

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 557 Fire Investigator Cancer Treatment Benefits  
**SPONSOR(S):** Government Operations Subcommittee, Salzman & others  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N	Herendeen	Luczynski
2) Government Operations Subcommittee	16 Y, 0 N, As CS	Roth	Toliver
3) Appropriations Committee	23 Y, 0 N	Lee	Pridgeon
4) Commerce Committee			

### SUMMARY ANALYSIS

In 2019, the Legislature created a special benefit package for firefighters suffering from certain types of cancer, because studies have demonstrated a link between firefighting and cancer. The special benefit package is an alternative to filing a workers' compensation claim, which requires proof that workplace exposures are the cause of a firefighter's occupational disease. Like firefighters, fire investigators sustain significant exposure to hazardous vapors, gases and particles that are known to contribute to chronic health conditions, including cancer; however, fire investigators are not eligible for the special benefit package.

The special benefit package provides that firefighters who are diagnosed with certain types of cancer are eligible for a one-time payment of \$25,000 and employer-sponsored health insurance, including reimbursement for any deductible, co-payment, or co-insurance costs the firefighter incurs for the treatment of cancer. To qualify for these benefits, a firefighter must: (1) have been working full-time as a firefighter, for a government employer, for at least five continuous years; (2) have not used tobacco products for at least the five years prior to the cancer diagnosis; and (3) have not been employed in any other position which is proven to create a high risk of cancer during the five years prior to the cancer diagnosis.

Employment-sponsored health benefits must be made available for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter.

If a firefighter becomes disabled or dies due to cancer, the employer must consider the cancer diagnosis as an injury or illness incurred in the line of duty. This makes the firefighter eligible for line-of-duty disability retirement benefits and also makes surviving family members eligible for line-of-duty death benefits.

The number of Florida-certified fire investigators working full-time for state and local governments, including special fire districts, is unclear. The Florida State Fire College has certified 1,740 fire investigators since 2005, and about half of these people also hold certifications as firefighters. The State Fire Marshal employs 104 fire investigators; 86 of these fire investigators are Florida-certified or in the process of becoming certified.

The bill amends the definition of "firefighter" to include Florida-certified fire investigators, making fire investigators eligible for the special benefit package related to a cancer diagnosis. The costs to provide the enhanced benefits under s. 112.118, F.S., must be borne by the employer.

The bill has an indeterminate significant negative fiscal impact on state and local governments, which are responsible for the cost of the special benefit package. See Fiscal & Analysis & Economic Impact Statement.

The effective date of the bill is July 1, 2022.

### FULL ANALYSIS

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

STORAGE NAME: h0557f.APC

DATE: 2/17/2022

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Firefighters Face an Increased Risk of Cancer

A two-part study by the Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety (NIOSH) concluded that firefighters have a nine percent greater risk of being diagnosed with cancer – and a 14 percent greater risk of dying from cancer – than the general population of the United States.<sup>1</sup>

The study was launched in 2010 and reviewed records of nearly 30,000 career firefighters who served in Chicago, Philadelphia, and San Francisco fire departments between 1950 and 2009.<sup>2</sup>

- In 2013, researchers reported statistically significant mortality and incidence rates of cancers of the esophagus, intestine, lung, kidney, and oral cavity, as well as increased mesothelioma for firefighters compared with the general population, and excess risk of bladder and prostate cancer at younger ages.<sup>3</sup>
- In 2015, researchers reported that the risk of developing lung cancer and leukemia increases with exposure to smoke and hazardous chemicals that are released from burning materials, asbestos, and diesel exhaust.<sup>4</sup>

In 2018, the federal government directed the Centers for Disease Control to create a National Firefighter Registry that, with voluntary participation from firefighters, will track cancer and occupational risk factors to help researchers and the medical community better understand the causes of disease and death among firefighters.<sup>5</sup>

##### Special Benefit Package for Firefighters in lieu of Workers' Compensation Benefits

The Legislature took action in 2019 by creating s. 112.1816, F.S.<sup>6</sup> Instead of seeking benefits through the workers' compensation system<sup>7</sup>, where the employee must prove that workplace exposures caused cancer, a firefighter diagnosed with certain types of cancer is entitled to certain benefits. An affected firefighter may receive a one-time cash payment of \$25,000 and a guarantee that their employer-sponsored health insurance will continue while the firefighter remains on the job and for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter. The employer must reimburse the firefighter for any deductible, co-payment, or co-insurance costs paid for the treatment of cancer.

