

**Testimony from Brian Daniels, Executive Director**  
**H 7449 – Cancer Benefits for Firefighters**  
**House Committee on Labor – February 11, 2020**

Thank you, Madam Chair and members of the committee, for the opportunity to testify. The League of Cities and Towns has not taken a position on this bill, as it was introduced last week, and our members are still trying to determine the impact. Our Executive Board did meet this morning to discuss the bill, at which time they raised several questions and concerns that we hope the sponsors and the Committee will address. We also believe, if the state pursues cancer presumption legislation, it should also adopt other overdue reforms to disability benefits as part of this effort.

Last December, the RI Supreme Court ruled, in *Corrine A. Lang v. Municipal Employees Retirement System of Rhode Island*, that Rhode Island’s cancer presumption law pertained only to occupational cancers that “arose out of [...] employment due to injury from certain exposures while in the performance of active duty as a firefighter.” Further, they concluded that the state law does not “establish a conclusive presumption that every firefighter’s cancer is due to injury from exposures while in the performance of his or her duties.” H 7449 was introduced in response to that decision and would establish a conclusive presumption that any cancer diagnosed in a current or retired firefighter would be deemed work-related. That language would make Rhode Island one of two states in the country without an approved list of occupational cancers or a rebuttable presumption.

The League is open to legislation creating a cancer presumption for firefighters who have workplace exposure to smoke and harmful chemicals. Cancer presumption legislation should be grounded in medical science and best practices and should include minimum service requirements and other conditions.

Cancer presumption laws for firefighters are relatively common in the United States. According to data provided to the RI League by the National League of Cities’ Risk Information Sharing Consortium (NLC-RISC), 42 states, including Rhode Island, have some type of cancer presumption laws. However, they vary substantially in eligibility criteria, applicable timeframe, types of cancers covered and the evidence needed to approve a claim. Several of the key factors are listed below, along with a summary table showing how H 7449 compares to other state laws.

**Eligibility** – All states place some limitations on who is eligible for benefits. Many states condition eligibility on employment status (career vs. volunteer) and/or risk exposure (“interior firefighting” vs. other firefighting response functions). Some common provisions for eligibility include:

- *Minimum Service Requirement* – How long must an applicant work as a firefighter before becoming eligible to apply?
- *Tobacco Limitation* – Are applicants prohibited if they smoke or use tobacco products?
- *Entry Exam & Absence of Cancer* – Are applicants required to take an entry physical exam showing that they were cancer-free to access the benefit?

**Rebuttable Presumption** – Presumptions may either be conclusive (automatically approved if eligibility criteria are met) or rebuttable (allowing the deciding body to consider other factors and evidence and exercise discretion). Thirty-two states have rebuttable presumptions.

**List of Cancers** – Twenty-four states establish lists of cancers that are presumed to be work-related, based on government studies or other medical research. The number of cancers listed varies, with some states enumerating specific cancers (lung, leukemia, etc.) and others using systemic categories (pulmonary, circulatory/blood, etc.).

**Post-Employment Benefit Period** – Seventeen states place time limits on firefighters’ ability to apply for benefits after retirement or leaving service, ranging from three months to ten years or more. In some states, the time limit is dependent on the type of cancer, based on medical studies.

Presumption Criteria	Rhode Island – H 7449 / S 2302	Other States (41)
Minimum Service Requirement	<u>Current / Past Employees:</u> None <u>New Hires:</u> 2 years	23 have a minimum service requirement (usually 5-10 years) 17 do not specify minimum 2 listed “N/A” or unknown
Tobacco Limitation	<u>Current / Past Employees:</u> None <u>New Hires:</u> No smoking for previous 5 years	13 have limits on tobacco use 28 do not specify tobacco use 1 listed “N/A”
Entry Exam	<u>Current / Past Employees:</u> None <u>New Hires:</u> Physical exam required upon entry to determine if new hire has cancer	25 require cancer-free entry exams 14 have no entry exam requirement 3 listed “N/A” or “Other”
Rebuttable Presumption*	<u>Current / Past Employees:</u> Conclusive for all cases <u>New Hires:</u> Rebuttable only if any of above three criteria are not met	32 have rebuttable presumption 5 have non-rebuttable 4 listed “N/A”
List of Cancers*	None	24 have a list of cancers 13 have no specified list 4 listed “N/A”
Post-Employment Benefit Period	No limit	17 have a time limit for benefits 17 do not specify a time limit 8 listed “N/A” or unknown

\* Only one state, Minnesota, has a conclusive presumption and no cancer list, similar to what is proposed for Rhode Island in H 7449/S 2302

Source: National League of Cities – Risk Information Sharing Consortium (2017 survey, Jan. 2020 update)

As previously noted, H 7449 would make Rhode Island only one of two states, with Minnesota, without a rebuttable presumption and/or an approved list of cancers. We understand the Committee may be hearing other testimony about the impact of Minnesota's law on local government, and we encourage the committee and staff to reach out to their counterparts in that state before proceeding.

We also urge completion of a pension fiscal note to understand the potential fiscal impact on cities and towns, which we understand is being developed. However, that amount will understate the entire impact, as it will not include costs of Injured on Duty benefits for firefighters, as well as overtime to backfill vacancies. Also, it is unclear what the impact of this legislation would be on volunteer fire departments and who would be responsible for that liability.

Finally, in light of several costly personnel-related unfunded mandates passed in recent years, we urge the General Assembly to pursue other necessary reforms:

- *State Presumption Fund* – Several other states have created state-funded pools to pay for any cancer or other presumption-related claims. As H 7449 could be an expansion of an existing unfunded mandate, we believe the state should pay any direct benefits associated with presumption claims. Without a state-funded pool, a community could be harmed by a large number of presumption claims.
- *IOD Reforms* – The General Assembly passed reforms to the Injured on Duty law in 2019, but limited them only to state employees and not to municipal police and fire. As a result, numerous communities have public safety personnel on IOD status indefinitely. We urge the General Assembly to apply last year's reform to cities and towns.
- *Disability Pension Parity with State Employees & Teachers* – Municipal employees in the state-run Municipal Employees' Retirement System (MERS) may receive only accidental benefits in the amount of 66 2/3% of salary, tax-free. However, state employees and teachers may be awarded 50% disability benefits if they are able to perform other employment. We strongly encourage the General Assembly to close this loophole and restore parity between state and municipal workers by creating a 50% municipal disability benefit.

Again, the League and its members are open to cancer presumption legislation that provides firefighters with much-needed and deserved support for occupational cancers and that is also grounded in medical science and best practices from other states. Thank you for your consideration of our views.