

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1097                      Firefighters  
**SPONSOR(S):** Jordan  
**TIED BILLS:** none                      **IDEN./SIM. BILLS:** SB 1932 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	_____	<u>Bond</u>	<u>Everhart</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Current law provides three forms of retirement for state and local employees: regular retirement, disability retirement, and "in line of duty" disability retirement. In general, while all employees who have reached age, service, and vesting requirements, are eligible for regular retirement, only a limited few are eligible for the relatively more generous "in line of duty disability" retirement benefit, which is intended to compensate an employee whose disability results from an injury or illness resulting from the employee's performance of duties on behalf of a state or local government.

This bill provides a presumption, applicable to firefighters employed by state and local governments, that any cancer contracted by such persons was contracted in the line of duty. Firefighters newly hired in the future must undergo a pre-employment physical showing no cancer before the presumption will apply; this requirement does not apply to currently employed firefighters.

This bill requires state and local governments to notify their firefighter employees every time one of those firefighters is exposed to a known carcinogen.

The fiscal cost of this additional employment benefit is unknown, and cannot be determined without an actuarial study.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1097.sa.doc  
**DATE:** March 17, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill provides a presumption regarding cancer contracted by a firefighter that may reward behavior that may be the cause of such cancers.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Under the Department of Management Services, the Division of Retirement serves 800,000 statewide retirement system members and oversees approximately 500 local government retirement systems. The division administers all statewide retirement systems, the largest of which is the Florida Retirement System (FRS). The FRS provides disability retirement benefits to its members as an incidental benefit. All state and county employees are compulsory members of the FRS. The division reports that 113 Florida cities either wholly or separately cover firefighters, police and general employees under the FRS. There are also 411 special districts with members in the FRS.

The Special Risk Class is one of five membership classes in the FRS. It is open to a number of classes of employees, including firefighters. Membership in the Special Risk Class allows those persons to retire at an earlier age and makes them eligible to receive higher in-line-of-duty disability benefits than regular class members.

Section 121.091(7), F.S., provides death benefits for active members of the FRS who die before retirement. In the first 6 years of employment, the employee’s spouse receives only the accumulated FRS contributions that were made on the employee’s behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors. Because those annuity options are based on the number of years of service, and are discounted based on the age of the annuity recipient, the beneficiary of younger employees with few years of service receive a relatively small monthly amount. If the death is the result of an injury or illness that occurred in the line of duty, however, the benefit is substantially increased. From the first day of employment, the surviving spouse of an employee who suffers an in line of duty illness or injury resulting in death receives a monthly pension of one-half of the employee’s final salary.<sup>1</sup>

There are three types of retirement applicable to the Special Risk Class, summarized as follows:

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<sup>1</sup> Section 121.091(7)(d), F.S. Should the surviving spouse die, surviving minor children may receive the benefit.

## Disability Benefits Applicable to Special Risk Members

	<i>Regular Retirement</i>	<i>Regular Disability</i>	<i>In Line of Duty Disability</i>
<i>Vesting Period</i>	6 years	8 years	None
<i>Qualified for Disability Benefit</i>	May retire upon vesting, but benefit will be reduced actuarially unless member is age 55, or has 25 years of service	May retire upon disability, benefit will not be reduced actuarially	May retire upon disability.
<i>Proof Needed to Qualify for Disability Benefit</i>	A birth certificate	Employee must show that, due to illness or injury (regardless of cause), the employee is unable to render "useful and efficient service as an officer or employee." <sup>2</sup>	In addition to regular disability, must show that the disability resulted from "an injury or illness arising out of and in the actual performance of duty required by a member's employment" <sup>3</sup>
<i>Amount of Disability Benefit</i>	3 percentage points for each year of service, times number of years, times average of 5 highest years of service (for example: 75% times average of 5 highest, at 25 years service)	Creditable service to date of disability times average of 5 highest years of service, with a minimum of 25% of average salary	Creditable service to date of disability times average of 5 highest years of service, with a minimum of 65% of average salary

Section 112.18, F. S., provides a presumption applicable to certain employees, including firefighters, that such employees qualify for in line of duty disability or death benefits if such disability is a result of tuberculosis, heart disease, or hypertension. Section 112.181, F.S., provides a presumption applicable to certain employees, including firefighters, that such employees qualify for in line of duty disability or death if such disability is due to hepatitis, meningococcal meningitis, or tuberculosis. Successful passage of a pre-employment physical examination is required for these presumptions.

Absent one of these special presumptions, and assuming that the FRS member employee can prove disability, the FRS member employee has the burden of proof when claiming 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. If the employee or the employee's survivors cannot meet the burden of proof, the disabled employee, or the survivors of the deceased employee, are only entitled to the lesser benefits available under regular death or disability benefits. The special presumptions have the effect of shifting the burden of proof; that is, they shift from employee to employer the burden of proving the case. Where shifted, an employer seeking to avoid liability for the increased benefits must prove that the injury or illness to which the presumption applies was caused by some factor other than a work-related exposure or injury.

