



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

**BEFORE THE
SENATE VETERANS AFFAIRS &
EMERGENCY PREPAREDNESS COMMITTEE
AND
SENATE LABOR & INDUSTRY COMMITTEE**

ON

ACT 46 OF 2011

PRESENTED BY

**ELAM M. HERR
ASSISTANT EXECUTIVE DIRECTOR**

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HARRISBURG, PA**

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Chairman Vulakovich, Chairman Ward and members of the Senate Veterans Affairs and Emergency Preparedness and Senate Labor and Industry 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 to range from \$5 billion to \$8 billion annually, a severe financial burden for the citizens of Pennsylvania.

After the passage of Act 46 of 2011, there were widespread concerns raised by the insurance industry over the potential financial impact of this coverage. Although the experience data from other states that had passed legislation similar to Pennsylvania's showed minimum impact, we had little data until July 2012, when we learned that most providers had announced that they were dropping workers' compensation coverage for firefighters due to the potential cost and liability exposure imposed by Act 46. Remember that Act 46 had a 600 week look-back window for coverage without any reserves in place to cover the potential exposure. At that point, the market for workers' compensation coverage for our firefighters disappeared, forcing most townships into the State Workers Insurance Fund (SWIF) at extraordinary cost increases.

In the summer of 2013, PSATS conducted a survey of our members. 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. Of those who saw their costs increase, 20 percent reported an increase of more than 50 percent, while 23 percent reported an increase between 26 percent and 50 percent.

It should be noted that not every municipality is a host to a volunteer fire company. Only host municipalities receive a bill for workers' compensation coverage, which they then bill the non-host municipality that relies on the same volunteer fire company as the primary responder for their share of the cost. This cost share is based on the total population served. As such, the non-hosts may not be as aware of the premium cost issue as the host municipality, which is responsible for acquiring and providing 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 compared 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 increase of 19 percent. Based on this information, we estimate premium increases of \$2 million just for townships.

The most recent data that we have for companies that provide coverage to firefighters is from 2013. In our 2013 survey, 44 percent of the responding townships indicated that they had a separate policy for volunteer fire coverage and SWIF was noted as the provider for 63 percent of these separate policies. A number of respondents noted that their volunteer fire coverage was provided by EMC Insurance and Selective, however, at the time these companies were no longer renewing policies for firefighters. AmeriHealth was named as the insurer for 3 percent of the respondents.

The remaining 56 percent of the responding townships in the 2013 survey indicated that they had a single workers' compensation policy for all covered classes of employees and more than 60 percent indicated that they were covered by EMC Insurance, Selective Insurance, or Erie Insurance. However, it was our understanding that none of these companies were renewing policies that covered firefighters in 2013. Of those remaining, 20 percent are covered by AmeriHealth and 13 percent by SWIF. Certainly SWIF could provide current data for how many volunteer fire policies they currently insure.

It should be noted that while we do not have specific numbers, we are aware that quite a number of townships had workers' compensation coverage with one of several municipal insurance trusts prior to the summer of 2012. In the second half of 2012, most, if not all of the municipal trusts were dropping workers' compensation coverage for firefighters due to the cost and potential liability imposed by Act 46. To date, none have reentered the marketplace.

As we have stated in prior hearings, we believe that the time is right to carefully examine the affect this law has had on the insurance industry and our members. We need to find 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.

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 firemen. Only with competition will we potentially see premium costs decrease and again become available and affordable for municipalities.

According to the Department of Labor and Industry's 2015 Act 46 report, a cumulative total of 126 claim petitions and 36 fatal claim petitions have been filed as of

July 5, 2015. Of these claims, 135 were from paid firefighters, 18 from volunteer firefighters, and 9 from firefighters of hybrid companies consisting of both volunteers and paid firefighters. 67 of these claims, or 41 percent, resulted in awards. However, the report does not detail how many awards were for volunteers and how many were for paid firefighters. The report also does not define “claim petition” or “fatal claim petition” and does not provide a breakdown of how many of each were successful. The report does state that 141 of the petitions were for injury dates prior to July 7, 2011 and 21 were for injury dates after July 7, 2011.

Current SWIF premiums to cover volunteer firefighters are based on population served and as such, townships are paying from \$4,492.31 for those with a population up to 300, up to \$76,246.35 for a township with a population of up to 60,000.

We would like to know how much SWIF has collected in premiums from municipalities for VFCs since the act’s inception. How much of the premium cost was for legacy costs due to Act 46? How much does SWIF have in reserve currently for legacy costs associated with Act 46? Of SWIF’s total business, what percentage today are fire companies and what percentage was made up of fire companies immediately prior to the act’s enactment? We believe this data is needed for the legislature to make decisions about SWIF’s role.

Following are a few concepts that we believe are 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.

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.

Consider insuring career firefighters as a separate classification.

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 drives up the townships’ cost of workers’ compensation. Adjustments are needed to allow municipalities to require a minimum level of fitness for these responders.

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.

Finally, if we are going to convince private insurance carriers to again offer worker's compensation for volunteer firefighters, then we need to provide that some of the reserves SWIF is holding will go to the private carrier that is underwriting a plan. Without this transfer of funds no private carrier is going to enter the market and expose itself to the potential liability without adequate reserves.

We are more than willing to continue working with both committees 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.