

Open Work Session

Proposed Legislation for Property Tax Credit for Disabled Law Enforcement Officers, Rescue Workers, and the Surviving Spouse of a Fallen Law Enforcement Officer or Rescue Worker

April 19, 2022

Mr. Cannon said he knows Mr. Mitchell put together a pretty concise idea of what the Legislative Bill should look like, and he thinks the Councilmembers have had a chance to read it. He said there were two concerns expressed, one that it be a local Bill, to which Mr. Mitchell responded, the way it is submitted in the Brief Book, it is. Mr. Cannon clarified, he thinks Mr. Mitchell has addressed that. He said the one issue that was left open to Councilmembers on how they might decide to finetune this was the amount of the actual tax deduction, whether it was going to be 100 percent or be a smaller percentage, or whether it was going to be a flat cap rate, so that is really up for discussion as far as an amount, as well as anything else the Councilmembers might have.

Mr. Mitchell said he thinks the one other issue was the section where it lists all the activities that were covered for the volunteer fire companies, and the statute they were taken from lists one more.

Ms. Acle asked if they have this as defined by the State statute, to which Mr. Mitchell responded, no, they do not. He explained, the activities are found in Public Safety 7-202A, and he believes there are seven of them, and they took one out, which said "while performing other duties necessary for the operation or maintenance of the fire company." He said they took that out because it was not an active fire, but it is still something that is necessary because it is still a duty being performed for the fire company. He said that was brought up at the meeting and was not resolved, as Council had not decided, and it is one of the differences in the Arnett version and the version put forward to the Council. He said, in Arnett's they just site the statute, but that statute deals with disabilities on a workman's comp basis and has extra language that does not really apply. He said what they did was lift the language of the various activities that would be covered and just put it in the Bill rather than citing the statute, but in doing that they took one out, and the question is if they want to put it back in.

Ms. Acle said they took one of those out, but there has actually been an instance where that happened to a fire chief, so they probably want to put that back in.

Mr. Mitchell said, if they use the statute for the police officers and for the paid firemen and rescue workers, it is pretty much following what would be worker's comp for them, but for volunteers there is a difference because they are not on duty during certain hours, so they have to separate what is really a part of the duty and what is not. He said, in going through that, he was asked to take that one section out because that is sort of a regular maintenance thing that is going on all the time, but then again they saw somebody die doing that. Mr. Cannon asked what section was taken out, to which Mr. Mitchell responded, it said while performing other duties necessary to the operation or maintenance of the fire company. Mr. Cannon asked what was wrong with that, to which Mr. Mitchell responded, he was asked to take it out. Mr. Cannon asked why he was asked to take it out, to which Mr. Mitchell responded, it was in the original. Mr. Dodd asked who asked Mr. Mitchell to take it out, to which Mr. Mitchell responded, Mr. Cannon. Mr. Cannon said he did not ask Mr. Mitchell to take that out because he was wondering why it was taken out, to which Mr. Mitchell responded, it was his understanding that he was specifically asked to take that out, but maybe he misunderstood. Mr. Cannon said that is what the whole law is supposed to be about, someone injured on the job, to which Mr. Mitchell responded, yes, but the

other things are specific to the duty, and this is the catchall phrase they put in the statute to pick up the other things that might be covered.

Mr. Cannon asked Mr. Mitchell to read it again, which Mr. Mitchell did.

Mrs. Hurley said the conversation she recalls was, if the person was a volunteer and they had a heart attack while sweeping the front steps, for example. Mr. Dodd said the fire chief in Delaware who died was doing station duties and fell and hit his head and died.

Mr. Holloway said most of the time anybody on the fire department property is doing something for the fire department, whether it is sweeping, whether they have a heart attack, or whether they get injured, so it can be different things, and he thinks that is something they should leave in there. Mr. Dodd said volunteers maintain their own stations.

