

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/SB 1744

SPONSOR: Banking and Insurance Committee and Senator Alexander and others

SUBJECT: Workers' Compensation for First Responders

DATE: April 22, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Effective October 1, 2003, legislation was enacted that provided significant reforms to the workers' compensation system that included changes related to benefits for injured workers, attorney's fees, and the affordability and availability of coverage.<sup>1</sup> The committee substitute establishes lower compensability standards and increases benefits for a class of state and local governmental employees and volunteers defined as "first responders." The bill defines the term, "first responder," to include a law enforcement officer, a firefighter, an emergency medical technician or paramedic, and a volunteer firefighter. The bill provides the following changes in workers' compensation benefits and compensability standards for first responders only:

- lowers compensability standards for toxic substance exposure, occupational disease, repetitive exposure, and mental or nervous injury;
- authorizes payment for medical benefits in cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment;
- eliminates the current six-month limitation on temporary total disability benefits for compensable mental or nervous injuries after a first responder reaches maximum medical improvement and the 1 percent limitation for permanent impairment benefits for psychiatric impairment;
- provides that any adverse result or complication caused by a smallpox vaccination is deemed to be an injury arising out of work performed in the course and scope of employment; and
- extends the payment of permanent total disability (PT) supplemental benefits beyond age 62 for first responders that were employed by a public employer that did not participate

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<sup>1</sup> Ch. 2003-412, L.O.F.

in the social security program whether or not the employer provided an alternative retirement program. Currently, PT benefits and PT supplemental benefits generally end at age 75 and 62, respectively.

In addition, the bill increases attorney's fees for cases involving a first responder with alleged exposure to toxic substances or occupational diseases by allowing the judges of compensation claims to award hourly fees, based in addition to the contingency fee schedule based on certain factors. Currently, the judges of compensation claims may award an attorney's fee based on the contingency fee schedule, or as an alternative to the contingency fee for medical-only claims, an attorney's fee not to exceed \$1,500 once per accident, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney.

The National Council on Compensation Insurers estimates that costs for first responder classes would increase approximately 5.7 percent (\$10.5 million) if this proposal were enacted in its current form. Individual self-insureds do not report data to NCCI and are therefore not included in this estimate. As a result, additional costs are expected from individual self-insureds that employ first responders.

This bill creates the following section of the Florida Statutes: 112.1815.

## **II. Present Situation:**

### **Permanent Total Disability Benefits**

In order to be eligible for permanent total disability benefits, an employee must either have a catastrophic injury or be unable to engage uninterruptedly in at least sedentary employment under the provisions of s. 440.15(1), F.S. Permanent total disability is determined at the time of maximum medical improvement, based upon reasonable medical probability that no further medical improvement can reasonably be anticipated. The benefit is calculated at 66 2/3 percent of the average weekly wage, subject to the maximum compensation rate. In addition, an employee will generally receive an annual supplemental income benefit equal to 3 percent per year of the compensation payment, multiplied by the number of calendar years since the date of the injury, until age 62.

Generally, permanent total disability benefits are payable until the employee reaches age 75. If the accident occurs on or after the employee reaches age 70, benefits are payable during the continuance of permanent total disability, not to exceed 5 years following the determination of permanent total disability. An employee is eligible to receive permanent total disability benefits after age 75, and to receive the annual 3 percent permanent total disability supplementary benefit after age 62, if the employee is not eligible for social security benefits due to the compensable injury preventing the employee from working sufficient quarters to be eligible for such benefits.<sup>2</sup>

An indeterminate number of municipalities and special districts do not participate in the social security program. However, the federal Omnibus Budget Reconciliation Act of 1990 (Public

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<sup>2</sup> Section 440.15, F.S.

Law No.101-508) requires social security coverage for state and local employees who are not covered by a state voluntary agreement that provides social security coverage or a retirement system. The state, as an employer, and the counties are mandatory participants in the Florida Retirement System (FRS) and participate in the social security program through a state voluntary agreement. Municipalities and special districts may participate in the FRS and thereby participate in the social security system, or establish their own retirement system that may participate in the social security system.

