

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 426
 INTRODUCER: Senators Flores and Torres
 SUBJECT: Firefighters
 DATE: February 18, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	AP	_____

I. Summary:

SB 426 makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers' compensation coverage, a firefighter is entitled to cancer treatment, at no cost to the firefighter, and a one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Be employed full-time as a firefighter;
- Be employed by the state, university, city, county, port authority, special district, or fire control district;
- Have been employed by his or her employer for at least 5 continuous years;
- Not have used tobacco products for at least the preceding 5 years; and
- Have not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer.

The bill provides that the term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal 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, skin cancer, stomach cancer, testicular cancer, and thyroid cancer.

In addition, the employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if diagnosed with one of the 21 enumerated cancers and unable to render useful and effective service as a firefighter (rather than an employee). Moreover, the cancer or the

treatment of cancer is deemed to have occurred in the line of duty, resulting in higher disability and death benefits.

The fiscal impact on state and local governments employing firefighters is unknown at this time.

The bill takes effect July 1, 2019.

II. Present Situation:

Under Florida law, a firefighter may be eligible for benefits upon a showing by a preponderance of the evidence that exposure to a specific toxic substance, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee and that the exposure arose out of employment.¹

Cancer Studies regarding Firefighters

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.² This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health (NIOSH) initiated a study to evaluate the cancer risk of firefighters.³ The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The study spanned 4 years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010.

According to the 2010 study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine) and kidney.⁴

¹ Section 112.1815(2)(a), F.S.

² Occupation and Cancer, American Cancer Society, <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf>; 15 Jobs That Put You at a Higher Risk of Cancer, <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html/?a=viewall>; Cancer Facts and Figures, American Cancer Society, <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>; 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://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\).pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf).

³ See also, 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://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\)-508.pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015)-508.pdf).

⁴ *Supra*, note 2.

Workers' Compensation Insurance

Under ch. 440, F.S., relating to Workers' Compensation, the employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.⁵ The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.⁶

Compensation for permanent total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability.⁷ In addition, an employee will generally receive an annual supplemental income benefit equal to three percent per year of the compensation payment, multiplied by the number of calendar years since the date of the injury, until age 62.⁸

Compensation for temporary total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed 104 weeks. At the earlier of the 104th week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.⁹

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.¹⁰ The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which 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."¹¹

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 involving an occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.¹²

⁵ Section 440.09(1), F.S.

⁶ *Id.*

⁷ Section 440.15(1)(a), F.S.

⁸ Section 440.15(1)(f), F.S.

⁹ Section 440.15(2)(a), F.S.

¹⁰ Section 440.151(1)(a), F.S.

¹¹ Section 440.151(2), F.S.

¹² Section 440.09(1), F.S.

The Florida Retirement System (FRS)

General Background

The Florida Retirement System (FRS) was established in 1970.¹³ The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S.¹⁴ As of June 30, 2018, the FRS had 643,333 active members, 415,800 annuitants, 16,032 disabled retirees, and 33,432 active participants of the Deferred Retirement Option Program (DROP).¹⁵ As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.¹⁶

The membership of the FRS is divided into five membership classes:

- The Regular Class¹⁷ consists of 551,997 active members and 7,349 in renewed membership;
- The Special Risk Class¹⁸ includes 72,642 active members and 976 in renewed membership;
- The Special Risk Administrative Support Class¹⁹ has 87 active members;
- The Elected Officers' Class²⁰ has 2,050 active members and 120 in renewed membership; and
- The Senior Management Service Class²¹ has 7,881 active members and 207 in renewed membership.²²

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

¹³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf. (Last visited January 28, 2019.)

¹⁴ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

¹⁵ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 160.

¹⁶ *Id.* at 196.

¹⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

¹⁸ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

¹⁹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

²⁰ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

²¹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

²² All figures from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 163.

The Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

In originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.²³

A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members.

Disability Retirement Benefits for Special Risk Members of the FRS

There are two types of disability retirement available under the Florida Retirement System: regular disability, and in-the-line-of-duty disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work.²⁴ An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.²⁵

To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.²⁶ Under the FRS pension plan, the minimum benefit under regular disability retirement, regardless of class, is 25 percent of the employee's average final compensation.²⁷ In contrast, in-the-line-of-duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in-the-line-of-duty disability benefit of 65 percent of their average final compensation.²⁸ Members in all other classes are eligible to receive a minimum in-the-line-of-duty disability benefit of 42 percent of their average final compensation.²⁹

²³ Section 121.0515(1), F.S.

