

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: CS/SB 136

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Hays and Latvala

SUBJECT: Florida Retirement System

DATE: February 4, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 136 amends ss. 112.19 and 112.191, F.S., to provide additional death benefits for law enforcement officers, correctional officers, correctional probation officers and firefighters who are employed by the state and are killed in the line of duty. This monthly benefit equals 50 percent of the monthly salary being received by the member at the time of death as follows:

- Payable to the surviving spouse for the lesser of the lifetime of the spouse or 300 months (25 years);
- If no surviving spouse, payable until the youngest child reaches age 21, or any child reaches age 25 if that child is a full-time student;
- If no surviving spouse or children, payable to a joint annuitant under the Florida Retirement System (FRS) for the lesser of the period the joint annuitant receives benefits under the FRS or 300 months.

The bill appropriates from the General Revenue Fund to the State Risk Management Trust Fund of the Department of Financial Services the funds necessary to cover the annual costs associated with these new benefits.

The bill authorizes local governments to offer similar benefits to law enforcement officers, correctional officers, correctional probation officers or firefighters employed by the local governments.

The bill reenacts s. 185.21, F.S., relating to municipal police pensions to incorporate amendment made to s. 112.19, F.S. The bill also reenacts s. 175.201, F.S., relating to firefighter pensions to incorporate amendment made to s. 112.191, F.S.

The fiscal impact on the State of Florida is indeterminate.

II. Present Situation:

In Line of Duty Death Benefits Available under Chapter 121, F.S.

Pension Plan

The Florida Retirement System (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.¹ Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.² 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-line-of-duty (ILOD) death benefits. There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness "suffered in the line of duty."

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for her lifetime equal to half the member's monthly salary at death.³ If the spouse dies, the benefit continues until member's youngest child reaches 18 or is married, if earlier.⁴ If the deceased member is entitled to a higher retirement benefit based on service credit, the higher benefit is payable to his/her spouse or eligible dependent(s).⁵

Special Survivor Provisions — For ILOD deaths, the surviving spouse or eligible dependent may purchase credit for any service, which could have been claimed by the member at the time of his/her death.⁶ 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 purchasable service, to purchase enough service credit to vest the member posthumously (and entitle the surviving beneficiary to a death benefit).⁷

Burden of Proof — Unless a legal presumption applies such as the one provided under section 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in the line of duty death benefits.

¹ Section 121.091(7), F.S.

² Section 112.18(1)(a), F.S. Any condition of health caused by tuberculosis, heart disease or hypertension for firefighters, law enforcement officers, correctional officers and correctional probation officers resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

³ Section 121.091(7)(d), F.S.

⁴ *Id.*

⁵ Section 121.091(7)(b) and (d), F.S.

⁶ Section 121.091(7)(e), F.S.

⁷ Section 121.091(7)(f), F.S.

The following chart notes the Special Risk Class ILOD death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:⁸

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
State Count	0	2	2	1	0	5
State Benefits	0	\$49,928	\$37,424	\$25,862	0	\$113,214
Local Count	5	5	4	2	1	17
Local Benefits	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$460,270

Investment Plan and other state-administered defined contribution plans

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (Investment Plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. Benefits under the Investment Plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the Investment Plan.⁹ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁰ Regardless of when or how an investment plan member dies, there is no minimum death benefit payable to the surviving spouse or children. If the member dies before vesting, the accumulated member contributions are payable to the designated beneficiary. If the member is vested at the time of death, the full accumulations in the member's account are payable as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹¹

State University System Optional Retirement Program

On July 1, 1984, the State University Optional Retirement Program (SUSORP) was established as an optional program under the FRS for eligible State University faculty and administrators. The program was later expanded in 1988 to include the State University System Executive Service and in 1999 to include all administrative and professional personnel exempt from career service. As of June 30, 2013, there were 17,780 participants in the SUSORP.

The SUSORP is a defined contribution plan qualified under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with

⁸ E-mail from Department of Management Services dated Jan. 12, 2015

⁹ Section 121.4501(6)(a), F.S.

¹⁰ Section 121.4501(6)(b), F.S.

