

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 838

INTRODUCER: Senators Wright and Polsky

SUBJECT: Fire Investigators

DATE: January 14, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 838 expands the definition of “firefighter” in s. 112.1816, F.S., related to cancer diagnoses for firefighters, to include “full-time, Florida-certified fire investigators. Upon diagnosis of one of the 21 specific cancers enumerated within s. 112.1816, F.S., the bill has the effect of making a fire investigator eligible for benefits under the statute. The benefits are an alternative to pursuing a workers’ compensation claim, and entitle an eligible firefighter to a one-time cash payout of \$25,000, upon the firefighter’s initial diagnosis of cancer, and cancer treatment with the employer reimbursing the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs related to the cancer treatment. Based on the conclusive presumption contained in the statute that the cancer or the resulting treatment of cancer occurred in-the-line-of duty, if a firefighter meets the retirement plan’s definition of totally and permanently disabled due to the cancer or circumstances that arise out of the treatment of cancer, the fire investigator is 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 death is conclusively presumed to be in-the-line-of-duty, resulting in a higher death benefit for the firefighter’s beneficiaries.

The Department of Financial Services currently employs 104 fire investigators within the Division of Investigative and Forensic Services, 86 of which are Florida-certified fire investigators or are in the process of becoming certified. These fire investigators respond to fire scenes throughout the State of Florida, supporting local law enforcement, and spend an average of three hours per investigation on-site. These on-site audits and investigations typically occur the same day of the fire or within three days of the fire. As a result, fire investigators sustain significant exposure to hazardous vapors, gases, and particles that are known to contribute to chronic health conditions, including cancer, as these dangerous chemicals and carcinogens remain after the fire.

The bill takes effect July 1, 2022.

## II. Present Situation:

### 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.<sup>1</sup> 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.<sup>2</sup> 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 four 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 nine 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.<sup>3</sup>

### Recent Florida Legislation

In 2019, the Legislature created s. 112.1816, F.S.,<sup>4</sup> to make 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 and 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 five continuous years;
- Not have used tobacco products for at least the preceding five years; and

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<sup>1</sup> Occupation and Cancer, American Cancer Society, available at <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, available at <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html?a=viewall>; Cancer Facts and Figures, American Cancer Society, available at <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>.

<sup>2</sup> See 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), available at [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).

<sup>3</sup> *Id.*

<sup>4</sup> Ch. 2019-21, Laws of Fla.

- Have not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer.

Under the statute, the term “cancer” includes 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.

The employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, co-payment, or coinsurance costs incurred due to the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if the firefighter is diagnosed with one of the 21 enumerated cancers and meets the retirement plan’s definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer. 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.

To cover the costs associated with changes to Florida Retirement System (FRS) benefits (disability retirement benefits and in-line-of-duty benefits), the statute provides adjustments to the employer-paid contribution rates for the Special Risk class and the Deferred Retirement Option Program (DROP) that fund the FRS’s normal costs and unfunded actuarial liability, and adjusts the percentage of funds allocated to provide in line of duty death benefits for investment plan members.

To date, three cancer claims have been submitted under the statute, totaling \$66,308 in payments.<sup>5</sup>

Section 112.1816, F.S., does not currently apply to full-time fire investigators.

### **Division of the State Fire Marshal**

State law on fire prevention and control designates the Chief Financial Officer as the State Fire Marshal, operating through the Division.<sup>6</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, trains, and certifies fire service personnel;
- Investigates the causes of fires;
- Enforces arson laws;
- Regulates the installation of fire equipment;
- Conducts firesafety inspections of state property;
- Develops firesafety standards;

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<sup>5</sup> Department of Financial Services, *Senate Bill 838 Agency Analysis* (November 19, 2021) (on file with the Senate Committee on Banking and Insurance).

<sup>6</sup> Section 633.104, F.S.

- Provides facilities for the analysis of fire debris; and
- Operates the Florida State Fire College.

The Division is comprised of two bureaus: the Bureau of Fire Prevention (BFP) and the Bureau of Fire Standards and Training (BFST).<sup>7</sup> The BFP conducts fire/life safety inspections and construction plans review on all state-owned buildings; regulates the fireworks and the fire sprinkler industries; inspects and licenses boilers; and certifies suppression industry workers.<sup>8</sup> The BFST approves firefighter training curricula; offers fire service training at the Florida State Fire College; and certifies that fire service members meet industry-based standards.<sup>9</sup>

### ***Florida State Fire College***

The Florida State Fire College, offers basic, intermediate, and advanced training and education courses, develops educational curricula to be used by other fire-rescue training agencies, and conducts research into new methods and technologies related to fire-rescue activities.<sup>10</sup> Course offerings fall into five general categories: academic, certification, certificate of competency, vocational, and non-credit.<sup>11</sup> The Fire Investigation is one such advanced training program.