Mr. Hastings said, for clarity, if someone is on their way to a fire and they have a heart attack and they die, are they entitled, as that was not caused by the fire, to which Mr. Dodd responded, it is considered a line of duty death. Mr. Mitchell said the key phrase is a worker's comp phrase and is "arising out of and in the course of," so if someone is working some place and decides to make a phone call that has nothing to do with their job and they step out and suddenly get hurt, that is not covered. He said, if they are going to a meeting of fire chiefs and coming back and get in an accident, that would be covered. He said, if on the way back they decided to stop off and see their cousin, that is not going to be covered.

Mr. Hastings asked, if an individual has a heart attack during the Hebron volunteer casino night, do they qualify, to which Mr. Dodd responded, he would think that would not be considered because they were not responding to a fire or coming back from a call. Mr. Hastings said they were in service at that point in time though, to which Mr. Dodd responded, he does not know how that would be judged, but that would be an interesting question.

Mr. Hastings asked if there is more simple language because he is hearing that obviously the folks in a volunteer capacity are not recording their hours completely, and that is the challenge because it starts to get a little murky as to when they are really volunteering and when they are not per se.

Mr. Mitchell said the State law cites the paid workers in a different section. He said he lives 200 yards from the fire station in Allen, and there are a lot of guys who go there every Saturday morning just to see what is going on, and they may end up staying and doing some work around the place, and some may not. Mr. Dodd said they could be logging hours as being on duty to count for their Maryland credits. Mr. Mitchell said there may be six there doing that, and two guys go up just to stop by and then stay and do some work, so it is a different sort of thing than when they are being paid.

Mr. Cannon said the version the Council has still refers to in the course of employment, to which Mr. Mitchell responded, but that is for the paid workers. He said it is under law enforcement officer and it cites a section, and rescue worker cites a section, but says while performing activities, fighting fire, going to or from a fire, and number three in the version he has is redlined and struck "while performing other duties necessary to the operation and maintenance" and has a new number three.

Mr. Mitchell said this talks about people employed and includes volunteers and says while performing the following, so it separates it. He said, if they are employed, they do not have to prove what they were doing as long as it is in the course of their job. He said he would think one could certainly argue that, if

they are doing a chicken barbeque to raise money to keep the firehouse going, that may be part of their activity, but other people may say no. Mr. McCain asked if that is the intention of this Bill? He said it talks about putting themselves in dangerous situations, which is what they are trying to compensate them for, to which Mr. Mitchell responded, and that is why he really thinks that the State law does not tie it to the County, but it does not put a timeframe. He said, when he took the Bill and made the changes, it was then changed several times. He said the big deal was to make it Wicomico County centric. He said someone could live in Princess Anne and work fulltime for an entity out of Wicomico when they get injured, and the weird thing is, the way the State law is written is, if they are killed on the job, it is right then, but if they are disabled, it does not kick in until they have been adjudicated disabled, which means they could be living someplace else and move here and 18 months later they are now a Wicomico resident, so someone who has been working their entire career in Montgomery County is now living here and getting a tax break. He clarified, if the County wants to do that, that is perfectly fine because they are rewarding somebody who has done something good, but the question is whether that is the intent or not.

Mr. Cannon said it seems this Bill reflects the Wicomico centric portion. He said, as far as the section that was taken out, if they put that section back in, where would it go, to which Mr. McCain responded, if they put it back in, it cannot have the same language. Mr. Cannon said it seems almost redundant with what they already have, to which Mr. Mitchell responded, it is really just a catchall. He said it would go in that list and would add a number five. He said that list is basically the same list that is cited for the professionals in 7-101B, but it has additional language that may or may not truly apply to volunteers.

Mr. Cannon said the Council is going to need to make a decision of whether they put that back in or leave it as it is. He then asked if it is okay with Council to put that back in, to which Mr. Holloway responded, it is fine with him to put it back in. Mr. Dodd said he was okay with it. Mr. McCain said he is okay but comes back to the question of someone at the carnival who has a heart attack, to which Mr. Holloway responded, they are performing the duties. Mr. McCain said, but that is not what this law was intended for. He clarified, it talks about being put into dangerous situations on a daily basis as a first responder, such as stopping at an accident. He said they are doing their duty and are in a dangerous situation, but voluntarily helping to raise funds is not performing first responder duties. Mr. Mitchell said, if they were working as a paid EMT, that would be different.