¹¹ Section 121.591, F.S.

designated investment providers¹². It provides for full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant upon signing an investment contract within 90 days of employment in an eligible position. Contributions, which are invested as directed by the participant, accumulate in individual participant accounts, together with investment earnings. At retirement, the accumulated benefits are payable to the participant or to his or her beneficiaries or estate.

There are no ILOD minimum death benefits provided to members of the SUSORP.

State Community College System Optional Retirement Program

In 1995, the Florida Legislature enacted provisions¹³ allowing faculty and certain administrators with a state community college *in the FRS Regular Class* to opt out of the FRS and enroll in an optional retirement program known as the State Community College System Optional Retirement Program (SCCORP). The board of trustees of the employing agency as authorized under section 1001.64, Florida Statutes, must implement this program either individually or in consortia with other community colleges. The member is immediately vested upon signing an investment agreement with a provider company and may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account.

There are no ILOD minimum death benefits provided to members of SCCORP.

Senior Management Service Optional Annuity Program

In 1986, the Florida Legislature enacted provisions¹⁴ creating the Senior Management Service Class under the FRS and also a non-integrated optional defined contribution plan under the FRS called the Senior Management Service Optional Annuity Program (SMSOAP). Under the SMSOAP, retirement and death benefits are provided through contracts with designated investment providers. The member may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account.

There are no ILOD death benefits provided to members of SMSOAP.

Death benefits available under Chapter 112, F.S.

Chapter 112, F.S., provides death benefits that are supplemental to the benefits afforded under ch. 121, F.S., for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.¹⁵ The

¹² The five approved participating companies currently available under SUSORP are: ING, TIAA-CREF, Variable Annuity Life Insurance Company, Jefferson National Life Insurance Company, and MetLife Investors USA Insurance Company.

¹³ See chapter 95-392, Laws of Florida.

¹⁴ See chapter 86-149, Laws of Florida.

¹⁵ Section 112.19(1)(b), F.S., the term "law enforcement, correctional, or correctional probation officer" means any officer as defined by s. 943.10(14) or any employee of the state or any political subdivision of the state, including any state attorney investigator or public defender investigator whose duties require such officer or employee to investigate, pursue, apprehend, arrest, transport, or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime; any member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices;

table below shows the benefits provided. The nominal amounts cited below for law enforcement and firefighters are adjusted annually for price level changes in the Consumer Price Index since 2002.¹⁶

	Law Enforcement	Firefighters	Instructional Personnel ¹⁷
Accidental Death in performance of duties	\$50,000 ¹⁸	\$50,000 ¹⁹	None.
Accidental Death in response to emergency	Additional \$50,000 ²⁰	Additional \$50,000 ²¹	None.
Death by intentional act of another	\$150,000 ²²	\$150,000 ²³	\$75,000 ²⁴

Please note that the payments outlined above for accidental death in performance of duties (\$50,000), accidental death in response to emergency (\$50,000) and death by intentional act of another (\$150,000), for firefighters, law enforcement, correctional, and correctional probation officers, the law provides that such payments will be made to the beneficiary designated by the firefighter or officer in writing.²⁵ If no designation is made, payments are made to the firefighter or officer’s surviving spouse and children in equal amounts.²⁶ If there is no surviving spouse or children, payment is made to the firefighter’s or officer’s parents.²⁷ If there is no surviving spouse, child or parent, payment will be made to the firefighter’s or officer’s estate.²⁸

and any full-time officer or employee of the state or any political subdivision of the state, certified pursuant to chapter 943, whose duties require such officer to serve process or to attend a session of a circuit or county court as bailiff.

¹⁶ Sections 112.19(2)(j) and 112.191(2)(i), F.S.

¹⁷ Section 112.1915(1)(b), F.S., provides that the term “teacher” means any instructional staff personnel as described in s. 1012.01(2). Instructional personnel includes classroom teachers, student personnel services, librarians/media specialists, other instructional staff, and education paraprofessionals.

¹⁸ Section 112.19(2)(a), F.S., if the officer is accidentally killed or receives accidental bodily injury resulting in loss of the officer’s life while engaged in the performance of the officer’s duties, provided that such killing or injury is not intentionally self-inflicted.

