

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 227 Workers' Compensation Benefits for First Responders

SPONSOR(S): Government Operations & Technology Appropriations Subcommittee; Oversight, Transparency & Administration Subcommittee; Willhite; Plasencia; and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Moore	Harrington
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N, As CS	Helpling	Topp
3) Government Accountability Committee			

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and wage replacement (i.e., indemnity payments) benefits if an employee suffers an accidental injury or death arising out of work performed in the course and the scope of their employment. Current law establishes the conditions under which a mental or nervous injury is compensated. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. However, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. While medical treatment is covered, first responders without an accompanying physical injury may not receive wage replacement benefits for mental or nervous injuries.

The bill provides workers' compensation wage replacement benefits in specified circumstances for post-traumatic stress disorder (PTSD) suffered by a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic regardless of whether their PTSD is accompanied by a physical injury requiring medical treatment. First responder PTSD-related wage replacement benefits, in addition to currently available medical benefits, are due under certain circumstances.

The first responder must be diagnosed by a psychiatrist with PTSD following certain specified death related events that were experienced while acting in the course and scope of their employment. These death related events include working a call involving the death of a child, a homicide, or the death, including suicide, of a person who suffered grievous bodily harm. The circumstances include seeing the decedent, seeing or hearing the injury or death, and participating in the treatment or transport of those who die in these events.

Eligible PTSD claims are not subject to benefit limitations generally applicable to mental and nervous injuries, apportionment, or contribution. Such PTSD claims must be filed within 30 days of the death-related event or manifestation of the PTSD, but no later than one year after the event. Each qualifying death-related event that the first responder experiences will carry its own timely reporting deadline.

The bill also 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 may have a significant negative fiscal impact on the state and local governments (See *Fiscal Analysis & Economic Impact Statement*).

The bill has an effective date of July 1, 2018.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Workers' Compensation System

Employers are required to provide medical and wage replacement (i.e., indemnity payments) benefits that are required under ch. 440, F.S., if an employee suffers an accidental 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 The Department of Financial Services (DFS) administers the workers' compensation system.

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁴ A work-related accident must be the major contributing cause of any resulting injury or illness, 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

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., establishes the conditions under which a mental or nervous injury is compensated under workers' compensation laws. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a mental or nervous injury occurring as a manifestation of a compensable physical injury 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 indemnity benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.⁶ If the six month cap on temporary benefits is reached and the injured worker has reached maximum medical improvement (MMI) or if MMI is reached before reaching the cap, permanent indemnity benefits will be due if they are permanently and totally disabled or if they have a permanent impairment.⁷

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.⁸

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.⁹ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,¹⁰ up to the maximum weekly benefit established by law.¹¹ Indemnity

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 Temporary indemnity benefits, known as temporary total disability and temporary partial disability benefits, are due while an injured worker is either unable to earn a wage or earn the same or greater wage as prior to the compensable injury and has not yet reached maximum medical improvement. Following maximum medical improvement, permanent total disability or permanent impairment benefits may be due. Section 440.15, F.S.

⁷ However, in 2016, the Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. They invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016) and *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016). While no court has issued an opinion applying these cases to 6-month cap on compensable mental and nervous injuries, it is reasonable to believe that this limitation may be unconstitutional, as well.

⁸ Section 440.13(2)(a), F.S.

⁹ Section 440.12(1), F.S.

¹⁰ 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.

¹¹ Section 440.15(1)-(4), F.S.

benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹²
- 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.¹³
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.¹⁴

Compensability for Mental or Nervous Injuries of First Responders

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. The term "first responder" is defined as a law enforcement officer,¹⁵ a firefighter,¹⁶ or an emergency medical technician or paramedic¹⁷ employed by state or local government.¹⁸ Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.¹⁹

Although mental or nervous injuries are generally not compensable under workers' compensation laws, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. However, while medical treatment is covered, first responders without an accompanying physical injury may not receive indemnity benefits.²⁰

Compensability of Occupational Diseases of First Responders

Generally

The workers' compensation law provides medical and wage replacement benefits for workers who were accidentally injured while acting in the course and scope of their employment. This typically involves a physical injury, e.g., cuts, abrasions, broken bones, and soft-tissue damage; however, the law also provides benefits for workers who develop occupational diseases due to their employment.²¹

¹² Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies 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. 2016). In addition, s. 440.15(4)(e), F.S., specifies that temporary partial disability benefits are payable for 104 weeks; however, the First DCA applied the holding in *Westphal* to these benefits, found the limitation unconstitutional, and reverted the limitation back to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA).