### ***Fire Investigator Program***

The Fire Investigator Program is a voluntary, advanced training program administered by the Florida State Fire College and designed for certified firefighters, certified law enforcement officers, law enforcement crime scene technicians, and certified firesafety inspectors who have fire investigation responsibilities.<sup>12</sup>

The program offers Fire Investigator I and II Certifications of Competency. In the first, the individual must complete at least 360 hours of training, including courses in 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>13</sup>

The Level II Certification of Competency is available to an individual holding a Fire Investigator II Certificate of Competency if the individual is also a certified firefighter, certified law enforcement officer, law enforcement crime scene technician, or certified sworn or non-sworn firesafety inspector, and has completed a Fire Investigator Portfolio and Fire Investigator Task Book.<sup>14</sup>

Since 2005, 1,740 individuals have been certified as Fire Investigators through the State Fire College.<sup>15</sup> Of these, 947 individuals hold both a Firefighter II and Fire Investigator certification,

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<sup>7</sup> Department of Financial Services, Division of the State Fire Marshal, *What We Do*, <https://www.myfloridacfo.com/division/sfm/> (last visited December 19, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Rule 69A-37.064, F.A.C.

<sup>11</sup> *Id.*

<sup>12</sup> See Rule 69A-37.065(3), F.A.C.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Department of Financial Services, *Senate Bill 838 Agency Analysis* (November 19, 2021) (on file with the Senate Committee on Banking and Insurance).

and meet the criteria to be covered by the current definition of firefighter under s. 112.1816, F.S.<sup>16</sup>

The Department of Financial Services currently employs 104 fire investigators with the Division of Investigative and Forensic Services. Of these, 86 are Florida-certified or are in the process of earning certification.<sup>17</sup> These fire investigators respond to fire scenes throughout the State of Florida, supporting local law enforcement, and spend an average of three hours per investigation on-site. These on-site audits and investigations typically occur the same day of the fire or within three days of the fire. As a result, fire investigators sustain significant exposure to hazardous vapors, gases, and particles that are known to contribute to chronic health conditions, including cancer, as these dangerous chemicals and carcinogens remain after the fire.

### III. Effect of Proposed Changes:

**Section 1** amends s. 112.1816, F.S., related to cancer diagnoses for firefighters, to include a “full-time, Florida-certified fire investigator” in the current definition of “firefighter.” The bill further adds “investigation of fires and explosives” to the list of primary responsibilities of an “employer” within the current definition of “firefighter.”

Upon diagnosis of one of the 21 specific cancers enumerated within s. 112.1816, F.S., the bill has the effect of making a fire investigator eligible for benefits under the statute: (1) cancer treatment, at the employer’s expense, and (2) a \$25,000 cash payment. Under the bill, the fire investigator also becomes eligible for disability and death benefits. Based on the conclusive presumption contained in the statute that the cancer or the resulting treatment of cancer occurred in-the-line-of duty, and if the fire investigator meets the retirement plan’s definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer, the fire investigator becomes eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan. Likewise, if the fire investigator dies from the cancer or circumstances that arise from the cancer treatment, the fire investigator’s death is conclusively presumed to be in-the-line-of-duty, resulting in a higher death benefit for the firefighter’s beneficiaries.

**Section 2** provides a legislative finding that determines that this act fulfills an important state interest.

**Section 3** provides an effective date of July 1, 2022.

### IV. Constitutional Issues:

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

None.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Indeterminate.

According to the Department of Financial Services:

There are 1,740 individuals that have been certified as a Fire Investigator through the State Fire College since 2005. Of these 1,740, there are 947 that hold both a Firefighter II and Fire Investigator certification, and meet the criteria to be covered by the current definition of firefighter in s. 112.1816, F.S.

The precise number of individual that are currently working as full-time fire investigators is unknown, as this is a one-time certification.

Since the creation of s. 112.1816, F.S., in 2019, there have been 3 cancer claims reported totaling \$66,308 in payments, a claims rate of less than 1 percent over the two-year period. It is anticipated that the addition of the Florida-certified fire investigators would only have a minimal fiscal impact on the Risk Management Trust Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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