Every state board, commission, department, division, bureau, agency, county, municipality, or other political subdivision of the state that employs firefighters<sup>8</sup>, including fire control districts, must make these

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<sup>1</sup> Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Findings from a Study of Cancer among U.S. Fire Fighters*, [www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final-508.pdf](http://www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final-508.pdf) (last visited Jan. 28, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950– 2009)*, [http://www.cdc.gov/niosh/firefighters/pdfs/OEM\\_FF\\_Ca\\_Study\\_10-2013.pdf](http://www.cdc.gov/niosh/firefighters/pdfs/OEM_FF_Ca_Study_10-2013.pdf) (last visited Jan. 28, 2022).

<sup>4</sup> Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009)*, <https://stacks.cdc.gov/view/cdc/34054>, (last visited Jan. 28, 2022).

<sup>5</sup> Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *National Firefighter Registry*, <https://www.cdc.gov/niosh/firefighters/registry.html> (last visited Jan. 28, 2022).

<sup>6</sup> Ch. 2019-21, Laws of Fla.

<sup>7</sup> See ch. 440, F.S.

<sup>8</sup> S. 112.191(1)(a), F.S.

benefits available to firefighters who are employed on a full-time basis. There are approximately 650 state-employed firefighters currently covered by the State Risk Management Trust Fund (SRMTF).<sup>9</sup>

### *Eligibility Requirements*

To be eligible, a firefighter must be diagnosed with one of the following types of cancer: bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.<sup>10</sup> Additionally, the firefighter:

- Must have been employed by his or her employer for at least 5 continuous years;
- Must not have used tobacco products for at least the 5 years preceding the cancer diagnosis; and
- Must not have been employed in any other position in the 5 years preceding the cancer diagnosis which is proven to create a higher risk for any cancer.<sup>11</sup>

### *Line-of-Duty Disability Retirement and Death Benefits*

Many firefighters are members of the Florida Retirement System (FRS), which provides retirement benefits to 980 participating employers, including all state and county government agencies, school boards, state universities and community colleges, as well as many cities and special districts.<sup>12</sup> Firefighters who are members of the FRS are included in a special risk class whose members receive enhanced benefits, due to the unique challenges and risks of their jobs.<sup>13</sup>

Municipalities and special fire districts that do not participate in the FRS offer retirement plans that are secured by the Firefighters' Pension Trust Fund (FPTF)<sup>14</sup>, which must meet minimum requirements established by the Division of Retirement of the Department of Management Services.<sup>15</sup>

When a firefighter diagnosed with cancer qualifies for the \$25,000 cash payment and health benefits, the employer must consider a firefighter's cancer diagnosis as an injury incurred in the line of duty.<sup>16</sup>

If the firefighter becomes totally and permanently disabled by cancer, the firefighter is entitled to a line-of-duty retirement,<sup>17</sup> as follows:

- Under the FRS, a line-of-duty disability retirement results in payment of 65 percent of the firefighter's average final compensation for the remainder of his or her life;<sup>18</sup>
- Under the FPTF, a line-of-duty disability retirement results in payment of at least 42 percent of the firefighters' average monthly compensation for the remainder of his or her life;<sup>19</sup> and

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<sup>9</sup> Florida Department of Financial Services (DFS), Agency Analysis of 2022 CS/House Bill 557, p. 1 (Feb. 7, 2022).

<sup>10</sup> S. 112.1816(1)(a), F.S.

<sup>11</sup> S. 112.1816(2), F.S.