¹³ Section 440.15(3), F.S.

¹⁴ Section 440.15(1), F.S.

¹⁵ The term "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. The term 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. Section 943.10, F.S.

¹⁶ The term "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. Section 633.102, F.S.

¹⁷ The term "emergency medical technician" means a person who is certified by the Department of Health to perform basic life support. The term "paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support. Section 401.23, F.S.

¹⁸ Chapter 2007-1, L.O.F.

¹⁹ Section 112.1815, F.S.

²⁰ Section 112.1815(2)(a)3., F.S. The outcomes in *Westphal* and *Jones* imply that this limitation may be unconstitutional.

²¹ Section 440.151, F.S.

Occupational diseases generally do not involve a traumatic event that causes obvious disruption to the body requiring immediate medical attention. Lung disease, hypertension, hearing loss, dermatitis, and certain communicable disease, such as hepatitis, are examples of occupational diseases that may be compensable if certain conditions are met. These diseases develop due to exposure to airborne particles, severe physical stress, excessive noise, irritants, or pathogens in the workplace.

For the purposes of the workers' compensation law, "occupational disease" means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. Such diseases are compensable if there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.

Because occupational diseases differ from the more common types of workers' compensation claims, there are special provisions governing occupational disease claims. These include the following:

- The disease must result from the nature of the employment²² while engaged in such employment;
- The nature of the employment must be the major contributing cause²³ of the disease and the disease must be the major contributing cause of the need for treatment, each of which must be shown by medical evidence only based on physical examination and diagnostic testing;
- Causation, including sufficient exposure to a specific harmful substance shown to be present in the workplace, must be proven by clear and convincing evidence;
- If the occupational disease is aggravated by a non-compensable disease or infirmity, then the wage replacement benefits must be reduced in proportion to the percentage of aggravation;
- Death benefits are only available to surviving spouses and living and unborn dependent children, if their relationship to the decedent existed prior to or when an injured worker became disabled (i.e., became unable to earn the wages being received at the time of last exposure);²⁴
- Only the employer and their insurer, if the employer is not self-insured, at the time of last exposure is liable for benefits for an occupational disease (i.e., no other employer or insurer is required to contribute to funding the claim costs);²⁵
- The timely filing of occupational disease claims are limited in the following ways:
 - The notice of injury or death must be filed within 90 days of the injurious exposure or manifestation of the illness, rather than the general 30-day notice requirement;²⁶ and
 - The claim must be filed within 350 weeks (6.73 years) of the last exposure;
- If the employer asked, at the time of hiring, whether the employee has a history of disability, lay-offs, or being compensated in damages or otherwise because of the claimed occupational disease, and the employee falsely represented himself or herself in writing about such history, then wage replacement benefits due to the disease are prohibited.

First Responder Related Exceptions

For firefighters, law enforcement officers, correctional officers, and correctional probation officers tuberculosis, heart disease, and hypertension resulting in disability or death are presumed to be

²² "Nature of the employment" means that in the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations, or the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations. Section 440.151(1), F.S.

²³ "Major contributing cause" is the one cause that is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought. Section 440.09(1), F.S.

²⁴ "Disability" means incapacity because of the injury to earn in the same or any other employment the wages that the employee was receiving at the time of the injury. Section 440.02(13), F.S. This definition also applies to the terms "disabled" and "disablement".

²⁵ In the case of dust exposure related diseases, the liable employer is the one that last exposed the worker to dust for at least 60 days. Section 440.151(5), F.S.

²⁶ Section 440.185(1), F.S.

compensable, unless shown otherwise by competent evidence.²⁷ This presumption only applies to claims filed within 180 days of terminating their employment.

In some circumstances, certain communicable diseases are also presumed to be compensable.²⁸ For emergency rescue or public safety workers who require medical treatment due to hepatitis, meningococcal meningitis, or tuberculosis, they are presumed to have a compensable disability. This presumption is lost, if claimants: do not verify in writing that they have no known exposures outside of their employment, based on specified criteria; refused required immunization for such diseases; or cannot document the absence of hepatitis or tuberculosis. Employers are allowed to test for hepatitis and tuberculosis at a pre-employment physical examination.