Mr. Cannon said he thinks what Mr. McCain is suggesting is, if someone is working at the carnival and is in charge of the ball drop and has a heart attack, do they qualify as someone who was injured on the job and is permanently disabled and should be compensated, to which Mr. Mitchell responded, if they were a volunteer, they would fall under this language. He said, if they were paid, that same exact wording is in the statute that is cited and they would then be filing a worker's comp claim. Mr. Cannon said he thinks they are talking about the volunteers and the piece that was taken out was relevant to volunteers specifically. He said the question is if they feel they are going to give them that type of compensation if they were not fighting a fire or assisting someone and just happened to be helping out somewhere and had a heart attack, which maybe was not job related at all.

Mr. Holloway said there could be numerous things that could happen to somebody that are not job related even if they were on the job. He clarified, they could have a heart attack while on the job, and they need to make a decision whether they are going to cover that.

Mr. Dodd said, if they are raising money to make sure that the fire department is in service, he thinks that is on the job and they are doing their duty, to which Mr. McCain responded, but that is not what the law was written for. Mr. Holloway said they can change the law. He said they could change the wording of the heading.

Mr. Hastings asked if the State gave the County approval to be able to do this, so they only have the ability to do this with what they have given them approval to do. Mr. Holloway asked if they were given approval to do it this way, to which Mr. Mitchell responded, yes.

Mr. Mitchell said that is just a definition of who the people are, but when they get down to who is disabled, and when it revisits this language, it says a member of a volunteer fire company or volunteer rescue squad whose disability arose out of and in the course of, and then it goes through the listed items, so the beginning is just defining. He said the streamline ordinance just defines a law enforcement officer by calling him a law enforcement officer, but that does not tell who a law enforcement officer is, and that is the same thing here. He said the first section just says who is covered and then Section 4 says what they are covered for, but it has the same exact list of items.

Ms. Acle said, just so they do not lose sight of the big picture of this Bill, it is really a thank you for doing this service. She said she thinks just going down to the percentage they want to determine is probably where they need to focus at, whether it is 100 percent or 50 percent.

Mr. Hastings said he wishes the Bill were a little more uniform. He said he feels like this should be a State effort because it is inherently unequal. He clarified, if one does not own property, they cannot benefit. Mr. Mitchell said it is hard to give credit to someone who does not own any property. Mr. Hastings said, on top of that, the biggest thing that has been happening in the last couple of years with the firefighters is the issue with poly flora and alkaline. He said there are 40 year olds dying from cancer because they were exposed either in training or otherwise by using any kind of chemical, which is why the State of Maryland said last year that they had to get rid of all the ones they had. He said it is one thing if someone looks bloody, but if they go to a fire and end up with lung damage, there is a difference, so there are a lot of murky areas.

Ms. Acle said the State law is pretty clear on what they can do, so she does not know if they are going to deviate from that too much. She said, whether they are going to add it back in for the volunteers or not is a choice they have to make.

Mr. Mitchell said the State law simply cites a State statute, and that statute has these lists of items that are covered, but the statute also deals with workers comp and things that do not necessarily apply to volunteers, so instead of just citing the statute again, for the volunteers they lifted that list of items out and just put them in there specifically so they are the same, basically, except that the volunteer has a little more duty to prove. He clarified, all the professional has to say is that they showed up at 8:00 when their shift started and they got hurt at 10:00, whereas the volunteer may have come in at 8:00 and went somewhere that is not fire-related business and came back, so that is the only real difference.

Mr. Cannon said the compensation is for someone injured in the line of duty, which he thinks was the original intent of the Bill, to which Mr. Mitchell responded, and this he thinks was intended to be a thank you for service.

