Firefighter Cancer Disability Presumption

Talking Points:

- SB 158 (Latvala) and HB 143 (Fitzenhagen) establish a cancer disability presumption for firefighters.

- The Florida League of Cities OPPOSES the bills as being a significant unfunded state mandate.

- The bills grandfather in approximately 41,500 current firefighters from having to pass a physical examination, of which approximately 39,500 are employed by cities, counties and other local governmental entities. The bills will result in significant increases in expenses for local governments for workers' compensation and disability pension benefits.

- Current law treats all employees, including firefighters, the same relating to "occupational diseases," like cancer. That is, the employee must establish a connection between his or her job (such as being exposed to toxic substances or smoke) and a health condition related to cancer, to be entitled to workers' compensation and disability pension benefits. Establishing a disability presumption that any health condition related to a specified cancer is presumed to be job related requires the governmental entity to prove that no aspect of the firefighter's job contributed to the health condition. This evidentiary standard is nearly impossible for a governmental entity to meet, and will result in significant increases in expenses for workers' compensation and disability pension benefits for firefighters.

- The bills provide that any condition or impairment of health of a firefighter caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer or testicular cancer is presumed to be suffered in the line of duty, unless the contrary is shown by competent evidence.

- To be entitled to the presumption, a firefighter must meet certain minimum conditions, such as: being employed with current employer for at least five continuous years; not having used tobacco products for at least five years; and not having been employed during the preceding five years in any other position that has been proven to create a higher risk for a covered cancer. While these conditions may limit the application of the bills, the impact may not be significant as most firefighters will meet the conditions, prior to developing a specified cancer.

- A cancer disability presumption is a term or condition of employment for pensions subject to being collectively bargained by a city and its employees or their unions and, as such, should not be mandated on cities by the state. This mandate skews the collective bargaining process.

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- There are inconsistent outcomes in the medical research to show a substantially higher association between cancers suffered by firefighters versus the general population.

- The bills require the Legislature prior to the 2018 Session to review the status of research programs which study the incidence of cancer in firefighters. Any "further statutory changes" should be made in 2018. Passing a law, prior to completing the studies, puts the policy in place before the facts.

Background:
SB 158 (Latvala) and HB 143 (Fitzenhagen) establish a cancer disability presumption for firefighters. The bills grandfather in approximately **41,500** current firefighters from having to pass a physical examination. The bills will result in significant increases in expenses for local governments for workers' compensation and disability pension benefits. **The Florida League of Cities OPPOSES the bills as being a significant unfunded state mandate.**

The bills limit the types of cancer the presumption would apply to by specifying any condition or impairment of health of a firefighter caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer is presumed to be suffered in the line of duty unless the contrary is shown by competent evidence. In order to be entitled to the presumption, the firefighter:

1. Must have successfully passed a physical examination administered before the individual began service as a firefighter which failed to reveal any evidence of such a health condition.
2. Must have been employed as a firefighter with his or her current employer for at least 5 continuous years before suffering the health condition.
3. Must not have used tobacco products for at least 5 years before suffering the health condition.
4. Must not have been employed during the preceding 5 years in any other position that has been proven to create a higher risk for multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer, which includes other employment as a firefighter at another employing agency.

The bills provide that an employing agency must provide a physical examination for a firefighter before he or she begins service or immediately thereafter. However, all firefighters employed on July 1, 2017, are not required to meet any physical examination requirement to be entitled to the presumption (but, a firefighter would still have to meet conditions 2, 3 and 4 listed above).

The bills require the Legislature prior to the 2018 Session to review the status of research programs which study the incidence of cancer in firefighters. Any "further statutory changes" should be made in 2018. Passing a law, prior to completing the studies, puts the policy in place before the facts.

