

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 716

**STATE OF NEW JERSEY
218th LEGISLATURE**

DATED: JULY 26, 2019

SUMMARY

- Synopsis:** “Thomas P. Canzanella Twenty First Century First Responders Protection Act”; concerns workers’ compensation for public safety workers.
- Type of Impact:** Indeterminate recurring expenditure increase.
- Agencies Affected:** All State and local public entities which utilize public safety workers.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will most likely increase annual expenditures by State and local public entities that utilize public safety workers.
- The bill will also most likely result in annual increased costs to State and local public entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers’ compensation benefits, and the requirement for public safety employers to maintain additional records.
- The OLS cannot quantify the cost of this bill to the State and local units due to uncertainty on the number of individuals who may submit claims each year and the costs of those claims. Additionally, the OLS does not have sufficient data on the costs to establish the programs and to maintain the additional records required pursuant to this bill.

BILL DESCRIPTION

The bill creates a rebuttable presumption of workers’ compensation coverage for public safety workers in certain circumstances. The public safety workers covered by the bill include paid or volunteer emergency, correctional, fire, police and medical personnel.

The bill affirms that if a public safety worker can demonstrate that in the course of his or her employment, the worker is exposed to a serious communicable disease or a biological warfare or epidemic-related pathogen or biological toxin, all care or treatment of the worker, including services needed to ascertain whether the worker contracted the disease, shall be compensable under workers' compensation, even if the worker is found not to have contracted the disease. If the worker is found to have contracted a disease, there shall be a rebuttable presumption that any injury, disability, chronic or corollary illness or death caused by the disease is compensable under workers' compensation.

The bill affirms workers' compensation coverage for any injury, illness or death of any employee, including an employee who is not a public safety worker, arising from the administration of a vaccine related to threatened or potential bioterrorism or epidemic as part of an inoculation program in connection with the employee's employment or in connection with any governmental program or recommendation for the inoculation of workers.

The bill creates a rebuttable presumption that any condition or impairment of health of a public safety worker which may be caused by exposure to cancer-causing radiation or radioactive substances is a compensable occupational disease under workers' compensation if the worker was exposed to a carcinogen, or the cancer-causing radiation or radioactive substance, in the course of employment. Employers are required to maintain records of instances of the workers deployed where the presence of known carcinogens was indicated by documents provided to local fire or police departments under the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.) and where events occurred which could result in exposure to those carcinogens.

In the case of any firefighter with seven or more years of service, the bill creates a rebuttable presumption that, if the firefighter suffers an injury, illness or death which may be caused by cancer, the cancer is a compensable occupational disease.

The bill provides that, with respect to all of the rebuttable presumptions of coverage, employers may require workers to undergo, at employer expense, reasonable testing, evaluation and monitoring of worker health conditions relevant to determining whether exposures or other presumed causes are actually linked to the deaths, illnesses or disabilities, and further provides that the presumptions of compensability are not adversely affected by failures of employers to require testing, evaluation or monitoring.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill will most likely increase annual expenditures by State and local public entities that employ or otherwise utilize public safety workers as defined by the bill. The bill will most likely result in increased costs to State and local public entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may cause increased claims for workers' compensation benefits and the requirement for public safety employers to maintain additional records.

The bill provides public safety workers, in certain cases, who incur an injury, disability or death, with a presumption that the injury, disability or death they experience is related to work place activities and is compensable through workers' compensation benefits. This is a shift in the

current system in which the worker has the burden of proving that the injury, disability or death is related to work place activities. It is possible that this shift will result in the filing of additional claims for workers' compensation benefits. The OLS notes that individuals may be more likely to apply for workers' compensation benefits, particularly when the root cause of an injury or illness is at question, if there is an understanding that they do not have to bear the burden of proving the connection between their workplace activities and their injury, disability or death. However, it should be noted that these injuries, illnesses and deaths under the system for workers' compensation benefits, and shifting the burden of proof, may have little or no fiscal impact. It is not possible to quantify with any certainty the number of cases and the cost of the cases that may be filed due to the change proposed pursuant to this bill.

The OLS does not have access to independent actuarial information to analyze and determine the impact of projected claim increases on workers' compensation premium calculations and total costs. However, since a majority of public entities are self-insured for workers' compensation, any increases to the costs of workers' compensation will be funded directly by these entities.

Section 6 of the bill establishes that any injury, illness or death, including cancer and damage to reproductive organs, incurred by a public safety worker, which may be caused by exposure to a known carcinogen, cancer-causing radiation or a radioactive substance will be presumed to be compensated through workers' compensation, if the worker demonstrates exposure and disease manifestation to a known carcinogen, cancer-causing radiation, or radioactive substances in the course of employment. Furthermore, section 6 of the bill requires that the employer must maintain records of all public safety workers in its employ who were deployed to an area in which fire, explosions, spills or other events occurred which could result in exposure to carcinogens. The record keeping requirement is for all public entities and is intended to assist the employer and the worker to demonstrate a connection, or lack thereof, for any injury, illness, or death due to cancer or damage to reproductive organs. The tracking of these incidents of exposure may be costly and time consuming. A public safety employer will need to ensure that the records are comprehensive and thorough in order to track exposure for workers due to the possibility of future benefit claims. The OLS cannot determine with any certainty the cost of this record keeping and impact on future workers' compensation claims.

Section 7 of the bill establishes the presumption for any firefighter, with more than seven years of service, who suffers injury, illness or death caused by cancer that this injury, illness or death is an occupational disease and the burden of proof is borne by the employer. Firefighters with more than seven years of experience will not have to demonstrate exposure to a known carcinogen, cancer-causing radiation or a radioactive substance. The OLS cannot determine with any certainty the impact of this change on future workers' compensation claims.

In summary, although the OLS cannot quantify the cost of this legislation to the State and local public entities, it is possible that there will be an increase in the cost of workers' compensation claims to self-insured entities and in workers' compensation premiums for those entities that purchase coverage. These increases will be due to the potentially larger number of individuals filing for workers' compensation coverage in instances in which the root cause of illness, injury or death is uncertain. There may also be an increase in costs related to record keeping requirements for public safety employers pursuant to section 6 of the bill.

Section: Commerce, Labor and Industry

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).