### **Compensability for Injuries**

Section 440.09(1), F.S., requires that 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. An injury or disease caused by a toxic substance requires clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee. Both causation and sufficient exposure to support causation must be proven by clear and convincing evidence in cases involving occupational disease or repetitive exposure.

Courts have held that a higher standard of proof applies for occupational disease and exposure cases than other types of claims. Causation for exposure and occupational disease claims must be proven by clear evidence; a preponderance of the evidence is not enough. The District Court of Appeal noted:

*In cases involving diseases or physical defects of an employee as distinguished from external occurrences to an employee such as an automobile accident claimant must prove a causal connection other than by merely showing that it is logical that the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment. There must be some clear evidence rather than speculation or conjecture establishing the causal connection between the claimant's injury and her employment.<sup>3</sup>*

Prior to the enactment of Senate Bill 50-A, a mental or nervous injury due to stress, fright, or excitement only, did not qualify as an accidental injury and was not compensable and the law also required that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence.<sup>4</sup> Florida case law determined that a mental or nervous injury, even with a physical injury or accident, was not compensable unless the physical injury was the causal factor.<sup>5</sup> The Florida Supreme Court stated:

*For a mental or nervous injury to be compensable in Florida there must have been a physical injury. Otherwise, the disability would have been caused only by a mental stimulus, and must be denied coverage under the statutory exclusion. A mere touching cannot suffice as a physical injury.<sup>6</sup>*

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<sup>3</sup> *Harris v. Joseph's of Greater Miami*, 122 So.2d 561 (Fla. 1960)

<sup>4</sup> Section 440.02(1), F.S.

<sup>5</sup> *City of Holmes Beach v. Grace*, 598 So.2d 71 (Fla. 1989).

<sup>6</sup> *Ibid.*

Subsequently, the Florida First District Court of Appeal held that eligibility for compensation for psychiatric injury resulting from compensable work-related physical injury required a finding by clear and convincing evidence that the mental or nervous injury was directly linked to the initial injury, not that the physical injury was the major contributing cause of the psychiatric injury.<sup>7</sup>

The 2003 legislation continued the mental nervous injury exclusions and the clear and convincing evidence standard noted above and codified case law that prohibited the payment of benefits for mental or nervous injuries without an accompanying physical injury; however, the law also provides that the physical injury must require medical treatment.<sup>8</sup> Before the 2003 legislative changes, case law provided that the lack of medical treatment was relevant to whether or not a sufficient injury had been sustained. Senate Bill 50-A required the compensable physical injury be the major contributing cause of the mental or nervous injury.<sup>9</sup> The act also provides that a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable. It limited 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 for the physical injury. In context, this six-month limitation is understood to apply to the temporary disability benefits payable under s. 440.15, F.S., but not to medical benefits payable under s. 440.13, F.S.

### ***Smallpox Vaccinations***

According to the Florida Department of Health, 14 out of 3,942 people vaccinated for smallpox in Florida have had adverse reactions to the vaccination. Some contend that the law is not clear as to whether an adverse reaction to a smallpox vaccine is compensable under workers’ compensation. Section 440.09, F.S., provides that an employer must pay compensation or furnish under ch. 440, F.S., if the employee suffers an accident compensable injury or death arising out of work performed in the scope and course of employment. The law does not address smallpox vaccinations.

In 2003, Congress created the Smallpox Vaccine Injury Compensation Program.<sup>10</sup> This program compensates law enforcement, firefighters, emergency medical personnel, and other public safety personnel for medical benefits, death benefits, and lost wages due to an adverse reaction to a smallpox vaccination. In order to be compensated under the program, these employees must volunteer and be selected to serve as a member of a smallpox emergency response plan prior to an outbreak of smallpox. The program also provides medical, death, and lost-wage benefits to family members or others in contact with the vaccinated employee who sustains a medical injury from exposure to the smallpox virus through physical contact with the vaccinated employee. However, any payments under the program are secondary to payments made or due from health insurance, workers’ compensation, or any other entity.

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<sup>7</sup> *Cromartie v. City of St. Petersburg*, 840 So.2d 372 (Fla. 1st DCA 2003).

<sup>8</sup> Section 440.093, F.S.

