

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 376

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senator Book and others

SUBJECT: Workers' Compensation Benefits for First Responders

DATE: February 28, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Johnson/Sanders/ Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 376 revises the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics. The bill allows first responders that meet certain conditions to access indemnity and medical benefits for PTSD without an accompanying physical injury. Current law provides only medical benefits for a mental or nervous injury without an accompanying physical injury and requires the first responder to incur a compensable physical injury to receive indemnity benefits for a mental or nervous injury. Generally, the bill will increase the likelihood of compensability for workers' compensation indemnity benefits for PTSD.

PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault. A diagnosis of PTSD requires direct or indirect exposure to an upsetting traumatic event.

The bill creates an exception to current law to authorize the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
 - Seeing for oneself a deceased minor;
 - Witnessing directly the death of a minor;
 - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department, participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
 - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
 - Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence; or
 - Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- "Apportionment" due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file the notice of injury with their employer or carrier within 90 days of the qualifying event, described above, or manifestation of the PTSD. However, the claim is barred if it is not filed within 52 weeks of the qualifying event.

The bill requires an employing agency of a first responder, including volunteer first responders, to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

The bill provides that the Legislature determines and declares that this act fulfills an important state interest.

State and local governments may incur additional costs as a result of the implementation of this bill. The National Council on Compensation Insurance estimates the fiscal impact of the bill on Florida's workers' compensation system is approximately 0.2 percent, or approximately \$7 million.

The bill is effective October 1, 2018.

II. Present Situation:

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.¹ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,² or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.³

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁴ An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.⁵ An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee.⁶

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.⁷

¹ Section 440.09(1), F.S.

² Section 440.38, F.S.

³ Section 627.311(5)(a), F.S.

⁴ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

⁵ Section 440.09(1), F.S.

⁶ Section 440.02(1), F.S.

⁷ Section 440.13(2)(a), F.S.

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.⁸ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),⁹ up to the maximum weekly benefit established by law.¹⁰ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹¹
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.¹²
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.¹³

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

First Responders' Compensability for Mental or Nervous Injuries

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,¹⁴ a firefighter as defined in s. 633.102, F.S.,¹⁵ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,¹⁶ employed by state or local government.¹⁷ Further, a volunteer law enforcement officer, firefighter, or emergency medical

⁸ Section 440.12(1), F.S.

⁹ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

¹⁰ Section 440.15(1)-(4), F.S.

¹¹ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

¹² Section 440.15(3), F.S.

¹³ Section 440.15(1), F.S.

¹⁴ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁵ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

¹⁶ "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

¹⁷ Chapter 2007-1, Laws of Fla.

technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.¹⁸

In regards to compensability for a mental or nervous injury involving a first responder, s. 112.1815, F.S.:

- Requires that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence;
- Authorizes the payment of only medical benefits in employment-related cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment;
- Prohibits the payment of indemnity benefits unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury; and
- Provides that benefits for first responders are not subject to any limitation on temporary benefits under s. 440.93, F.S., or the one percent limitation on permanent psychiatric impairments benefits under s. 440.15, F.S.

State Survey of Compensability Laws for Workers' Compensation Mental Injuries

Often stress-related injuries do not result from a physical injury. These types of injuries are referred to as “mental-mental” injuries because they are caused by a purely mental stimulus that leads to a mental impairment, such as depression or post-traumatic stress disorder (PTSD). This stimulus could be witnessing, but not being physically injured by, a particularly horrific accident, workplace incident, or crime scene.

In 2017, the National Council on Compensation Insurance (NCCI) issued a report summarizing compensability for injuries¹⁹ in the United States.²⁰ Highlights of the study include:

- **Compensability for Mental-Mental Injuries:** 27 jurisdictions, including Florida, have statutory language expressly allowing compensation for nonphysical mental (mental-mental) injuries or stress in limited circumstances.²¹
- **Mental-Mental and Mental-Physical Exclusions:** Montana is the only state that specially denies compensability for both mental-physical and mental-mental injuries.
- **Personnel Actions:** 21 states specify that stress arising out of a personnel action is not compensable.