For purposes of determining compensability for exposure to toxic substances involving a first responder, an injury or disease caused by the exposure to a toxic substance is not compensable, unless a preponderance of the evidence establishes that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease.²⁹ Further, for cases involving occupational disease, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace must be proven by a preponderance of the evidence.

Post-Traumatic Stress Disorder

The American Psychiatric Association provides diagnostic criteria for mental disorders, including post-traumatic stress disorder (PTSD) in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*.³⁰ 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.³¹ A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.³² 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.³³

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.³⁴ Nationwide, the proportion of adults reporting symptoms of PTSD in a year is approximately 3.5 percent.³⁵ 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.³⁶ A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.³⁷ Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.³⁸ A 2015 survey of 4,000

²⁷ Section 112.18, F.S. After July 1, 2010, law enforcement officers, correctional officers, and correctional probation officers may lose the presumption if they depart from the prescribed course of treatment in manner that significantly aggravates the disease during treatment of a current or previous compensable claim for tuberculosis, heart disease, or hypertension.

²⁸ Section 112.181, F.S.

²⁹ Section 112.1815, F.S.

³⁰ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition (2013). Commonly referred to as DSM-5.

³¹ American Psychiatric Association, *What is Posttraumatic Stress Disorder?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited Jan. 26, 2017).

³² *Id.*

³³ DSM-5, *supra*, note 30 at 276.

³⁴ DSM-5, *supra*, note 30, at 276.

³⁵ This is commonly referred to as a 12-month prevalence period. <https://www.nimh.nih.gov/health/statistics/what-is-prevalence.shtml> (last visited Feb. 6, 2018).

³⁶ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

³⁷ Fauzeyah Rahman, *New study estimates 20 percent of firefighters and paramedics have PTSD*, EMS1.COM NEWS Aug. 17, 2016, available at <https://www.ems1.com/health-and-wellness/articles/117387048-New-study-estimates-20-percent-of-firefighters-paramedics-have-PTSD/>.

³⁸ Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law*, Apr. 25, 2013, available at https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-public-health/research/FirstResp_MHSvcs.pdf.

first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.³⁹

Effect of the Bill

The bill allows wage replacement benefits for a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic (first responders) with PTSD without requiring a link to a compensable physical injury. This is in addition to the medical benefits currently allowed for mental and nervous injuries for claims where no physical injury has occurred. The first responder will qualify for PTSD-related wage replacement benefits, if the first responder:

- Was acting within the course and scope of employment; and
- Is diagnosed, following an examination by the employer's/carrier's authorized treating psychiatrist, with PTSD due to:
 - Seeing a dead minor;
 - Directly witnessing the:
 - Death of a minor; or
 - Injury to an injured 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 prior to or upon arrival at a hospital emergency department;
 - Seeing someone who died due to grievous bodily harm (DFS to specify such harm by rule);
 - Directly witnessing a death due to:
 - Grievous bodily harm, including suicide; or
 - Homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
 - Directly witnessing an injury, including attempted suicide, to an injured person who suffered grievous bodily harm if the injured person subsequently died prior to or upon arrival at a hospital emergency department; or
 - Participating in the physical treatment of or manually transporting an injury, including attempted suicide, to a person who suffered grievous bodily harm if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

“Directly witnessing” means to see or hear for oneself. “Manually transporting” means performing physical labor to move the body of a wounded person for his or her safety or medical treatment.

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

- If the PTSD is proven by clear and convincing medical evidence;
- Regardless of whether a physical injury occurred to the first responder;
- Without “apportionment” due to preexisting PTSD;
- Without limitation to the one percent cap on permanent psychiatric impairment benefits; and
- Provided, the first notice of injury is filed with their employer/carrier within 30 days of the qualifying event or manifestation of the PTSD.
 - Except, the claim is barred if not filed within one year of the qualifying event that supports the claim.

First responder PTSD is deemed an “occupational disease,” which means that:

- Stand-alone first responder PTSD is treated and compensated as a workers' compensation injury, i.e., the first responder is entitled to medical and indemnity benefits;
- All practices and procedures of ch. 440, F.S., apply to the claim, except as otherwise provided;
- Current law applies regarding:

³⁹ Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRE RESCUE NEWS, Mar. 19, 2017, available at <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/>.