<sup>12</sup> Department of Management Services, Division of Retirement, Florida Retirement System Pension Plan and other State Administered Systems, *Comprehensive Annual Financial Report FY 2019-2020*, p. 8, [Annual Reports / Publications / Retirement / Workforce Operations / Florida Department of Management Services - DMS \(myflorida.com\)](#) (last visited Jan. 28, 2022).

<sup>13</sup> S. 121.0515, F.S.

<sup>14</sup> S. 175.041, F.S.

<sup>15</sup> Ss. 175.021, and 175.351, F.S.; also see Department of Management Services, *Municipal Police and Fire Plans/Overview*, [Overview / Municipal Police and Fire Plans / Local Retirement Plans / Retirement / Workforce Operations / Florida Department of Management Services - DMS \(myflorida.com\)](#) (last visited Jan. 28, 2022).

<sup>16</sup> S. 112.1816(2)(b), F.S.

<sup>17</sup> S. 112.1816(3), F.S.

<sup>18</sup> Department of Management Services, *supra* note 12, at 39. Under s. 121.091(4)(b), F.S., an employee is totally and permanently disabled if he or she cannot render useful and efficient service as an officer or employee.

<sup>19</sup> S. 175.191, F.S., states that an employee is totally and permanently disabled if he or she cannot render useful and efficient service as a firefighter and is likely to remain so disabled continuously and permanently.

- If the firefighter did not participate in a retirement plan, the employer must pay 42 percent of the firefighters' most recent annual salary, for life.<sup>20</sup>

If the firefighter dies due to cancer or the treatment of cancer, the firefighter's beneficiary is entitled to line-of-duty death benefits,<sup>21</sup> as follows:

- Under the FRS, a line-of-duty death benefit provides a lifetime monthly benefit equal to the firefighter's salary at death to the surviving spouse. If the spouse dies, the benefit is paid on behalf of the member's dependent children until the youngest reaches age 18, and the benefit may be extended until the youngest child reaches age 25 if the child is unmarried and a full-time student.<sup>22</sup>
- State law does not require a line-of-duty death benefit for the FPTF. However, if a firefighter with 10 years of service dies prior to retirement, the firefighter's beneficiary receives either early or normal retirement benefits for 10 years.<sup>23</sup>
- If the firefighter did not participate in a retirement plan, the employer must provide a death benefit of at least 42 percent of the firefighters' most recent annual salary to the beneficiary, for at least 10 years.<sup>24</sup>

Additionally, the firefighter's beneficiary is eligible for a death benefit of \$75,000.<sup>25</sup>

The employer is required to pay the costs of the special benefit package without increasing employee contributions to a retirement plan.<sup>26</sup>

### Workers' Compensation Benefits

A firefighter who declines the special benefit package may instead file a claim for workers' compensation benefits. Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment.

#### *The Employee Must Demonstrate Causation*

In addition to on-the-job injuries, employers may be required to pay compensation for lost wages or furnish benefits (such as medical care, medical devices, attendant care) if an occupational disease causes disablement, is due to the nature of the employee's occupation, and the employee contracted the disease during the course of his or her employment.<sup>27</sup> In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job presents a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show 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.<sup>28</sup>

Thus, under the workers' compensation system, a firefighter suffering from cancer must show a causal relationship between the diagnosis of cancer and his or her work as a firefighter to receive medical benefits and compensation for lost work time.

<sup>20</sup> S. 112.1816(3)(b), F.S.

<sup>21</sup> S. 112.1816(3)(a), F.S.

<sup>22</sup> Department of Management Services, *supra* note 12, at 39.

<sup>23</sup> S. 175.201, F.S.

<sup>24</sup> S. 112.1816(3)(b), F.S.

<sup>25</sup> S. 112.191(2)(a), F.S.

<sup>26</sup> S. 112.1816(5), F.S.

<sup>27</sup> Ss. 440.09 and 440.151, F.S.

<sup>28</sup> S. 440.151(2), F.S.