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association provides diagnostic criteria for mental disorders, including PTSD, in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*

¹⁸ Section 112.1815, F.S.

¹⁹ Reference to mental injuries also includes mental impairments or disorders that are occupational diseases. The District of Columbia and Kansas laws do not expressly provide for compensation of mental injuries, but they do reference mental conditions and/or mental providers.

²⁰ NCCI, *Compensability for Workers' Compensation Mental Injuries* (2017) (on file with Senate Banking and Insurance Committee).

²¹ Typically, compensable mental-mental injuries must be considered extraordinary and the predominate or substantial contributing cause.

(DSM-5).²² PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.²³ A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.²⁴ Symptoms generally begin within the first three months after the trauma, although there may be a delay of months or even years before the criteria for the diagnosis are met.²⁵

Prevalence Rate

The exact prevalence rate for PTSD is difficult to ascertain. According to the National Center for PTSD, about seven or eight percent of the population will have PTSD at some point in their lives.²⁶ About eight million adults will have PTSD during a given year. About 10 percent of females develop PTSD during their lives compared with about four percent of males. The number of veterans with PTSD varies by service era. For example, about 15 percent of Vietnam veterans are diagnosed with PTSD at the time of the most recent study conducted in the late 1980s. It is estimated that 30 percent of Vietnam veterans have had PTSD in their lifetime. In contrast, about 12 percent of Gulf War veterans have PTSD in a given year.

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.²⁷ Twelve-month prevalence among U.S. adults is approximately 3.5 percent. The PTSD rates are higher among veterans and others whose employment increases the risk of traumatic exposure, such as police, firefighters, and emergency medical personnel. The highest rates (ranging from one-third to more than one-half of those exposed) are found among survivors of rape, military combat and captivity, and ethnically or politically motivated internment and genocide.

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.²⁸ A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.²⁹ Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.³⁰

²² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (5th, 2013). Commonly referred to as DSM-5.

²³ See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* (Jan. 2017) (on file with Senate Banking and Insurance Committee).

²⁴ *Id.*

²⁵ DSM-5, *supra*, note 25 at 276.

²⁶ National Center for PTSD, *How Common is PTSD?* Available at: <https://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp> (last visited Jan. 12, 2018).

²⁷ DSM-5, *supra*, note 25, at 276.

²⁸ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

²⁹ EMS1.com News, *New study estimates 20 percent of firefighters and paramedics have PTSD* (Aug. 17, 2017) (on file with Senate Banking and Insurance Committee).

³⁰ Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) (on file with Senate Committee on Banking and Insurance Committee).

A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.³¹ Concern has been expressed that first responders may underreport mental health conditions as a result of stigma associated with seeking treatment for those conditions.

Prognosis

The onset of PTSD symptoms is usually in the first month after the traumatic event; however, in about 15 percent of the cases, there may be a delay of months or years before symptoms appear.³² Further, although a high proportion of trauma survivors will initially develop symptoms of PTSD, a substantial number of these individuals recover without treatment in the following years, with a steep decline in PTSD rates occurring in the first year.³³ However, at least a third of the individuals who initially develop PTSD remain symptomatic for three years or longer, and are at risk of secondary problems such as substance abuse.³⁴

2016 Pulse Shooting in Orlando, Florida

On June 12, 2016, 49 people were killed and at least 68 others were injured at a shooting at the Pulse nightclub in Orlando, Florida. The shooting has been characterized as one of the deadliest mass shootings in modern U.S. history.³⁵ One recently profiled police officer was diagnosed with post-traumatic stress disorder and has been out of work since shortly after the shooting.³⁶ The article noted that, while the City of Orlando Police Department was paying his full salary, Florida law did not require the employer to pay because workers' compensation compensability for PTSD must be accompanied by a physical injury, which the officer did not have.