<sup>9</sup> *Ibid.*

<sup>10</sup> Public Law 108-20, “The Smallpox Emergency Personnel Protection Act of 2003”

### *Attorney's Fees*

The 2003 legislation continued the use of the existing contingency fee schedule in awarding attorney's fees. The fee for benefits secured are limited to 20 percent of the first \$5,000 of benefits secured, 15 percent of the next \$5,000 of benefits secured, 10 percent of the remaining amount of benefits secured to be provided during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years. Except for cases involving medical-only claims, the legislation eliminated the discretionary hourly fees. As an alternative to the contingency fee for medical-only claims, the judge of compensation claims may approve an attorney's fee not to exceed \$1,500 once per accident, based on a maximum hourly rate of \$150 per hour, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney.

The attorney fee changes, provided in Senate Bill 50-A, have generated concerns regarding the ability of an injured worker to obtain legal representation and access to courts. Opponents contend, particularly for medical-only claims, that the contingency fees authorized under the fee schedule or, as an alternative, the hourly fee of \$150 per hour, or up to \$1,500 per accident, will not adequately compensate them for their time, thereby discouraging them from litigating smaller claims. Proponents of the fee change contend that the \$1,500 fee is a reasonable financial incentive for litigating smaller medical-only claims and that the contingency fee schedule allows for a greater amount for larger medical-only claims (exceeding \$8,333).

In response to a recent request by committee staff, the Office of the Judges of Compensation Claims provided attorney's fee data associated with medical-only claims. A review of the 1,815 cases having medical only claims with accidents dated after October 1, 2003 reveals that 598 of those cases had attorneys' fees greater than \$1,500. Of these, the largest fee was \$15,750 and the average fee was \$2,503. The Office of the Judges of Compensation Claims has also indicated that the percentage of unrepresented clients has declined from 2.96 per cent in 2002 to 2.78 percent in 2004.

Some claimant attorneys argue that by only applying the fee cap to the claimant's attorney, and not the defense attorney, it places the employee at a competitive disadvantage in litigating the claim. In justifying such limits, the courts have relied on the legitimacy of the legislature's objective of protecting the injured worker's interest and the rationality of regulating only workers' attorneys as a reasonable means of furthering this objective. The prohibition on the claimant's attorney collecting a fee, unless approved by the court, was upheld on the basis that the statute serves a legitimate state interest in affording a worker necessary minimum living funds.<sup>11</sup>

In response to a request by committee staff, the Division of Risk Management (division) of the Department of Financial Services provided the following information concerning litigation involving toxic substance, repetitive trauma, or occupational disease compensability for law enforcement officers, forest firefighters, and emergency medical technicians. The reports looked at five years of workers compensation claims, with dates of accident from January 1, 2000 through December 31, 2004. According to the division, of the three classes of employees

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<sup>11</sup> *Samaha v. State*, 389 So.2d 639 (Fla. 1980).

affected by this bill, the state primarily employs law enforcement officers. The division was unaware of any state employee classified as an emergency medical technician. As to firefighters, as defined in s. 663.30, the state has a limited number within the Division of State Fire Marshall of the Department of Financial Services. The division provided the following information:

<b>2000-2004 Division of Risk Management Claims Data</b>	
Average number of claims filed per year (toxic substance, repetitive trauma, or occupational disease) by a law enforcement, firefighter, or emergency medical technician employee.	103
Average amount of claim paid per year on this group of claims	\$209,418
Average defense attorney's fee & cost paid per year on this group of claims	\$10,850
Average plaintiff attorney fees & cost paid per year on this group of claims	\$8,836

**III. Effect of Proposed Changes:**

**Section 1** creates s. 112.1815, F.S., relating to first responders, to define a “first responder” to mean a law enforcement officer, as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., an emergency medical technician or paramedic, as defined in s. 401.23, F.S., or a volunteer firefighter engaged by a state or local government. This definition would appear to include first responders employed or engaged by the state, a county, municipality, or special district.