- “Major contributing cause,” which must be shown by medical evidence only, based on physical examination findings and diagnostic testing; and
- “Disablement,” which is a reduced earning capacity due to a compensable injury;
- The first responder’s spouse and living and unborn dependents at the time of the first responder’s disablement receive death and other allowed benefits;
 - Death benefits are limited to deaths occurring within 350 weeks (6.73 years) of last witnessing a qualifying event causing the PTSD;
- There is no “contribution” of claim costs among current and former employers (i.e., only the employer at the time of the last qualifying event causing/aggravating the PTSD is liable); and
- No benefits are due if, upon employment, the first responder falsely represented himself or herself in writing as not being previously disabled, laid off, or compensated because of PTSD.

The bill also 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.

B. SECTION DIRECTORY:

Section 1. amends s. 112.1815, F.S., relating to firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a significant negative fiscal impact to the state. However, the amount is indeterminate. The fiscal impact will vary depending on the number of claims meeting the requirements of the bill that are submitted, how many claims are awarded, and the legal fees associated with increased claims. The National Council on Compensation calculates that the average cost for each indemnity claim in Florida is \$15,378.⁴⁰ Based on an estimate of state employed first responders in Florida, and the average indemnity cost per claim, below are estimates of potential increased costs to the state. The cost varies based on a percentage of first responder employees awarded claims. These estimates do not include local government first responders.

⁴⁰ Florida Department of Financial Services, Agency Analysis of 2018 House Bill 227, p. 2 (Nov. 2, 2017).

**Estimated Average Indemnity Cost, Based on
Varying Percentage of Awarded Claims⁴¹**

	State First Responders	Percent awarded claims	Number receiving benefit	Average Florida Indemnity Cost for all Claims	Total Cost (rounded to nearest dollar)
Firefighters - State Government	619	0.25%	1.548	\$ 15,378	\$ 23,805
State Law Enforcement	4,285	0.25%	10.713	\$ 15,378	\$ 164,745
University System Law Enforcement	418	0.25%	1.045	\$ 15,378	\$ 16,070
				TOTAL	\$ 204,620

Firefighters - State Government	619	0.50%	3.095	\$ 15,378	\$ 47,595
State Law Enforcement	4,285	0.50%	21.425	\$ 15,378	\$ 329,474
University System Law Enforcement	418	0.50%	2.090	\$ 15,378	\$ 32,140
				TOTAL	\$ 409,209

Firefighters - State Government	619	0.75%	4.643	\$ 15,378	\$ 71,400
State Law Enforcement	4,285	0.75%	32.138	\$ 15,378	\$ 494,218
University System Law Enforcement	418	0.75%	3.135	\$ 15,378	\$ 48,210
				TOTAL	\$ 613,828

Firefighters - State Government	619	1.00%	6.190	\$ 15,378	\$ 95,190
State Law Enforcement	4,285	1.00%	42.850	\$ 15,378	\$ 658,947
University System Law Enforcement	418	1.00%	4.180	\$ 15,378	\$ 64,280
				TOTAL	\$ 818,417

In addition to indemnity costs, the National Council on Compensation Insurance notes that modifications to workers' compensation related to PTSD could result in increased litigation costs 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.⁴²

Recent case law⁴³ has resulted in a significant increase in workers' compensation related attorney fees. According to the Office of the Judges of Compensation claims,⁴⁴ from fiscal year 2015-2016 to fiscal year 2016-2017, there was a:

- 36 percent (\$49 million) increase in total injured worker attorney fees.
- 5 percent increase in reported defense attorney fees.
- 191 percent increase in total hourly attorney fees.

⁴¹ This table represents estimates for the 5,322 first responders employed by state government. The approximate total number of first responders statewide is 177,724 persons. According to the Florida Department of Law Enforcement, there were 46,309 law enforcement officers, as of June 15, 2017. http://www.fdle.state.fl.us/CJSTC/Documents/Quarterly-Update_Summer-2017_small.aspx (last visited Feb. 14, 2018). According to the Florida Department of Health, Division of Medical Quality Assurance, there were 32,074 active emergency medical technicians and 29,242 paramedics, in fiscal year 2016-2017. <http://mqawebteam.com/annualreports/1617/> (last visited Feb. 14, 2018). 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. Email from B.G. Murphy, Director of Legislative Affairs, Department of Financial Services, Re: HB 227 Question (Feb. 6, 2018).

⁴² NCCI, *Analysis of SB 376* (Oct. 19, 2017) (on file with Government Operations & Technology Appropriations Subcommittee).