Florida Retirement System

The Florida Retirement System (FRS)³⁷ offers members a choice between the Pension Plan (a defined benefit plan) and the Investment Plan (a defined contribution plan). Generally, FRS membership is compulsory for employees filling a regularly established position in a state agency, county agency, state university, state college, or district school board with some limited exceptions. Participation by cities, municipalities, special districts, charter schools, and metropolitan planning organizations, although optional, is generally irrevocable after the election to participate is made. The five classes of membership are Regular Class, Senior Management

³¹ FireRescue News, *Increasing suicide rates among first responders spark concerns* (Mar. 19, 2017) (on file with Senate Committee on Banking and Insurance Committee).

³² National Collaborating Centre for Mental Health (UK). *Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care*. Leicester (UK): Gaskell; 2005. (NICE Clinical Guidelines, No. 26.) Post-traumatic stress disorder. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK56506/> (last viewed Feb. 26, 2018).

³³ *Id.*

³⁴ *Id.*

³⁵ CBS News, *Report reveals dramatic new details from Orlando nightclub massacre*, (Apr. 14, 2017) available at <http://www.cbsnews.com/news/orlando-nightclub-shooting-report-reveals-new-details-inside-pulse/> (last visited Jan. 12, 2018).

³⁶ Orlando Sentinel, *Proposed bills would cover first responders who have PTSD* (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

³⁷ Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, available at http://www.myflorida.com/audgen/pages/pdf_files/2017-073.pdf (last visited Jan. 12, 2018).

Service Class, Special Risk Class, Special Risk Administrative Support Class, and Elected Officers' Class.

Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency medical care who meet statutory criteria for membership set for in s. 121.0515, F.S.³⁸ A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members. In creating the Special Risk Class of membership within the FRS, the Legislature recognized that certain employees, as an essential function of their positions, must perform work that is physically demanding or that requires extraordinary agility and mental acuity.³⁹ The Legislature further found that, as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.

Disability Benefits for Members of the FRS

The FRS provides disability benefits for its active members who are permanently, totally disabled from useful employment. The level of disability benefits to which an eligible disabled member is minimally entitled depends upon membership class, and whether the disabling injury or illness was job related. For Special Risk Class members retiring on or after July 1, 2000, the minimum in-line-of-duty disability benefit is 65 percent of average final compensation (AFC) as of the member's disability retirement date.

Section 121.091(4), F.S., provides that any FRS⁴⁰ member who is totally and permanently disabled due to a condition or impairment of health caused by an injury or illness (including tuberculosis, heart disease, or hypertension) is entitled to disability benefits. The disabling injury or illness must have occurred before the member terminated employment. If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member is entitled to in-line-of-duty disability benefits.

There are several important differences in the laws applicable to disability benefits, depending on whether the disability is found to be due to an injury or illness "suffered in the line of duty":

- *Eligibility* — A FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have eight years of creditable service⁴¹ before becoming disabled in order to receive disability retirement benefits for any disability occurring other than in the line of duty.
- *Burden of Proof* — Proof of disability is required, including certification by two Florida-licensed physicians that the member's disability is total and permanent (i.e., that the member is prevented by reason of a medically determinable physical or mental impairment from

³⁸ Section 121.0515(1), F.S.

³⁹ *Id.*

⁴⁰ Members of both the FRS Pension Plan and the FRS Investment Plan are eligible for disability coverage.

⁴¹ Until July 1, 2001, any member who joined the FRS on or after July 1, 1980, was required to complete 10 years of creditable service to qualify for disability benefits for a disability that was not job-related. Under current law, the 10-year service requirement has been reduced to eight years.

engaging in gainful employment of any type). It is the responsibility of the applicant to provide such proof. Unless a legal presumption applies such as the one provided under s. 112.18, F.S., to qualify to receive the higher in-line-of-duty disability benefits, the member must also show by competent evidence that the disability occurred in the line of duty.