For purposes of determining benefits of the section relating to employment-related accidents and injuries for a first responder the bill provides:

- An injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of evidence establishing that exposure to the specific substance to which the first responder was exposed can cause the injury or disease sustained by the employee. Currently, ch. 440, F.S., requires, for purposes of workers’ compensation compensability, such evidence be proven by clear and convincing standard for cases involving occupational disease or repetitive exposure. A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.<sup>12</sup> Currently in cases involving these types of claims, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.
- Any adverse result or complication caused by a smallpox vaccination of a first responder would be considered an injury by accident arising out of work performed in the course and the scope of employment. Currently, ch. 440, F.S., does not specifically address compensability for adverse results or complications related to smallpox vaccinations.

<sup>12</sup> Black’s Law Dictionary, 6<sup>th</sup> edition. 1991 West Publishing.

- The bill would allow a first responder to receive compensability for mental or nervous injuries without an accompanying physical injury requiring medical treatment. The bill would continue to require that a mental or nervous injury and occurring as a manifestation of a compensable injury would to be proven by clear and convincing evidence. The section provides that a first responder would be entitled to the payment of medical benefits for mental or nervous injuries even if the mental or physical injury were not accompanied by a physical injury. For a first responder, compensability for indemnity benefits would not be made unless a physical injury accompanied the mental or nervous injury. The bill eliminates the current six-month limitation on temporary total disability benefits for compensable mental or nervous injuries after a first responder reaches maximum medical improvement and the 1 percent limitation for permanent impairment benefits for psychiatric impairment.

Under current law, the section prohibits the payment of benefits for mental or nervous injuries without an accompanying physical injury; requires compensability to be demonstrated by clear and convincing evidence, and provides that the physical injury must require medical treatment.<sup>13</sup> The law also requires that the compensable physical injury be the major contributing cause of the mental or nervous injury.<sup>14</sup> A physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable. The duration of “temporary benefits” for a compensable mental or nervous injury is limited to no more than six months after the employee reaches maximum medical improvement for the physical injury. This six-month limitation is understood to apply to the temporary disability benefits payable under s. 440.15, F.S., but not to medical benefits payable under s. 440.13, F.S.

- The bill increases certain permanent total disability (PT) benefits for first responders by allowing a first responder to continue to receive permanent total disability supplemental benefits beyond age 62, if the employer does not participate in the social security program. Currently, permanent total disability supplemental benefits cease at 62, unless the employee is not eligible for social security because the compensable injury prevented the employee from working sufficient quarters to be eligible for such benefits. The permanent total supplemental benefits are a cost-of-living benefit that is equal to 3 percent of the employee’s compensation rate multiplied by the number of calendar years since the date of the injury. A public employer may not participate in the social security program; however, federal law requires the employer to provide an alternative retirement plan.

This section of the bill does not specifically amend the provision in subsection (1) to extend the permanent total disability benefit beyond age 75. It may have been the intent to extend PT benefits beyond age 75 for first responders if their employer did not participate in the social security program and regardless of whether or not the employer provided an alternative retirement program.

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<sup>13</sup> Section 440.093, F.S.

<sup>14</sup> Ibid.

- In cases involving occupational diseases, both causation and sufficient exposure to a specific substance must be shown to be present in the workplace to support causation and must be proven by a preponderance of evidence. Under current law, s. 440.09, F.S. provides that in such cases both causation and sufficient exposure to a specific harmful substance known to be present in the workplace to support causation be proven by clear and convincing evidence. Currently, case law generally requires that the claimant must prove a causal connection other than by merely showing that it is logical that the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment. This change in the law would appear to lower the standard for causation to a preponderance of evidence.

Provisions relating to attorney's fees for first responders involved in occupational or toxic exposure claims are revised to allow an attorney to receive hourly fees in addition to the statutory fee schedule for lost-time cases as well as medical-only claims, if the judge of compensation claims determines additional fees are appropriate, given certain factors. Currently, the law provides for the use of a contingency fee schedule in awarding attorney's fees. The fee for benefits secured are limited to 20 percent of the first \$5,000 of benefits secured, and 15 percent of the next \$5,000 of benefits secured, 10 percent of the remaining amount of benefits secured to be provided during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years. As an alternative to the contingency fee for cases involving medical-only claims, the judge of compensation claims may approve an attorney's fee not to exceed \$1,500 once per accident, based on a maximum hourly rate of \$150 per hour, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney.