Mr. Dodd said, back to Mr. Hastings' statement about it only benefiting property owners, maybe this will be an incentive for more people to buy property.

Mr. Cannon said right now what they have under Section D talks about the amount saying no more than \$1,500. He said the question is where the Council wants to leave that, to which Mr. McCain responded, he would keep the \$1,500 cap. Mr. Hastings agreed.

Mr. Cannon said they are ready to put this on the agenda and move forward with it. Mr. Dodd asked if Council will get a clean copy before it goes on the agenda, to which Mr. Cannon responded, yes. Mr. Cannon said they just need something that is clean for Council to review.

Mr. Holloway asked if Mr. Cannon has talked to the County Executive about this, to which Mr. Cannon responded, Mr. Psota is aware of it and is aware of what the Council is doing. He clarified, he cannot speak for him. Mr. Holloway said he just wanted to know if he has had any conversations with Mr. Psota about this or not, to which Mr. Cannon responded, he has not had any real specific conversations, but generally Mr. Psota knows it is in the brief book and it is something the Council is working on. Mr. Holloway said he knows when the tax credit came up for the fireman, Mr. Psota was concerned about the budgetary impact of that, and he sees in the new budget that he has made an offer that is in the budget, so he just wondered. Mr. Cannon said, as Mr. Holloway knows, the only conversation he had was when they were trying to get a fiscal note on it and they sort of decided they could not come up with a fiscal note, but at that time they did not suggest they were against it because of that. Mr. Holloway said they will know if Mr. Psota vetoes it, but maybe he will not do that.

Mrs. Hurley asked, for clarification, is Council adding number five back in. She clarified, she just was not clear on that because Council asked for a clean copy, but she is not exactly sure what changed. Mr. Cannon said he thinks the idea is that they are not adding it back in because the intent is that they are being compensated for being injured on the job. Mr. McCain said he does not think they need to add it back in. Mr. Dodd said he thought they all agreed to add it back, to which Mr. McCain responded, he thought they agreed not to. He said he thinks it is covered as far as it being related to their duties.


Mr. Mitchell responded, the way it is worded it would not be covered because it is very specific in the statute they cited. He said they could specifically eliminate fundraising if they thought that was important, but they are still going to have to show that it had something to do with maintaining the fire company.

Mr. McCain said, if they are going to add it back in, the language needs to be different, to which Mr. Cannon responded, put it in and they will have it as a document, and they will have to vote on it and they can certainly amend it.

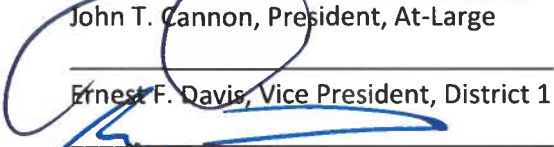
Mr. Holloway said, what if they are at the fairgrounds working a ride and the fire whistle blows and they have a heart attack, to which Mr. Dodd responded, that is in the line of duty. Mr. Holloway said it is such a gray area that they need to decide if it is going to be there or not, and if they are on the property or performing a duty beneficial to that fire department, it should be there. Mr. Dodd said he agrees. Mr. Mitchell said that example would be covered with or without that language. He said, if they had a heart attack because they hear the alarm and take a step and drop over, they are reporting to a fire. Mr. Holloway said, but the way this is, if they are working a ride, they are not covered, but they are still supporting the fire department, and they should be grateful to have them. Mr. McCain said the purpose

of the law is not to cover people for supporting the fire department, it is for performing their dangerous duties, as the law says. Mr. Dodd said there would be a big argument about that one. Mr. McCain said he is telling them what the law says, not his opinion. Mr. Mitchell said they will not have this problem with the paid individuals because their adjudication of disability is going to be a worker's comp hearing, and they are going to determine whether they are in the course of or arising out of their employment. Mr. Cannon said they will put it in.

There was no further discussion.



John T. Cannon, President, At-Large



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Nicole Acle, District 2



Larry W. Dodd, District 3



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