## Temporary Disability

Disability is defined as the incapacity to earn wages the employee was receiving at the time of injury.<sup>29</sup> It is a measure of the earning capacity that is lost as a result of a work-related injury.<sup>30</sup> Disability may be temporary or permanent, and partial or total.<sup>31</sup>

When an authorized doctor declares an injured employee to be temporarily but totally disabled, the employee is eligible for up to 260 weeks (five years) of disability benefits.<sup>32</sup>

Injured workers who earn less than the statewide average weekly wage<sup>33</sup> are paid two thirds of their average weekly salary, typically beginning on the eighth day after the employee loses time from work.<sup>34</sup> The minimum payment is \$20 per week and the maximum payment is 100 percent of the statewide average weekly wage; thus, payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.<sup>35</sup>

Temporary disability benefits end when the injured worker's doctor indicates that the employee can work in some capacity and the employee returns to work, or when the employee reaches the maximum medical improvement and the carrier has paid five years of benefits.<sup>36</sup>

## Total and Permanent Disability

When an employee is totally and permanently disabled after the date of maximum medical improvement, the employee who is not able to work in any job, for any employer, must be paid 66 2/3 percent of the employee's average weekly wage at the time of injury, or up to 100 percent of the statewide average weekly wage, until age 75, or until the end of the injured workers' life if the injury prevented the worker from working sufficient quarters to be eligible for Social Security disability.<sup>37</sup>

An order of compensation may require lifetime medical benefits for a catastrophic injury. Additionally, people who are disabled prior to age 65 are eligible for Medicare.<sup>38</sup> If a totally and permanently disabled worker receives Social Security disability benefits, the federal benefit may offset some or all of the benefits paid by the workers' compensation system.<sup>39</sup>

## Death Benefits

In the event that an injured worker dies within one year of an accident that causes injury or within five years of continuous disability, the employer must pay up to \$7,500 for funeral expenses and compensation up to \$150,000.<sup>40</sup>

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<sup>29</sup> S. 440.02(13), F.S.

<sup>30</sup> *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121 (1997).

<sup>31</sup> S. 440.15, F.S.

<sup>32</sup> S. 440.15(2)(a), F.S., limits disability benefits to 104 weeks (two years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (five years) be reinstated. See *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).

<sup>33</sup> S. 440.12(2), F.S., defines the "statewide average weekly wage" as the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.

<sup>34</sup> S. 440.14(1), F.S.

<sup>35</sup> S. 440.12(2), F.S.

<sup>36</sup> S. 440.15(3)(d), F.S.

<sup>37</sup> S. 440.15(1)(a) and (b), F.S.

<sup>38</sup> Department of Management Services, myBenefits, *Frequently Asked Questions-Retirees*, [https://www.mybenefits.myflorida.com/health/resources/faq\\_s/frequently\\_asked\\_questions\\_retirees](https://www.mybenefits.myflorida.com/health/resources/faq_s/frequently_asked_questions_retirees) (last visited Jan. 28, 2022).

<sup>39</sup> S. 440.15(1)(b) and (f), F.S.

<sup>40</sup> S. 440.16(1)(a)-(b), F.S., states that compensation is based on 50 percent of the statewide average weekly wage to the surviving spouse if there are no children, and 66 2/3 percent of the statewide average weekly wage if the injured worker had a surviving spouse and children.

The surviving spouse may also receive payment for up to 1,800 classroom hours at a college or career center, or 80 semester hours at a community college. If the deceased was a state employee, the spouse is entitled to a full tuition waiver at a state university or community college.<sup>41</sup>

In cases that involve a compensable occupational disease, death benefits are provided to surviving beneficiaries, if the employee demonstrates causation and sufficient exposure to a specific harmful substance shown to be present in the workplace, and the employee dies within 350 weeks (6.7 years) after the last exposure to the harmful substance.<sup>42</sup>

### *Statutory Presumptions*

Florida law includes several statutory presumptions that make a disability due to certain communicable diseases compensable under workers' compensation law, for first responders, unless the employer can prove that the disease was caused by a non-work related event or exposure. For firefighters, these laws include heart disease, hypertension, hepatitis, meningococcal meningitis, and tuberculosis.<sup>43</sup>

Workers' compensation law does not include any statutory presumption for firefighters who are diagnosed with cancer.