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

**Section 3** provides that this act will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Inasmuch as this bill requires local governments to incur expenses, i.e., to pay additional workers' compensation benefits, the bill may fall within the purview of Art. VII, Section 18 of the Florida Constitution, which provides that cities and counties are not bound by general laws requiring to spend funds or to take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.



**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Permanent total disability supplemental benefits for first responders that were employed by a state or local government unit that did not participate in the social security program would be extended beyond age 62, regardless of whether their public employer provided an alternative retirement program. Under current law, generally permanent total disability benefits cease at age 75 and supplemental permanent total disability benefits end at age 62.

By lowering certain compensability standards for first responders, it is expected that first responders would likely prevail more often in those types of claims against their employers.

Attorneys representing first responders in cases involving alleged exposure to toxic substances or occupational disease claims would benefit from the lower compensability standards for litigating those claims and the increased potential attorney's fees for these lost-time cases as well as medical only cases. The impact of the increased attorney's fees on the first responders' ultimate benefits is indeterminate at this time.

Any additional costs of funding workers' compensation coverage for state and local governments could be ultimately passed through to taxpayers.

**C. Government Sector Impact:****National Council on Compensation Insurers, Inc. (NCCI) Cost Analysis of the Bill For Public Employers That Are Insured**

The NCCI estimates that costs for first responder classes would increase approximately 5.7 percent (\$10.5 million) if this proposal were enacted in its current form. *Individual self-insureds do not report data to NCCI and are therefore not included in this estimate. As a result, additional costs are expected from individual self-insureds that employ first responders. This includes a number of major governmental agencies across the state.*

**Summary of Proposal**

The committee substitute creates s. 112.1815, F.S. This new section defines "first responder" and in part reverses the application to first responder workers of certain sections of Senate Bill 50A, which was enacted in October 2003. For first responder workers' compensation claims, this proposal loosens compensability standards, pays basic and supplemental permanent total benefits for life in the absence of social security, leaves the attorney fees for first responder claims subject to the determination by the

judge of compensation claims, and removes the limitation of 1 percent on psychiatric impairments.

### **Actuarial Analysis of Proposal**

First responders are defined as law enforcement officers, firefighters (including volunteers), and emergency medical technicians employed by state or local government. The classification codes that apply to these professionals are 7720, 7704, 7370 and 7380. Based on the premium and losses reported in NCCI's unit statistical plan data, these class codes make up approximately 5 percent of the insurance company and self-insured group data of the Florida workers compensation system. Individual self-insureds that employ first responders and do not report data to NCCI are not included in this estimate. As a result, additional costs would be expected from these individual self-insureds, including a number of major governmental agencies across the state.

### *Compensability Standards*

This proposal would allow for the compensation of complications from small pox inoculation and would reverse the application to first responders of some provisions of Senate Bill 50A currently in effect, including:

- Clear and convincing evidence is needed to prove causation of disease caused by toxic substance or occupational disease.
- Mental or nervous injury without accompanying physical injury requiring medical treatment is not compensable. The physical injury must be the major contributing cause of the mental or nervous injury.

Loosening compensability is likely to add claims. Depending on judicial interpretation, compensability of any mental injury 'occurring as a manifestation of an employment' may not only allow compensation of first responders traumatized by the suffering they've seen in the course of their employment, but may allow compensation as a result of the stress from routine activities, interactions and employment decisions. In order to estimate the additional costs, we reversed the savings attributed to tightened compensability standards from NCCI's pricing analysis of Senate Bill 50A. The NCCI estimates that the combined impact of the above provisions may increase the number of compensable claims for first responder classes by 1 percent. Any additional impact will be reflected in subsequent data that is collected and used in future rate filings.

### *Permanent Total Supplemental Benefits*

This continues the payment of basic and supplemental benefits for life for a first responder's permanent total claim if the first responder's employer does not participate in the social security program.