⁴³ *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. 2016) and *Miles v. City of Edgewater Police Department*, 190 So. 3d 171 (Fla. 1st DCA 2016).

⁴⁴ Email from David Langham, Deputy Chief Judge, Office of the Judges of Compensation Claims, Re: report and updated figures (Nov. 9, 2017).

- 109 percent increase in total attorney hours reported.
- 39 percent increase in overall average hourly attorney rates.

Attorney fees, generally, and recent increases in them are not included in the average indemnity cost used to calculate the estimated fiscal impact of the change proposed by the bill. Additionally, until the interpretation of a statutory revision is well settled by judicial opinions, a significant amount of litigation should be expected to test the limits of the law change. There will be an indeterminate, but significant, negative fiscal impact due to attorney fee costs associated with the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a significant negative fiscal impact to local governments. However, the amount is indeterminate. The fiscal impact will vary depending on the number of claims meeting the requirements of the bill that are submitted, how many claims are awarded, and the legal fees associated with increased claims. In their analysis of SB 376, which provides for a greater likelihood of increased claims than this bill, the National Council on Compensation on Compensation Insurance estimates that the overall impact to the workers' compensation system to be minimal.⁴⁵ 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.⁴⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector as a result of higher costs in some workers' compensation claims. However, this impact should be minimal, as the bill would only apply to first responders employed in the private sector.

D. FISCAL COMMENTS:

The Division of Risk Management, within DFS, provides workers' compensation coverage for state employees. The division, through the State Risk Management Trust Fund, pays compensable workers' compensation claims including indemnity and medical costs.

The December 21, 2017, Revenue Estimating Conference projects that the State Risk Management Trust Fund will be in a deficit of \$18.8 million for fiscal year 2018-19. The deficit is related to the costs associated with hurricane damage to state property, which is also paid for by the trust fund. The House General Appropriations Act, Specific Appropriation 1971A, provides a \$20 million transfer from the General Revenue Fund to the State Risk Management Trust Fund to offset the projected deficit. The bill will likely result in additional workers' compensation claims and increased legal costs covered by the State Risk Management Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires workers' compensation indemnity benefits to be paid to first responders for a mental or nervous injury; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because all similarly situated state and

⁴⁵ *Id.*

⁴⁶ NCCI correspondence (Dec. 4, 2017) (on file with Government Operations & Technology Appropriations Subcommittee).

local government employers of first responders are required to provide the indemnity benefits. However, for this exception to apply, the bill must declare that it fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DFS to adopt a rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2018. The majority of first responders are employed by local governments, which generally operate on fiscal year that begins October 1st. Workers' compensation coverage agreements typically coincide with the local government's fiscal year. If the bill goes into effect during the in-force period of a coverage agreement, an unfunded liability may result.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Oversight, Transparency & Administration Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided indemnity benefits to a law enforcement officer, firefighter, emergency medical technician, or paramedic (first responder) who treated or transported a deceased child or the victim of a murder, suicide, or fatal injury;
- Required an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation, and treatment;
- Required a first responder hired on or after July 1, 2018, to pass a pre-employment mental health examination that failed to reveal a diagnosis of PTSD, if such examination is provided by the prospective employer, in order to receive benefits;
- Required a first responder to receive a diagnosis of PTSD within two years of when the first responder witnessed a murder, suicide, fatal injury, child death, or mass killing, or treated or transported a deceased child or the victim of a murder, suicide, or fatal injury; and
- Prohibited a first responder from filing a claim for benefits more than 180 days after he or she leaves employment.

On February 13, 2018, the Government Operations & Technology Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute for committee substitute. The strike-all amendment:

- Maintained the intent of the current version of the bill and made the following modifications and clarifications:
 - Restored current law to continue to allow medical-only benefits for mental and nervous injuries to first responders, if the injury does not meet the requirements of PTSD.
 - Defined PTSD as a compensable occupational disease among first responders. This fit first responder PTSD into an existing provision of the workers' compensation law that allows the application of law governing workers' compensation injuries in general, which should limit the need to litigate claims.
 - Clarified the specific traumatic events and the nature of the exposure to such events that may qualify a first responder for wage replacement and medical benefits.
 - Provided for payment of these benefits by the entity that employs the first responder at the time of the qualifying event without apportionment or contribution.
 - Provided that a claim for such benefits must be made within one year of the qualifying event.

This analysis is drafted to the committee substitute as approved by the Government Operations & Technology Appropriations Subcommittee.

