise oversight of an employee or volunteer who allegedly committed sexual abuse. As a result, officials and volunteers will be faced with the near impossible task of defending a claim of sexual abuse that is decades old.

Wrongful Death Liability (S-1766):

The MEL opposes this bill which allows juries to award substantial compensation for “emotional distress.” Under the current New Jersey law, family members can already collect substantial compensation for actual losses such as medical bills and lost income as well as loss of companionship. The MEL’s actuary estimates that S-1766 as currently written will result in an increase of 6% to 10% in liability claim costs for local government and the state itself. S-1766 is inconsistent with the Tort Claims Act. Public entities are often forced into tough decisions and therefore should be held to a standard that recognizes this reality. Therefore, we urge that this legislation be amended so that it is not applicable to Title 59 entities.

A more complete discussion of these bills can be found on the MEL’s web site at NJMEL.ORG