¹⁹ Section 112.191(2)(a), F.S., if the firefighter is accidentally killed or receives accidental bodily injury resulting in loss of the firefighter’s life while engaged in the performance of the firefighter’s duties, provided that such killing or injury is not intentionally self-inflicted.

²⁰ Section 112.19(2)(b), F.S., if the officer is accidentally killed while: responding to fresh pursuit or an emergency; enforcing a traffic law or ordinance; or at the scene of a traffic accident to which the officer has responded.

²¹ Section 112.191(2)(b), F.S., if the firefighter is accidentally killed as result of firefighter’s response to emergency involving protection of life or property or the firefighter’s participation in a training exercise.

²² Section 112.19(2)(c), F.S., if the officer (while engaged in the performance of the officer’s duties) is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act.

²³ Section 112.191(2)(c), F.S., if the firefighter (while engaged in performance of the firefighter’s duties) is unlawfully or intentionally killed, is injured by an unlawful and intentional act of another and dies as a result of such injury, or dies as a result of a fire which has been determined to have been caused by an act of arson.

²⁴ Section 112.1915(2)(3)(a), F.S., if the instructional staff or school administrator is killed or injured and dies as a result of an unlawful and intentional act inflicted by another person.

²⁵ Sections 112.191(2)(d) and 112.19(2)(d), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

In regards to the payment outlined on the previous page concerning the death by intentional act of another (\$75,000) for instructional personnel, if a beneficiary is not designated, the instructional staff's or school administrator's estate would receive the money.²⁹

Other death benefits under chapter 112, F.S., which are available to law enforcement, correctional officers, correctional probation officers, firefighters and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (Full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances³⁰; and instructional staff and school administrator employed by school district³¹);
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (Full-time law enforcement officer or correctional officer,³² full-time firefighter,³³ and instructional staff and school administrator³⁴);
- Family health insurance premium payments for catastrophic injury (Full-time law enforcement, correctional, correctional probation officer,³⁵ or firefighter³⁶ employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;³⁷ firefighter,³⁸ and instructional staff or school administrator³⁹).

Death benefits available under Chapter 185, F.S.

Chapter 175, F.S., governs municipal police pensions. If a municipal police officer dies before being eligible to retire, the officer's beneficiaries will:

- Receive a refund of all contributions made by the officer to the retirement trust fund;⁴⁰
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;⁴¹
- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).⁴²

Death benefits provided in accordance with s. 112.19, F.S., are not included in the calculation of death or retirement benefits under this chapter.⁴³

²⁹ Section 112.1915(1)(f), F.S.

³⁰ Section 112.19(2)(f), F.S.

³¹ Section 112.1915(3)(b), F.S.

³² Section 112.19(2)(g), F.S.

³³ Section 112.191(2)(f), F.S.

³⁴ Section 112.1915(3)(c), F.S.

³⁵ Section 112.19(2)(h), F.S.

³⁶ Section 112.191(2)(g), F.S.

³⁷ Section 112.19(3), F.S.

³⁸ Section 112.191(3), F.S.

³⁹ Section 112.1915(3)(d), F.S., (surviving children only, not spouse)

⁴⁰ Section 185.21(1), F.S.

⁴¹ *Id.*

⁴² Section 185.21(2), F.S.

⁴³ *Id.*

Death benefits available under Chapter 175, F.S.

Chapter 175, F.S., governs firefighter pensions. If a firefighter dies before being eligible to retire, the officer's beneficiaries will:⁴⁴

- Receive a refund of all contributions made by the firefighter to the pension trust fund;⁴⁵
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;⁴⁶
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).⁴⁷

Death benefits provided in accordance with s. 112.191, F.S., are not included in the calculation of death or retirement benefits under this chapter.

III. Effect of Proposed Changes:

Section 1 amends s. 112.19, F.S., to provide that the qualifying survivor of a law enforcement officer,⁴⁸ correctional officer or a correctional probation officer who is killed in the line of duty; is killed when off duty while acting in an official capacity to prevent injury, death, or loss of property; or otherwise killed by reason of his or her employment as an officer is eligible for the following benefits.