- **All firefighters employed on the effective date of the bills, which is approximately 41,500 statewide, do not have to meet any physical examination requirement for any condition caused by a listed cancer. Approximately 2,000 are employed by the state, with approximately 39,500 employed by cities, counties, and other governmental entities. Based upon these figures, almost all of the fiscal impact from the bills is on local governments.**

- **A cancer disability presumption is a term or condition of employment subject to being collectively bargained by a city and its employees or their unions and, as such, should not be mandated on cities by the state. This mandate skews the entire collective bargaining process.**

- **There are inconsistent outcomes in the medical research to show a substantially higher association between cancers suffered by firefighters versus the general population.**

- **Smoking accounts for at least 30% of all cancer deaths and 87% of lung cancer deaths in men and 70% in woman (Cancer Facts and Figures 2016, American Cancer Society).** Smoking results in increased risk of cancers of the mouth, pharynx, larynx, nasal cavity, lung, esophagus, pancreas, ovary, uterine cervix, kidney, bladder, stomach, liver, rectum and bone marrow (leukemia). In addition to cancer, smoking is a major cause of heart disease, and other significant health disorders. Firefighters must not have used tobacco for at least one year prior to being certified as a firefighter, but may use tobacco after being certified. **The League believes that at a minimum, any cancer disability presumption must exclude any firefighter who uses or has used tobacco products. The bills include a restriction on tobacco product usage for at least 5 years before the firefighter suffered the health condition.**

- The Florida Legislature created a Task Force on Public Employee Disability Presumptions to review data related to the operation and fiscal impact of presumptions and provide findings and proposals. **In its 2012 final report, the Task Force found a significant fiscal impact from presumption related claims (heart and hypertension – not cancer) on workers' compensation costs for Florida state agencies. Over a 12 year period from FY 1999-2000 to FY 2010-2011 there was an increase in costs of 330 times, from approximately $25,000 to over $8.1 million.** The final report also includes workers' compensation cost impact data from municipalities and sheriffs. The Task Force presented numerous recommendations to make disability presumptions more equitable in operation to government employers.

- **Current law, section 112.1815, Florida Statutes, already provides firefighters (as well as law enforcement officers) with special protections for "occupational" or other diseases.** In summary, a disease caused by exposure to a toxic substance is an injury arising out of employment if there is a preponderance of the evidence establishing that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the disease sustained by the employee. For occupational diseases, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation must be proven by a preponderance of the evidence. "Occupational disease" means a disease that arises out of employment as a first responder and is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupation, process or employment and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is <u>substantially higher</u> in the particular trade, occupation, process or employment than for the general public.

- **Chapter 633, Part V, Florida Statutes, is the Florida Firefighters Occupational Safety and Health Act. Current law requires the State Fire Marshall to study firefighter safety and occupational diseases and implement and maintain rules for firefighter safety, including**

prescribing required safety equipment and other safeguards to prevent occupational diseases. The State Fire Marshall must make studies, investigations, and inquiries into firefighter employee injuries and illnesses and must make recommendations to the Legislature as it considers proper to address its findings. Section 633.518, F.S. Current law requires firefighter employers to maintain a log and summary of each firefighter's injury, illness and occupational disease within 6 days of its occurrence. Section 633.508, F.S.; 69A-62.033, Florida Administrative Code.

- Physical examinations of newly hired firefighters will be costly. Typical cost for the examinations are: physical breast examination ($50); mammogram ($100); digital rectal examination ($50); proctosigmoidoscopy ($100); blood stool test for colon and rectum cancer ($50); rectal examination for prostate cancer ($50); pap test ($50); pelvic examination for ovarian cancer ($50); and radiographic examine for lung cancer ($100).

Under current law, if a firefighter establishes a connection between his or her job (such as being exposed to toxic substances or smoke) and a health condition related to cancer, the firefighter is entitled to workers' compensation and disability pension benefits. Establishing a disability presumption that any health condition related to a specified cancer is presumed to be job related requires the governmental entity to prove that no aspect of the firefighter's job contributed to the health condition. This evidentiary standard is nearly impossible for a governmental entity to meet, and will result in significant increases in expenses for workers' compensation and disability pension benefits.

Status:
SB 158 passed the Senate Governmental Oversight and Accountability Committee (7-0) and is now in the Senate Community Affairs Committee. A workshop on HB 143 was held on March 13 in the House Oversight, Transparency and Administration Subcommittee but no vote was taken and the bill remains in that committee.

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