- *Chapter 175, F.S., plans* — Pension plans for firefighters established pursuant to ch. 175, F.S., must provide a minimum line of duty benefit equal to the firefighter's accrued retirement benefit, but no less than 42 percent of his or her average monthly salary at the time of disability. Disability occurs when an injured plan member is wholly prevented from rendering useful and efficient service as a firefighter and is likely to remain so in the opinion of the board of trustees, after the member has been examined by a duly qualified doctor selected by the board. Local law plans may have enacted disability benefits that exceed the minimum requirements.

Existing In-Line-of-Duty Disability Presumptions

Section 112.18, F.S., establishes a presumption for state and local firefighters, law enforcement, correctional, and correctional probation officers regarding determinations of job-related disability. This statute provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by these officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease was not related to the person's employment.

Section 175.231, F.S., provides a similar presumption for firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension. Section 185.34, F.S., provides a similar presumption for municipal police officers' pension plans.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death benefits if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in-line-of-duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.⁴² If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Death Benefits Available for FRS Members

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members. Under s. 121.091(7), F.S., death benefits may be paid for an active member of the FRS Pension Plan who dies before retirement due to an injury or illness (including

⁴² Sections 121.091(4)(c) and (7)(d), F.S.

tuberculosis, heart disease, or hypertension). If the injury or illness arises out of and in the actual performance of duty required by the job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-line-of-duty death benefits. There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness "suffered in the line of duty."

From the first day on the job, an FRS Pension Plan member is eligible for in-line-of-duty death benefits that will pay a minimum monthly benefit to a survivor equal to half the member's last monthly salary. If the deceased member would have been entitled to a higher retirement benefit based on service credit, the higher benefit would be payable to his/her spouse or eligible dependent(s). The survivor benefit for Special Risk Class members killed in the line of duty is 100 percent of the member's base pay at the time of death if the member's death occurs on or after July 1, 2013. Unless a legal presumption applies such as those provided under s. 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in-line-of-duty death benefits.

Local Government Pension Plans

Chapters 175 and 185, F.S., provide funding mechanisms for pension plans of municipal firefighters and police officers, respectively. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.⁴³ Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., to revise the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics. The section creates an exception to the current prohibition on the payment of indemnity benefits unless a physical injury accompanies the mental or nervous injury by authorizing indemnity benefits for PTSD if certain conditions are met. A first responder is entitled to medical and indemnity benefits for PTSD, as an occupational disease, the PTSD resulted from the first responder acting within the course and scope of employment and is diagnosed by a licensed psychiatrist who is an authorized treating physician under ch. 440, F.S. The PTSD must be due to one of the following qualifying events relating to minors or others:

- Seeing for oneself a deceased minor;
- Witnessing directly the death of a minor;

⁴³ Sections 175.191 and 185.18, F.S.

- Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department, participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence; or
- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Such medical and indemnity benefits for a first responder's PTSD are due:

- If the PTSD is proven by clear and convincing evidence;
- Regardless of whether the first responder incurred a physical injury;
- Without apportionment due to a preexisting PTSD;
- Without any limitation, thus the one percent on permanent psychiatric impairment benefits does not apply; and
- Without any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file a first notice of injury with their employer or carrier within 90 days of the qualifying event, or manifestation of the PTSD. However, the claim is barred if the notice is not filed within 52 weeks after the qualifying event. The section defines the terms, "directly witnessing," "manually transporting," and "minor." The section also directs the Department of Financial Services to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

Lastly, the section requires an employing agency of a first responder, including volunteer first responders, to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

Current law provides that only medical benefits are payable for a mental or nervous injury of a first responder that is unaccompanied by a physical injury. Indemnity benefits are available only if the mental or nervous injury is accompanied by a physical injury.

Section 2 provides that the Legislature declares that this act fulfills an important state interest.

