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## FISCAL IMPACT REPORT

SPONSOR Pope LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/26/2023  
BILL \_\_\_\_\_  
SHORT TITLE Firefighter Workers' Comp Conditions BILL NUMBER Senate Bill 369  
ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Municipalities	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	NM Self-Insurers' Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Workers' Compensation Administration (WCA)  
Department of Health (DOH)  
New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of Senate Bill 369

Senate Bill 369 (SB369) amends Section 52-3-32.1 NMSA 1978 of the New Mexico Occupational Disease Disablement Law, to add lung or prostate cancer, after five years of service, to the listed conditions that are presumed to be proximately caused by employment as a firefighter. The bill also removes the requirement that breast cancer be diagnosed before age 40 to be presumed to be proximately caused by such employment. The existing section defines a "firefighter" as a person employed as a full-time non-volunteer firefighter by the state or local government entity.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The current law requires the employer to treat the illness or injury as any other job-related illness or injury if it was not revealed during the initial employment medical screening or subsequent medical review. If a court determines the illness or injury is not job related, the employer's

workers' compensation insurance provider would be reimbursed by the employer's employee health plan.

WCA says:

...although it can be presumed that the number of workers' compensation claims will increase with additional conditions presumed to be caused by employment as a firefighter, in all likelihood, additional claims will be minimal. Thus, any impact on the WCA will be minimal to non-existent.

## SIGNIFICANT ISSUES

By enacting the firefighter occupational disease statute, firefighters are exempt in certain situations from the burden of establishing a causal connection between their disease and their duties as a firefighter. WCA says the statute has 13 conditions that invoke the presumption including various types of cancers, diseases such as hepatitis and tuberculosis, and posttraumatic stress disorder. The presumptions may be rebutted in court if the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing one of the listed conditions.

DOH notes that all 50 states have enacted laws presuming specific diseases or conditions are caused by firefighting, although the conditions and eligibility criteria varies from state to state. (<https://www.iaff.org/presumptive-health/>).

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB329 to increase maximum workers' compensation violation penalties to not more than \$2,500 for each occurrence.

## OTHER SUBSTANTIVE ISSUES

DOH also noted the following:

- As of 2022, 34 states include lung disease in their presumptive disability laws. New Mexico is not one, although, New Mexico's law does include cancer. (<https://www.iaff.org/wp-content/uploads/Presumptive-Disability-Chart-12-16-2022.pdf>).
- An analysis of workers' compensation claims among firefighters in Washington State between 2002-2017 showed out of 330 claims, 83 were for cancer. Lung cancer was not a covered condition, but prostate cancer under age 50 was. ([https://journals.lww.com/joem/Fulltext/2023/02000/Workers\\_Compensation\\_Claims\\_for\\_Conditions.18.aspx#T1](https://journals.lww.com/joem/Fulltext/2023/02000/Workers_Compensation_Claims_for_Conditions.18.aspx#T1)).
- Meta-analyses of literature on the association between firefighting and cancer show statistically significant associations of firefighting with prostate cancer. There was not a statistically significant association between firefighting and lung cancer (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7063017/>; <https://link.springer.com/article/10.1007/s00420-020-01539-0>).