



BILL NO.: Senate Bill 949

TITLE: Workers' Compensation – Medical Presumptions

POSITION: **OPPOSE**

DATE: March 22, 2012

COMMITTEE: Finance

CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** Senate Bill 949. The bill would significantly expand the workers' compensation cancer presumptions for firefighters and rescue workers. The expansion would: (1) ignore the many possible sources and risk factors of the cancers identified in the bill; (2) impose a significant fiscal burden on county governments at a time when the State is limiting its own new spending; (3) exacerbate underlying burden of proof inequities found in the current law; (4) likely increase the applicable duration of the cancer presumptions; and (5) create a confusing and potentially detrimental payment "cap" system.

The research purporting to show linkages between cancer and firefighting is tenuous¹ and counties cannot realistically regulate the numerous sources or potential exposure to causal agents for the cancers covered in the bill to manage risk. "Cancer" represents a wide and diverse range of diseases that have a variety of causes. Lifestyle choices, such as alcohol consumption, smoking, poor diet, lack of exercise, and high body weight all have been shown to increase the risk of contracting certain cancers. Sources of ionizing radiation, such as radon gas or a CT scan can cause cancer. Cancer can also result from certain viruses, including Hepatitis B, and bacterial infections. Finally, cancer can originate through immune system dysfunction or inherited genetic traits.

In the past, the Committee has refused to support expansion of the Lyme Disease presumption to cover law enforcement officers, as the disease could be contracted through many non-work related activities.² SB 949 represents a similar illogical expansion.

¹ A literature review of 71 firefighter cancer studies published between 1995 and 2008 found some association between certain cancers and firefighting but concluded there "is a lack of substantive scientific evidence currently available to confirm or deny linkages between firefighting and an elevated incidence of cancer." *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, National League of Cities, April 2009.

² See SB 743 of 2008 (Committee gave an unfavorable report) and HB 749 of 2007 (Committee heard the bill but took no action).

As the bill's fiscal note indicates, SB 949 would impose a significant fiscal burden on county and municipal governments at a time when they, like the State, are struggling to contain costs and reduce spending. Local aid has been reduced by \$687 million since FY 2008 and counties are facing costly new mandates, including the multi-billion dollar Chesapeake Bay Total Maximum Daily Load mandate and a proposed shift in teacher pension costs. It is difficult for those counties struggling with such challenges to accept another unfunded mandate. The General Assembly has adopted a policy of not passing a bill even if it only contains a modest fiscal cost to the State. The same consideration should be extended to local governments.

The bill would exacerbate underlying burden of proof inequities found in the existing "Morgan" presumption law. A 2001 Maryland Court of Appeals decision held that for burden of proof issues, it is a "Morgan" presumption, meaning a claimant does not need to present any evidence to prevail in a claim for workers' compensation.³ In practice, this standard makes compensation automatic once the claim is filed. The only other instance in Maryland law where the Morgan presumption applies is in family law where a husband is presumed to be the father of his wife's children.⁴ Today, a DNA test easily determines paternity. Unfortunately, there is no analogous test to determine the origin of cancer or other diseases covered under this bill.

A 2009 report by the National League of Cities, in its review of the 26 states with firefighter cancer presumptions, classified only Arizona and Maryland's presumption as not being rebuttable.⁵ The House has previously acknowledged the lack of a reasonable rebuttability standard for the presumptions when it passed a similar bill in 2010 that included language designed to strengthen the standard.⁶ Additionally, a bill introduced this Session that created a new law enforcement presumption included language explicitly making the presumption rebuttable.⁷

Finally, the bill contains several other provisions that are problematic. First, the bill states that the cancer presumption shall apply for 20 years after the date that the firefighter separated from service. MACo believes this provision overrides existing caselaw that would more reasonably limit the duration of the cancer presumption. The bill also contains a provision that would seek to "cap" a county's non-medical cancer presumption costs in any given year to 110% of the jurisdiction's previous highest annual payout for such benefits. Such a system would be difficult to implement and administer and would likely create an increasing "backlog" of required payouts over time.

MACo has consistently urged modest and reasonable adjustments to the presumption law.⁸ This bill represents a significant expansion of the presumption that would force local governments to cover workers' compensation claims for cancers that may not have been contracted in the line of duty. Accordingly, MACo urges the Committee to give HB 1101 an **UNFAVORABLE** report.

³ *City of Frederick vs. Shankle*, 367 Md. 5 (2001).

⁴ See § 5-1027 of the Family Law Article.

⁵ *Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research*, National League of Cities, April 2009.

⁶ HB 1280 of 2010.

⁷ HB 615 of 2012.

⁸ See MACo testimony on HB 1069/SB 491 of 2005 and HB 1070/SB 557 of 2004.