

**2007 Regular Legislative Session**  
**FISCAL ANALYSIS OF PROPOSED LEGISLATION**  
**Prepared by the Oregon Legislative Fiscal Office**

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**MEASURE NUMBER:** SB 560                      **STATUS:** C-Engrossed  
**SUBJECT:** Workers Compensation cancer coverage for firefighters  
**GOVERNMENT UNIT AFFECTED:** Department of Consumer and Business Services, Department of Forestry, Department of Administrative Services and Local Governments  
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**DATE:** June 22, 2007

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**EXPENDITURES:** See Comments.

**EFFECTIVE DATE:** January 1, 2008.

**GOVERNOR'S BUDGET:** This bill is not anticipated by the Governor's recommended budget.

**LOCAL GOVERNMENT MANDATE:** This bill may affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**COMMENTS:** The bill adds brain cancer, colon cancer, stomach cancer, multiple myeloma and non-Hodgkin's lymphoma to existing firefighter presumptions for employment caused occupational diseases for workers' compensation. The bill limits the workers' compensation presumption to nonvolunteer, full-time, fully compensated firefighters who receive a federal income tax wage withholding form from the fire departments or districts that employ the firefighters who are within 120 months from their last day on the job. Jail and prison inmates are excluded from the presumption. The bill requires that the presumption be made by cities that provide a separate disability and retirement system; and, allows Administrative Law Judges employed by the Workers' Compensation Board to decide disputes in these cases.

According to the Department of Consumer and Business Services (DCBS) Workers' Compensation (WC) rates are typically calculated using a national baseline rate, such as those supplied by the National Council on Compensation Insurance, and adjusted considering actual claims experience. At this time, it is not known how many accepted claims will result from passage of the bill and what specific impacts this might have on WC rates.

The Department of Administrative Services (DAS) indicates that the state is self-insured; pays its own WC claims with administrative support provided by SAIF. DAS expects that passage of the bill would increase WC rates as the Military Department and possibly the Department of Forestry have employees who meet the presumptions. The Military Department has 43 full-time firefighters: 19 employees at the Portland Air Base and 24 at Kingsley Field Air Base in Klamath Falls. The Department of Forestry (DOF) coordinates wild land firefighting efforts on state managed lands. Forestry employs, on average, 500 full-time seasonal firefighters each year. The timing and costs associated with potential increases to WC rates are unknown at this time.

City County Insurance Services' (CCIS) self-insured WC program, which covers 429 regular firefighters, and Special Districts Association of Oregon (SDAO) WC program, which covers 865 firefighters, have

both raised concerns that the bill will lead to significant increases in WC rates. SDAO prepared an analysis of the potential fiscal impact assuming two cancer claims are covered per year and that each claim cost \$1 million. SDAO arrived at the assumptions by using information from incidences and costs of cancer coverage in the health care system. The resulting impact was an estimated 259% increase in WC rates. CCIS indicates that if the bill passes, staff would recommend that the Board of Trustees of CCIS increase the rate 156% to generate sufficient reserves to pay the expected cost of claims for one year. CCIS raised an additional concern that if the legislation passes, actuarial studies would need to be performed to re-evaluate reinsurance needs given the added risk factors associated with the new presumptions and that this could also impact WC rates.

The SDAO and CCIS have raised concerns that significant increases in WC rates could trigger an unfunded mandate. The office of Legislative Counsel indicates that the bill modifies WC presumptions, which does not create a requirement that a claim be compensated. It merely shifts the burden of proof from the claimant to the employer. Therefore, it is not clear whether the bill creates a mandate that might be subject Section 15, Article XI of the Oregon Constitution. However, if there were a different interpretation of the applicability of Section 15, Article XI of the Oregon Constitution, the constitution provides that if a measure is enacted by three-fifths vote of each house, the Assembly is relieved of the requirement to appropriate reimbursement for the local governments' additional expenditures, and the local government must comply.

Notwithstanding the foregoing analysis, the Legislative Fiscal Office is not rendering an opinion on whether Section 15, Article XI of the Oregon Constitution applies to SB 560.

DCBS indicates that the City of Portland is the only city with a separate disability and retirement system for firefighters that would be allowed to use Administrative Law Judges employed by the Workers' Compensation Board (WCB). The Department expects WCB workload will be minimally impacted and indicates that this additional workload can be assumed with existing resources.