### Florida-certified Fire Investigators

Fire investigators determine the origin and cause of fires and explosions, preserve evidence and ensure that the chain of custody is maintained, and create a record of the investigation. They also support law enforcement in the detection and apprehension of persons suspected of arson and explosive-related crimes.

According to experts in the field, the best evidence of the cause and origin of a fire may be found after a fire has been suppressed and before the process of "overhaul" begins. Overhaul involves detecting and extinguishing hidden fires or hot spots that may rekindle. Thus, fire investigators, like firefighters, face significant exposure to hazardous vapors, gases, and dangerous chemicals and carcinogens that contribute to chronic health conditions, including cancer.<sup>44</sup> Respiratory protective equipment is crucial to first responders working in and around a fire scene.<sup>45</sup>

The Florida State Fire College provides training for firefighters, fire inspectors, fire investigators, and a variety of administrative positions within the fire service.<sup>46</sup> Certified firefighters, certified law enforcement officers, law enforcement crime scene technicians, and certified fire safety inspectors who have fire investigation responsibilities may become certified fire investigators by completing a 360-hour certification program and passing a certification exam.<sup>47</sup> The program includes coursework on fire chemistry, fire origin and cause, fire protection systems, building construction, latent investigation, arson investigation, post blast investigation, and legal issues for fire investigators.<sup>48</sup>

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<sup>41</sup> S. 440.16(1)(c), F.S.

<sup>42</sup> S. 440.151(1)(a), F.S.

<sup>43</sup> Ss. 112.18, 112.181 and 175.231, F.S.

<sup>44</sup> International Association of Arson Investigators, Inc., *Fire Investigator Health and Safety Best Practices*, May 4, 2020, [FireInvestigatorHealthSafetyBestPracticesSecond.pdf](#), (last visited Jan. 28, 2022); and FireRescue1, *It's in the smoke: cancer-causing compounds and contaminates*, August 31, 2018, <https://www.firerescue1.com/fire-products/turnoutgear/articles/its-in-the-smoke-cancer-causing-compounds-and-contaminates-oNwVfDIzBpJIUZMr/> (last visited Jan. 28, 2022).

<sup>45</sup> ScienceDirect, *The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters*, September 2018, at 352-355, [The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters - ScienceDirect](#) (last visited Jan. 28, 2022).

<sup>46</sup> Department of Financial Services, Division of State Fire Marshal, *Certification and Testing*, [www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm](http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm) (last visited Jan. 28, 2022).

<sup>47</sup> Department of Financial Services, Division of State Fire Marshal, Bureau of Fire Standards & Training, *Fire Investigation Certification*, <https://www.myfloridacfo.com/division/sfm/bfst/Standards/FireInvestigator.pdf> (last visited Jan. 28, 2022).

<sup>48</sup> R. 69A-37.065(3), F.A.C.

Since 2005, the Florida State Fire College has certified 1,740 fire investigators; 947 of these persons also hold a firefighter certification.<sup>49</sup> The number of certified investigators working as full-time fire investigators for state and local governments is not known.