²⁴ Section 121.091(4)(b), F.S.

²⁵ Florida Retirement System Employer Handbook, Disability Retirement, ch. 10-2, available at https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Feb. 15, 2019).

²⁶ Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

²⁷ Section 121.091(4)(f), F.S.

²⁸ *Id.*

²⁹ *Id.*

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).³⁰ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.³¹

Death Benefits for Special Risk Members of the FRS

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.³² Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in-the-line-of-duty.³³ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-the-line-of-duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to 100 percent of the member's monthly salary at death.³⁴ If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.³⁵ If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.³⁶

For instances relating to in-the-line-of-duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.³⁷ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.³⁸

³⁰ Section 121.591(2), F.S.

³¹ Section 121.591(2)(g), F.S.

³² Section 121.091(7), F.S.

³³ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

³⁴ Section 121.091(7)(d) and (i), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

³⁵ *Id.*

³⁶ Section 121.091(7)(b) and (d), F.S.

³⁷ Section 121.091(7)(e), F.S.

³⁸ Section 121.091(7)(f), F.S.

Under the investment plan, the beneficiary may transfer the accumulations in the member's account to the pension fund and receive the death benefits allowed under the pension plan.³⁹

Retirement Plans for Municipalities and Special Districts

Chapters 175, F.S., provide funding mechanisms for municipal firefighters' and police officers' pension plans. The statute provides a uniform retirement system for firefighters and sets standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters participate in these plans. Two types of plans are governed by each of these chapters—charter plans and local law plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter.⁴⁰ Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351, F.S.

Presumptions and Burdens of Proof Relating to “in the line of duty” Disability and Death

Existing In the Line of Duty Presumptions for Firefighters

Section 112.18, F.S., provides a presumption applicable to any state, municipal, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer that any such employee qualifies for in the line of duty disability or death benefits if such disability or death is the result of tuberculosis, heart disease, or hypertension.

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

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

Successful passage of a pre-employment physical examination is required for these presumptions.

Burden of Proof for In-the-Line-of-Duty Benefits

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in-the-line-of-duty disability or death benefits. The member must show by competent evidence that the death or disability occurred in-the-line-of-duty in order to receive the higher benefits.⁴¹ If the employee or the employee's survivors cannot meet the burden of proof, the

³⁹ Section 121.591(4), F.S.

⁴⁰ Section 175.191, F.S.

⁴¹ Sections 121.091(4)(c) and (7)(d), F.S.

employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,⁴² it may be difficult for an employee to meet this burden.

Firefighter Death Benefits under s. 112.191, F.S.

Section 112.191(2)(a), F.S., grants a death benefit of \$50,000 to each firefighter, while engaged in the performance of his or her firefighter duties, accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life. Section 112.191(2)(i), F.S., directs the Division of the State Fire Marshal to adjust the death benefit annually based on the increase in the Consumer Price Index for All Urban Consumers. As of July 1, 2018, the amount of the benefit is \$69,801.94.⁴³

III. Effect of Proposed Changes:

The bill applies to a firefighter who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county and state fire prevention codes and laws pertaining to the prevention and control of fires. Based on this definition, the employers include the Department of Agriculture and Consumer Service (Forest Service), the Department of Financial Services (State Fire Marshal's Office), the Department of Children and Families, the Department of Military Affairs, state universities, cities, counties, port authorities, and fire control districts.

To be eligible for benefits under this bill, a firefighter must be diagnosed with one of 21 specific cancers enumerated in the bill. Upon a diagnosis of one of these cancers, a firefighter is eligible for two new benefits established in the bill - cancer treatment, at the employer's expense, and a \$25,000 cash payment. Under the bill, the firefighter also becomes eligible for disability and death benefits. Based on the conclusive presumption contained in the bill that the cancer or the resulting treatment of cancer occurred in the line of duty, and if the firefighter no longer is able to render useful and effective service as firefighter, the firefighter becomes eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan. Likewise, if the firefighter dies from the cancer or circumstances that arise from the cancer treatment, the firefighter's death is conclusively presumed to be in the line of duty, resulting in a higher death benefit for the firefighter's beneficiaries.

⁴² "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited February 16, 2019).

⁴³ Rule 69A-64.005, F.A.C.

Benefits in lieu of workers compensation benefits

The bill provides that, upon a diagnosis of cancer, a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, F.S., if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund, or a rider added to such policy. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer. The employer may timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

The benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.