Section 3 provides the bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or

municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The bill expressly finds that the law fulfills an important state interest. The bill applies to all first responders delineated under s. 112.1815, F.S and similarly situated, including state agencies, school boards, community colleges, counties, municipalities, special districts, and private entities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

National Council on Compensation Insurance (NCCI) Analysis of CS/SB 376

According to the NCCI, the implementation of CS/SB 376 may result in an indeterminate increase in Florida's workers' compensation system costs for law enforcement officer, firefighter, emergency medical technician, and paramedic classifications in Florida.⁴⁴ However, the overall impact on workers' compensation costs was expected to be minimal, since the data reported to the NCCI show that first responders represent approximately 2.2 percent of statewide losses in Florida. The 2.2 percent may be an underestimate for the total population of Florida workers, as many entities that employ law enforcement officers, firefighters, and emergency medical technicians are self-insured and do not report data to the NCCI.

The ultimate system cost impact would be realized through future loss experience and reflected in subsequent NCCI rate filings in Florida. A minimal impact in this context is defined as an impact on overall system costs of less than 0.2 percent or approximately \$7 million.⁴⁵

⁴⁴ NCCI, *Analysis of SB 376* (Oct. 19, 2017) (on file with Senate Banking and Insurance Committee).

⁴⁵ NCCI correspondence (Dec. 4, 2017) (on file with Senate Committee on Banking and Insurance).

The NCCI is unable to quantify the expected increase in the number of post-traumatic stress disorder (PTSD)-related claims that would be entitled to indemnity benefits under CS/SB 376. According to the NCCI, the 2015 average total claim severity for an indemnity or lost-time claim⁴⁶ in Florida was \$60,700 (\$19,100 average indemnity claim severity plus \$41,600 average medical claim severity).⁴⁷ However, due to the high prevalence of PTSD among first responders, the NCCI estimates that the increase in compensable PTSD-related claims could be significant for these occupational classifications.⁴⁸ If enacted, the bill could potentially result in increased litigation related to the confirmation of a PTSD diagnosis and the determination of whether the PTSD arose out of an activity performed within the course of employment. Any costs associated with increased litigation would be expected to exert upward pressure on overall workers' compensation system costs.

C. Government Sector Impact:

The fiscal impact on state and local governments is indeterminate. State and local governments may incur higher claim costs for workers' compensation benefits of first responders contingent upon the frequency and severity of the claims.⁴⁹ In regards to prevalence rate, estimates vary across occupations. One study noted that police officers incurred duty-related post-traumatic stress disorder (PTSD) rates ranging from seven to 19 percent.⁵⁰ In contrast, another study noted that about 20 percent of ambulance workers developed post-traumatic stress disorder (PTSD).⁵¹ However, first responders are four to five times more likely to develop PTSD compared to the general population.⁵² Other prevalence rates range from seven to 37 percent.⁵³

According to the Department of Management Services (DMS), as of December 1, 2017, the total number of State Personnel System (SPS) employees in firefighter positions was 613 and the total number of SPS employees in law-enforcement officer positions was 4,342. This information does not include volunteers. According to the DMS, the SPS does not utilize paramedic or emergency medical technician classes, nor does it have volunteers perform firefighter or law enforcement duties.⁵⁴

⁴⁶ Lost-time claims are claims resulting in indemnity benefits and usually medical benefits being paid to or on behalf of the injured worker for time lost from work.

⁴⁷ NCCI correspondence (Feb. 26, 2018) (on file with Senate Committee on Banking and Insurance).

⁴⁸ According to NCCI, although events leading to PTSD cannot be predicted with certainty, the incidence of PTSD is estimated to be significantly higher for first responders compared to the general population. According to the U.S. Department of Veterans Affairs, about 55 percent of the population will experience at least one trauma in their lives and, as a result, about 7-8 percent of the population will have PTSD at some point in their lives. In comparison, the National Center for Biotechnical Information (NCBI) concluded that the prevalence of PTSD among Emergency Medical Technicians (EMTs) is greater than 20 percent, and various sources have reported the prevalence of PTSD among firefighters to be in the 7 percent to 37 percent range.

⁴⁹ See NCCI *Analysis of SB 376 in Private Sector Impact*.