The new monthly benefit granted is equal to 50 percent of monthly salary at time of the law enforcement officer, correctional officer, or correctional probation officer's death. The monthly benefit is payable:

- a. For the lesser of the surviving spouse's lifetime or 300 months (25 years).
- b. If the surviving spouse dies before receiving 300 monthly payments, for the use and benefit of member's child or children until the later of the 21st birthday of member's youngest child, or until the 25th birthday of any child of the officer if such child is enrolled as full-time student.
- c. If no surviving spouse but a surviving child or children under the age of 25, for the use and benefit of member's child or children under the same terms and conditions noted above in b.
- d. If no surviving spouse or children, but a surviving joint annuitant under the Florida Retirement System, for the use and benefit of such joint annuitants until those joint annuitants no longer receive benefits under the FRS but not to exceed 300 months.

Additionally, this section provides for an annual appropriation from the General Revenue Fund to the State Risk Management Trust Fund within the Department of Financial Services cover the annual costs associated with payment of the benefits authorized by this section.

⁴⁴ Section 175.201, F.S., for firefighters employed by any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan.

⁴⁵ Section 175.201(1), F.S.

⁴⁶ *Id.*

⁴⁷ Section 175.201(2), F.S.

⁴⁸ As this term is defined in Section 943.10(1), F.S.

This section also authorizes local governments to provide similar benefits to its law enforcement officers, correctional officers, and correctional probation officers.

Section 2 amends s. 112.191, F.S., to provide the same new death benefits authorized in s. 112.19, F.S., to firefighters.

Section 3 reenacts s. 185.21, F.S., relating to municipal police pensions, to incorporate the amendment made to s. 112.19, F.S.

Section 4 reenacts s. 175.201, F.S., relating to firefighter pensions, to incorporate the amendment made to s. 112.191, F.S.

Section 5 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact on the State of Florida is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Article VIII, section 2, of the State Constitution authorizes the Legislature to establish or abolish municipal governments pursuant to general or special law. A municipality is a local government entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality. The Municipal Home Rule Powers Act, granted in Art. VIII, section 2(b), of the State Constitution, states that a municipality may provide any governmental, corporate, or proprietary powers necessary so long as: 1) it is for a municipal purpose, and 2) it is not otherwise prohibited by general or special law.⁴⁹ The Florida Supreme Court considers any activity that is “essential to the health, morals, protection and welfare of the municipality” to be a valid municipal purpose.⁵⁰ While municipalities and charter counties have constitutional home rule power, non-charter counties only have home rule powers as provided by law.

To the extent that municipalities would want to offer benefits in excess of the benefits provided herein, this bill may limit this ability.

VIII. Statutes Affected:

This bill substantially amends ss. 112.19 and 112.191 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.)

CS/SB 136 by Governmental Oversight and Accountability:

CS/SB 136 makes the following changes:

- Creates the new death benefits in chapter 112, F.S., relating to public employees, rather than ch. 121, F.S., relating to the FRS. This means the benefits will not be funded through contributions to the FRS.
- Expands the employees eligible for the new benefits to include correctional officers and correctional probation officers employed by the state.
- Modifies the beneficiaries eligible to receive the death benefits to include only the surviving spouse, children up to age 21 or children up to age 25 if enrolled as full-time students, and certain joint annuitants that receive other benefits under the FRS.
- Limits the monthly benefits to 300 months (25 years).
- Authorizes local governments to provide similar benefits to their employees in the same occupations.
- Reenacts s. 185.21, F.S., relating to municipal police pensions, to incorporate the amendment made to s. 112.19, F.S.
- Reenacts s. 175.201, F.S., relating to firefighter pensions, to incorporate the amendment made to s. 112.191, F.S.

⁴⁹ *City of Boca Raton v. Gidman*, 440 So.2d 1277 (Fla. 1983) (providing money for a daycare is a valid municipal purpose that was not precluded by the city charter).

⁵⁰ *State v. City of Jacksonville*, 50 So.2d 532,535 (Fla. 1951) (stating that “municipal purpose” is broadly interpreted to include the maintenance and operation of a radio broadcasting system by the city).

B. Amendments:

None.

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