The State Fire Marshal's Division of Investigative and Forensic Services, Bureau of Fire and Arson Investigation employs 104 fire investigators and 86 of these employees are either Florida-certified or in the process of becoming certified. These fire investigators respond to fire scenes throughout the state, on the day of a fire or within three days of a fire, and spend an average of three hours on site for each investigation.<sup>50</sup> They handled an average of 39 fires per fire investigator in 2019, and 33 fires per investigator in 2020.<sup>51</sup>

The State Fire Marshal conducts investigations when:

- A local agency does not have an organized fire department or arson investigators within its law enforcement agency;
- An initial investigation gives reason to believe a fire or explosion was the result of an intentional or reckless act, or the cause of a fire or explosion is not readily determined by the initial investigation;
- A firefighter is injured or killed in the line of duty;
- A civilian is injured or killed by a fire or explosion;
- The cost of a fire or explosion exceeds \$1 million; or
- A fire or explosion may be due to the failure of a fire suppression or detection device.<sup>52</sup>

According to the U.S. Fire Administration, firefighters in Florida spent about 1.8 percent of their time fighting fires, and 73.2 percent of their time responding to requests for emergency medical services.<sup>53</sup> Thus, fire investigators employed by the State Fire Marshal likely have as much exposure to cancer-causing carcinogens as the 19,000 firefighters who respond to the scenes of active fires in Florida.<sup>54</sup>

According to the Department of Management Services, which oversees the FRS, some employers that participate in FRS consider fire investigators to be members of the special risk class, while others place fire investigators in the regular class.<sup>55</sup> Employees in the special risk class receive enhanced benefits. For example, a line-of-duty disability retirement benefit for a member of the special risk class is 65 percent of the employee's monthly salary, while an employee in the regular class receives 42 percent of his or her monthly salary.<sup>56</sup> If a fire investigator placed in the regular class wishes to receive the increased benefits of the special risk class, he or she must complete an application and his or her employer must certify that the fire inspectors' duties include on-the-scene firefighting, fire prevention, or fire training, or the supervision of persons who have such responsibilities.<sup>57</sup>

A fire investigator who is diagnosed with cancer may file a petition for workers' compensation benefits. If the fire investigator's cancer is compensable as an occupational disease, the fire investigator is eligible for temporary disability benefits described above, based on his or her level of impairment, and may be deemed totally and permanently disabled if he or she is unable to work in any job for any employer.

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<sup>49</sup> DFS, *supra* note 9, at 2.

<sup>50</sup> DFS, *supra* note 9, at 1.

<sup>51</sup> Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 / SB 838 (Jan. 11, 2021).

<sup>52</sup> S. 633.112, F.S., and R. 69D-4.001, F.A.C.

<sup>53</sup> U.S. Fire Administration, *Florida Fire Loss and Fire Department Profile*, <https://www.usfa.fema.gov/data/statistics/states/florida.html> (last visited Jan. 28, 2022). The U.S. Fire Administration is an entity of the U.S. Department of Homeland Security's Federal Emergency Management Agency.

<sup>54</sup> U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020, Firefighters, <https://www.bls.gov/oes/current/oes332011.htm> (last visited Jan. 28, 2022).

<sup>55</sup> Email from Sam Kerce, Deputy Director of Legislative Affairs, Department of Management Services, RE: Qualifying for Special Risk (Feb. 1, 2022).

<sup>56</sup> S. 121.091(4)(f), F.S.

<sup>57</sup> S. 121.0515(3)(b), F.S., and R. 60S-1.005, F.A.C.

A fire investigator who is disabled by cancer, but denied workers' compensation benefits, may be eligible for a general disability retirement rather than a line-of-duty retirement, so long as the fire investigator has completed eight years of service as a member of the FRS or 10 years of service as a member of the FPTF. The fire investigator would be paid 25 percent of his or her average monthly compensation.<sup>58</sup>

## Effect of the Bill

The bill amends the definition of "firefighter" to make full-time fire investigators certified by the Florida State Fire College eligible for the special benefit package provided by s. 112.1816, F.S.

The bill also expands the duties of firefighters to include the investigation of fires and explosives in addition to the prevention and extinguishing of fires, the protection of life and property, and the enforcement of fire prevention codes and laws.

The special benefit package would be available to any full-time firefighter or certified fire investigator who has been employed by the state or a local government, including special fire districts, for at least five continuous years and is diagnosed with one of 21 types of cancer discussed above. Additionally, the fire investigator must not have used tobacco products and cannot have been employed in any other position which is proven to create a high risk of cancer during the five years prior to diagnosis.