⁵⁰ Psychological Trauma: Theory, Research, Practice, and Policy, see note 30, p.500.

⁵¹ *Id.*

⁵² *Id.*

⁵³ NCCI, see note 53.

⁵⁴ Department of Management Services correspondence (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

There are approximately 177,724 first responders statewide. According to the Florida Department of Law Enforcement, there were 46,309 law enforcement officers, as of June 15, 2017.⁵⁵ The Florida Department of Health, Division of Medical Quality Assurance, notes there were 32,074 active emergency medical technicians and 29,242 paramedics, in Fiscal Year 2016-2017.⁵⁶ According to the Department of Financial Services, Division of State Fire Marshal, there were 46,322 certified firefighters and 23,777 certified volunteer firefighters, as of December 2017.⁵⁷

Local Government Retirement Plans⁵⁸

The DMS analysis of SB 376 indicated that version of the bill would expand workers compensation benefits for first responders to mental and nervous injuries, regardless of a physical injury, and workers' compensation documentation and coverage is considered in determining eligibility for chapters 175 or 185, F.S., in-line-of-duty disability and in-line-of-duty death benefits. For local law plans governed by chapters 175 and 185, F.S., total disability includes inability to provide useful and efficient service as a firefighter or police officer. This is a more liberal definition of total disability than the Florida Retirement System (FRS) standard and will likely result in higher incidence of in-line-of-duty disability and in-line-of-duty death benefit awards for chapters 175 and 185, F.S., than in FRS plans.

The cost impact on individual local law plans will require the completion of actuarial impact statements. However, with the revised criteria, the potential higher incidence of in-line-of-duty deaths will likely result in increased plan costs for chapters 175 and 185, F.S., plans above the de minimis level.

Florida Retirement System⁵⁹

The DMS determined that the actuarial impact of SB 376 on the FRS was indeterminate. The DMS noted both a lack of data regarding how many members would be immediately eligible for enhanced in-line-of-duty disability benefits, as well as an absence of academic study regarding the incidence of mental and nervous injury, without accompanying physical injury, to estimate the potential ongoing cost arising from additional in-line-of-duty disability and in-line-of-duty death applications.

⁵⁵ See http://www.fdle.state.fl.us/CJSTC/Documents/Quarterly-Update_Summer-2017_small.aspx (last viewed Feb. 27, 2018)

⁵⁶ See <http://mqawebteam.com/annualreports/1617/> (last viewed Feb. 27, 2018).

⁵⁷ Email from B.G. Murphy, Department of Financial Services, Re: HB 227 Question (Feb. 6, 2018)

⁵⁸ Department of Management Services, *Analysis of SB 376* (Jan. 23, 2018) (on file with Senate Banking and Insurance Committee).

⁵⁹ *Id.*

Department of Agriculture and Consumer Services (DACS)⁶⁰

Since s. 112.1815, F.S., was enacted, the Florida Forest Service (FFS) and the Office of Agricultural Law Enforcement (OALE) have not received any workers' compensation claims for mental or nervous injuries. An increase in annual claims from first responders is highly probable; however, the limited level of exposure by the employees of the DACS to the scenarios and the requirements are likely to lessen the frequency of claims. A negative fiscal impact of unknown severity is likely. There are currently 211 special-risk positions in the OALE and 589 in FFS that are first responder positions. The FFS has a volunteer program; however, only a small portion of the FFS volunteers are classified as firefighters.

Department of Financial Services

Division of Risk Management⁶¹

Since the enactment of s. 112.1815, F.S., available records indicate that only one state employee has received medical benefits relating to a work-related mental condition without a physical injury. The DFS indicates there is a potential for small increases in claims costs. A state worker that is unable to return to work due to the extent of his mental injuries could result in a much higher cost depending on age and salary. These costs may include medical benefits, which are currently provided, as well as indemnity benefits. According to NCCI, the average indemnity claim severity is \$19,100 plus \$41,600 average medical claim severity.