Under current law, a firefighter that is disabled due to cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. In practice, firefighters are often exposed to known carcinogens. Firefighters believe that many firefighters contract cancer as a direct

<sup>2</sup> Section 121.091(4)(b), F.S.

<sup>3</sup> Section 121.021(13), F.S.

result of their employment, but that the nature of cancer makes it too difficult in practice to meet the burden of proof necessary to prove entitlement to in line of duty disability benefits.<sup>4</sup>

Chapters 175 and 185, F.S., provide funding mechanisms for municipal firefighters' and police officers' plans 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. Two types of plans are governed by each of these chapters – chapter plans and local law plans. To be considered totally and permanently disabled, chapter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer. 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.

The International Agency for Research on Cancer is located in France. The Agency has examined 882 agents or substances to date to determine whether each should be classified as a carcinogen in humans. The research findings cover 82 volumes, with 8 supplements.<sup>5</sup>

### **Effect of Bill**

This bill creates s. 112.183, F.S., to provide a presumption that disability or death due to cancer suffered by a firefighter employed by a state or local government is presumed to be due to an accident or injury suffered in the line of duty. This presumption shifts the burden of proof from the employee (or survivors) to the employer. The practical effect of this change is that, as to cancer, more employees and their survivors will win cases alleging that a cancer suffered by such employees was contracted in the line of duty. This will likely result in higher payments to employees and their dependents, and correspondingly higher costs to state and local government employers.

This bill provides that the presumption only applies if the employee underwent a pre-employment physical that ruled out cancer; however, the requirement of a pre-employment physical does not apply to persons employed as a firefighter on the effective date of this bill. The physical must include the following tests, as appropriate for gender: physical breast examination and mammogram for female breast cancer; digital rectal examination, proctosigmoidoscopy, and blood stool test for colon and rectum cancer; rectal examination for prostate cancer; pap test for uterine cancer; pelvic examination for ovarian cancer; and radiographic examination for lung cancer.

This bill also provides that state and local governments may negotiate policy contracts for life and disability insurance which include accidental death benefits or double indemnity coverage and which recognize the presumption created by this bill.

This bill also requires a state and local government agency that employs a firefighter to maintain a record of any reported exposure of a firefighter to a known carcinogen as defined by the International Agency for Research on Cancer. The agency must notify the firefighter of the exposure within 48 hours after the exposure is reported.

### **C. SECTION DIRECTORY:**

Section 1 creates s. 112.183, F.S., creating a presumption that death or disability due to cancer in a firefighter is an in line of duty illness or injury.

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<sup>4</sup> "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." From <http://www.cdc.gov/niosh/topics/cancer/>

<sup>5</sup> From [www.iarc.fr](http://www.iarc.fr)

Section 2 provides that the requirement of a pre-employment physical does not apply to persons employed as a firefighter on the effective date of this bill.

Section 3 provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

#### 2. Expenditures:

Unknown. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

#### 2. Expenditures:

Unknown. See fiscal comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The fiscal cost for this additional employment benefit is unknown, and cannot be determined without an actuarial study.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Article VII, Section 18, Florida Constitution, excuses local governments from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides, "[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist. Subsection (a) of Art. VII, Sec. 18, Florida Constitution, contains an exception for laws which apply to all persons similarly situated.

This bill appears to require municipalities that maintain their own pension plans (non FRS plans) to expend an unknown amount of funds for higher in-line-of-duty amounts for affected employees who become disabled or die as the result of cancer. This bill appears to apply to all persons similarly situated and provides a statement of an important state interest to that effect; therefore an exception may apply which would then make the provisions of this bill enforceable against local governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The reference to “a known carcinogen as defined by the International Agency for Research on Cancer” is unclear. There is no definition or listing entitled “known carcinogens” published by the International Agency for Research on Cancer. The reference probably would include the list entitled: “Group 1: Carcinogenic to humans” (88 items); but it is unclear whether “Group 2A: Probably carcinogenic to humans” (64 items) and perhaps even “Group 2B: Possibly carcinogenic to humans” (236 items) would be included. By contrast, the 10th Report on Carcinogens (2002), published by the National Toxicology Program of the United States Center for Disease Control, has only identified 13 substances or exposures occurring in the workplace that are classified as “known” or “reasonably anticipated” to be human carcinogens.<sup>6</sup> The U.S. Department of Health and Human Services, and the National Institute for Occupational Safety and Health, also publish lists of possible carcinogens. The State Fire Marshall also publishes It is unclear why this bill references a foreign resource when there are domestic resources available for reference.

This bill requires an employing agency to notify a firefighter upon every exposure to a known carcinogen. As smoke is a known carcinogen, and firefighters are frequently exposed to smoke in the performance of their duties, it is likely that this bill may create a significant administrative burden upon state and local governments.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

n/a

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<sup>6</sup> From <http://www.cdc.gov/programs/workforc17.htm>.