Using life mortality tables and annuity calculations, NCCI estimates that benefits would increase 52 percent on permanent total (PT) claims. Since PT represents approximately

5.4 percent of costs, the expected impact in cases where the employer does not participate in the social security program would be an increase of 2.8 percent.

#### *Benefits for Mental or Nervous Injury*

This would reverse the application to first responders of some provisions of Senate Bill 50A currently in effect including:

- Temporary benefits for a compensable mental or nervous injury shall not be paid for more than 6 months after the date of maximum medical improvement for the injured employee's physical injuries and is included in the period of 104 weeks allowed for temporary benefits under Section 440.15, F.S.;
- The portion of the impairment rating associated with psychiatric impairment is limited to 1 percent.

The change in temporary benefits was included in the 1 percent impact associated with the change in compensability standards in Senate Bill 50A. In order to estimate the additional costs due to removal of the limit on psychiatric impairment, NCCI reversed the savings from NCCI's pricing analysis of Senate Bill 50A. The NCCI estimates that the removal of the limit on psychiatric impairments would increase costs for first responder classes by 1 percent.

#### *Attorney Fees*

This would reverse the application to first responders with alleged exposure to toxic substance or occupational disease of the following items currently in effect from Senate Bill 50A:

- Elimination of hourly fees for cases with alleged exposure to toxic substances or occupational disease; and
- Alternate fee of up to \$1,500 per accident for medical-only petitions.

In addition, this proposal would allow any reasonable attorney fees for those cases with alleged exposure to toxic substances or occupational diseases. This proposal could potentially allow attorney fees to exceed the pre-Senate Bill 50A provisions. A savings of 2.1 percent was filed in Senate Bill 50A due to the change in how attorney fees were determined, but the impact from this provision is expected to be less than a full reversal of the 2.1 percent because it would only apply to claims with alleged exposure to toxic substances or occupational disease. The cost of this provision is estimated to be between 0.5 percent and 1 percent on first responder classes.

#### *Conclusion*

The additional cost of the bill on first responder classes is estimated to be approximately 5.7 percent (\$10.5 million). The percent impact on overall loss costs in Florida is approximately +0.26 percent. *Individual self-insureds do not report data to NCCI and*

*are therefore not included in this estimate. As a result, additional costs are expected from individual self-insureds that employ first responders.*

### **Impact on State Risk Management**

The Division of Risk Management of the Department of Financial Services has indicated that the bill will have fiscal impact on the state. Since the state employs law enforcement officers and others who will fall under the scope of "first responders," the bill will have an impact on the state's workers' compensation insurance program.

The following fiscal impact of the bill by the Division of Risk Management is based on the bill as originally filed. Claim development for workers compensation claims takes approximately 4 years. Risk Management projects this bill will increase workers' compensation cost for our program by the fourth year by \$210,000 per year. The increase will be less in the first three years; but by the fourth year, and thereafter, the additional cost will be \$210,000. The division estimates the cost for fiscal year 2005-2006, \$50,000, for fiscal year 2006-2007, \$100,000, and for fiscal year 2008-2009, \$150,000. The increased cost will primarily be passed to state agencies with law enforcement employees.

### **Impact on Individual, Self-Insured Public Employers**

The bill would have an indeterminate fiscal impact on individual self-insured governmental units, as indicated by NCCI. The fiscal impact of extending permanent total disability supplemental benefits for first responders if a public employer that does not participate in the social security program employs them is indeterminate. Although a local government could be providing an alternative retirement program to the first responders, in lieu of the social security program, the bill would require the local government to continue to pay these permanent total supplemental benefits beyond age 62. The magnitude of fiscal impact is unknown.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

Presently, an employee is eligible to receive permanent total disability benefits after age 75, and to receive the annual 3 percent permanent total disability supplementary benefit after age 62, if the employee is not eligible for social security benefits due to the compensable injury preventing the employee from working sufficient quarters to be eligible for social security benefits.<sup>15</sup> This language provides a financial safety net for employees that are unable to receive social security benefits and rely on the workers' compensation benefits for their sole income. However, the bill provides that first responders would receive the permanent total disability supplemental benefits beyond age 62 even if their employer provides an alternative retirement program to social security.

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<sup>15</sup> Section 440.15, F.S.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

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