Division of Workers' Compensation⁶² (DWC)

Using medical bills with dates of service in the last two fiscal years (July 1, 2015 through June 30, 2017), the Division of Workers' Compensation identified 203 first responder claims where one of the diagnoses is PTSD (unspecified) or PTSD (chronic). The vast majority of these claims (about 80 percent) have dates of accident between 2006 and 2017. For those, 80 percent or 162 claims, total medical was \$13,430,645 (\$82,905.22 average per claim) and total indemnity is \$9,064,407 (\$55,953.13 average per claim). Of the 162 claims, 110 claims had a payment for psychiatric care, which totaled \$275,140.94 (\$2,501.28 average per claim). There were 12 claims that had denials and all but one of those claims had medical and/or indemnity dollars paid on it. All of the claims that were denied had an associated physical injury.

⁶⁰ Department of Agriculture and Consumer Services, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

⁶¹ Department of Financial Services, *Legislative Analysis of SB 376* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).

⁶² Department of Financial Services, correspondences (Feb. 2018) (on file with the Senate Committee on Banking and Insurance).

Department of Highway Safety and Motor Vehicles (DHSMV)⁶³

The DHSMV has averaged \$73,500 in annual costs for injury-related workers' compensation benefits. There have not been any claims for mental or nervous injuries in recent years. If this bill is enacted, there could be an indeterminate, but possibly significant, increase in expenditures. The DHSMV has 1,974 FHP trooper positions, approximately 228 auxiliary volunteers and 50 reserve officers (volunteers). A reserve officer is a certified law enforcement officer appointed to serve without compensation and vested with the authority to bear arms and make arrests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 27, 2018:

The committee substitute:

- Revises compensability requirements of first responders for PTSD under s. 112.1815, F.S., in the following manner:
 - Requires that the post-traumatic stress disorder (PTSD) must result from the first responder acting within his or her course of employment and the first responder must be examined and diagnosed with PTSD by a licensed psychiatrist, who is an authorized treating physician, due to one of the specified qualifying events. The PTSD must be demonstrated by clear and convincing evidence rather than a preponderance of evidence;
 - Provides that medical and indemnity benefits for PTSD are not subject to apportionment due to a preexisting PTSD; any limitation on permanent impairment benefits; or any limitation on temporary benefits under s. 440.093, F.S.;
 - Revises the evidentiary standard for compensability of PTSD from preponderance of evidence to clear and convincing evidence;
 - Requires first responder to file a notice of injury within 90 days of the qualifying event or manifestation of the PTSD. The claim is barred if it is not filed within 52 weeks of the qualifying event; and

⁶³ Department of Highway Safety and Motor Vehicles, *Legislative Analysis of SB 376* (Dec. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

- Provides that the Legislature determines and declares that this act fulfills an important state interest.
- Restores current law in its general application of mental and nervous injury benefits for first responders;
- Requires the Department of Financial Services to adopt rules; and
- Requires an employing agency of a first responder to provide educational training relating to mental health awareness.

CS by Banking and Insurance on December 5, 2017:

The CS:

- Lowers the evidentiary standard for compensability of mental nervous injuries of first responders, defined in s. 112.1815, F.S., from clear and convincing evidence to preponderance of evidence.
- Revises compensability requirements of law enforcement officer, firefighter, emergency medical technician, and paramedics for PTSD under ch. 440, F.S., in the following manner:
 - Requires that such an employee must have been acting within the course of employment and the person witnessed, or arrived at the scene of, a murder, suicide, fatal injury, child death, or mass casualty incident.
 - Eliminates the requirement that such an employee must initiate mental health treatment within 15 days after the incident.
 - Requires that the mental nervous injury of such an employee must be demonstrated by a preponderance of evidence, rather than a clear and convincing evidence, by a licensed psychiatrist to meet the criteria for PTSD as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, published by the American Psychiatric Association.
- Changes the effective date of the bill from July 1 to October 1, 2018.

B. Amendments:

None.