Disability benefits

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter (rather than service as an officer or employee for the FRS) and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death. This will serve as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.

Death benefits

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at

least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

A firefighter who dies as a result of cancer or circumstances arising out of the treatment of cancer is considered to have died while engaged in the performance of his or her firefighter duties under s. 112.191(2)(a), F.S., and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.⁴⁴

Funding Firefighter Health Benefits

The bill requires the costs of purchasing the insurance policy or providing benefits through a self-funded system be borne solely by the employer that employs firefighters. The costs of the insurance policy or benefits provided through a self-funded system may not be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage which is funded partially or wholly by firefighters.

Firefighter protections

The bill directs the Division of State Fire Marshal within the Department of Financial services to adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

Other issues

The bill contains a legislative finding that determines and declares that this act fulfills an important state interest.

The bill takes effect July 1, 2019.

Other implications

Effective Service

Under current law, to be eligible for disability benefits under the FRS, the member must be prevented, by reason of a medically determinable physical or mental impairment, from "rendering useful and efficient service as an officer or an employee."⁴⁵ Under the bill, a member who is diagnosed with cancer becomes eligible for disability benefits if the member is "prevented from rendering useful and effective service as a firefighter" due to the diagnosis of cancer or circumstances that arise from the treatment of cancer. Even though a member is physically capable of performing services, a member may become eligible to receive disability benefits because the member is not be able to perform duties related to his or her preferred occupation (firefighter). No other members in the FRS are afforded this benefit.

⁴⁴ Section 112.191(2)(a), F.S., provides that a firefighter who is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life while engaged in the performance of his or her firefighter duties is entitled to a sum of \$50,000. However, such killing must not be the result of suicide and such bodily injury may not be intentionally self-inflicted.

⁴⁵ Section 121.091(4)(b), F.S.

Conclusive presumption of disability

In terms of the presumption of disability, the bill appears to create a conclusive presumption of disability. Under current law, the burden of proof is on the member to show that the medical condition occurred or became symptomatic during the time the member was employed by the FRS-participating employer, that the member was totally and permanently disabled at the time of termination from such employment, and for an in-line-of-duty disability, that the disability was caused by a job-related illness or accident which occurred while the member was in an employee/employer relationship with the FRS-participating employer.

Under the bill, the member must only show that the firefighter was diagnosed with one of the 21 cancers and was employed by an FRS-participating employer. Moreover, the employer has no opportunity to rebut the presumption that the illness was job-related or in-line-of-duty.

Funding of the benefits

Lines 114-122, as noted above, requires the costs of the benefits created by this act to be funded solely by the employer of firefighters. The costs cannot be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage that is funded partially or wholly by firefighters.

These restrictions would require the state and local employers to set up new health insurance programs because most public sector health insurance programs require employee premiums and copayments. Health insurance products typically shift financial burdens among the participants; particularly, healthy employees (including firefighters) pay premiums that ultimately subsidize the costs incurred by other less healthy employees (including firefighters) and dependents.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

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

The bill contains a finding that the bill fulfills an important state interest (section 2). The bill appears to apply to all persons similarly situated (those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, section 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.

Lines 82-100 of the bill increase benefits to firefighters participating in public sector retirement plans, including the Florida Retirement System and the various chapter 175 plans sponsored by Florida cities. A special study to determine the actuarial impact on the Florida Retirement System is necessary to determine the appropriate level of concurrent funding necessary to meet the constitutional requirements. Likewise, actuarial impact statements for the local government pension plans are required as well.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact on the state, universities, cities, counties, and special fire control districts is unknown at this time. However, these employers should anticipate incurring additional costs (a) to provide \$25,000 payment to each firefighter diagnosed with one of the 21 specific cancers enumerated in the bill; (b) for any cancer treatment undertaken by an eligible firefighter; (c) associated with potentially higher disability retirement benefits; (d) associated with potentially higher in-line-of-duty death benefits; and (e) associated with the adjusted \$50,000 death benefit granted by s. 112.191(2)(a), F.S.

VI. Technical Deficiencies:

Lines 61-63 directs the employer to provide cancer treatment within an employer-sponsored health plan. The provision also addresses the employer reimbursing the firefighter for out-of-pocket deductibles, copayments, and coinsurance incurred. Lines 114-122 prohibit the use of insurance programs that are partially or wholly funded by firefighters. Most employer-sponsored health plans require employee paid premiums and copayments or coinsurance. The two provisions appear to be inconsistent with each other.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.1816 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.