A certified fire investigator who qualifies for the special benefit package would be presumed to have developed cancer in the course of employment, due to the exposures of the job, and be eligible for a line-of-duty disability retirement (discussed above) if he or she became unable to work as a firefighter.

If a certified fire investigator qualifies for the special benefit package and dies due to cancer or the treatment of cancer, his or her beneficiaries would be eligible for line-of-duty death benefits (discussed above). The fire investigator's beneficiary would also be eligible for a \$75,000 death benefit paid by the employer or the employer's liability insurance carrier.

The cost of the benefits would be paid by the employer<sup>59</sup>; the employer would not be permitted to increase employee contributions required to participate in a retirement plan or system to pay for the enhanced retirement benefits.<sup>60</sup>

## B. SECTION DIRECTORY:

Section 1. Amends s. 112.1816(1)(c), F.S., relating to firefighters; cancer diagnosis.

Section 2. Provides a statement of important state interest.

Section 3. Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None

#### 2. Expenditures:

State agencies that employ certified fire investigators would pay the full costs of the enhanced benefits and may not raise employee contributions to an employer-sponsored retirement plan to do so.<sup>61</sup> Costs include the \$25,000 payment; continuation of health insurance for 10 years after the

<sup>58</sup> Ss. 121.091(4)(f) and 175.191(1), F.S.

<sup>59</sup> S. 112.1816(5)(a) and (c), F.S.

<sup>60</sup> S. 112.1816(5)(c), F.S.

<sup>61</sup> *Id.*



firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The state employing agency would also pay a \$75,000 survivor's benefit if a fire investigator is eligible for the benefits in s. 112.1816, F.S., and dies from cancer.

Since s. 112.1816, F.S., went into effect on July 1, 2019, there have been three cancer claims with payments totaling \$66,308 from the State Risk Management Trust Fund (SRMTF) reported by state agencies that employ firefighters.<sup>62</sup> Two claimants received the \$25,000 cash payment and compensation for medical benefits, and one claim was settled for \$15,000.<sup>63</sup> The Department of Financial Services (DFS) currently employs 104 fire investigators within the Division of Investigative and Forensic Services, 86 of which are Florida-certified fire investigators or in the process of becoming certified.<sup>64</sup> The bill has an indeterminate negative fiscal impact on the SRMTF; however, the impact is likely significant.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

Local governments that employ certified fire investigators, including special fire districts, are responsible for the costs of the special benefits package and may not raise employee contributions to an employer-sponsored retirement plan to do so.<sup>65</sup> Costs include the \$25,000 payment; continuation of health insurance for 10 years after the firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The local government employer also would pay a \$75,000 survivor's benefit if a fire investigator is eligible for the benefits in s. 112.1816, F.S., and dies from cancer.

The total number of fire investigators employed by local governments or special fire districts is unknown. Since 2005, the State Fire College has certified 1,740 individuals as a fire investigator. Of those 1,740 individuals, 947 individuals also hold firefighter certifications covered by the current definition of firefighter in s. 112.1816, F.S.<sup>66</sup> Under the bill, the remaining 793 certified fire investigators would potentially be eligible for the special benefits package. Therefore, the bill has an indeterminate, but likely significant, fiscal impact on local governments.

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

None.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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<sup>62</sup> DFS, *supra* note 9, at 1.

<sup>63</sup> Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 (Dec. 22, 2021).

<sup>64</sup> DFS, *supra* note 9, at 1.

<sup>65</sup> S. 112.1816(5), F.S.

<sup>66</sup> DFS, *supra* note 9, at 2.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires cities and counties and special districts to spend money or take an action that requires the expenditure of money; however, an exemption may apply as the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements

Article X, s. 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

B. RULE-MAKING AUTHORITY:

The bill does not alter existing rulemaking authority or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that fire investigators have separate responsibilities from those of other firefighters by moving the language "the investigation of fires and explosives" to the end of the paragraph.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.