

**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 Governmental Oversight and Accountability

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BILL: SB 136

INTRODUCER: Senator Hays

SUBJECT: Florida Retirement System

DATE: February 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Pre-meeting</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 136 amends s. 121.091, F.S., to provide a new death benefit through the Florida Retirement System for law enforcement officers and firefighters who are employed by the state and are killed in the line of duty. This benefit pays an additional 50 percent of the monthly salary being received by the member at the time of death as follows:

- Payable for the lifetime of the surviving spouse;
- If no spouse, payable until the youngest child reaches age 18 and unmarried, or age 25 if a full-time student;
- If no surviving spouse or children, payable for a period not to exceed five years on behalf of surviving parent(s) of the member.

The bill appropriates from the General Revenue Fund to the Florida Retirement System Trust Fund the funds necessary to cover the additional costs associated with these new benefits. An actuarial special study is required to determine the cost of funding the additional benefits authorized by SB 136. This study has not been initiated.

**II. Present Situation:**

**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.<sup>1</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional

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<sup>1</sup> Section 121.091(7), F.S.

probation officers are deemed accidental and suffered in the line of duty.<sup>2</sup> 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."

- *In-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 her lifetime equal to half the member's monthly salary at death.<sup>3</sup> If the spouse dies, the benefit continues until member's youngest child reaches 18 or is married, if earlier.<sup>4</sup> 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).<sup>5</sup>
- *Non-Duty Death Benefits* — If the death was NOT job-related:
- For FRS members who die before vesting, only accumulated member contributions, if any, are payable to designated beneficiaries.<sup>6</sup>
- If the deceased member was eligible for normal retirement, the death benefit is the Option 3 benefit amount (paying continuing benefits to a spouse and/or other eligible dependent for life). If the member was not eligible for normal retirement, the benefit is reduced just as if the member had taken early retirement. However, for survivors of members with 20 years of creditable service at the time of death, a different benefit calculation method applies: Benefits are based on salary at the time of death and the penalty is applied against either the number of years before normal retirement age, or the number of years remaining in a full career of service, whichever affords the better benefit. In any case, the beneficiary can also defer benefits (just as if the member had chosen to defer benefits) in order to reduce or eliminate early retirement penalties.

*Special Survivor Provisions* — For non-duty and 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.<sup>7</sup> 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).<sup>8</sup>

*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.

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<sup>2</sup> 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.

<sup>3</sup> Section 121.091(7)(d), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 121.091(7)(b) and (d), F.S.

<sup>6</sup> Section 121.091(7)(a), F.S.

<sup>7</sup> Section 121.091(7)(e), F.S.

<sup>8</sup> 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:<sup>9</sup>

	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.<sup>10</sup> With respect to the employer contributions, a member vests after completing one work year with an FRS employer.<sup>11</sup> 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.<sup>12</sup>

The Investment Plan does provide disability coverage for both in-line-of-duty and regular disability retirement benefits.<sup>13</sup> An FRS member who qualifies for disability while enrolled in the Investment Plan must apply for benefits as if the employee was a member of the Pension Plan. If approved for retirement disability benefits, the member is transferred to the Pension Plan.<sup>14</sup>

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.

<sup>9</sup> E-mail from Department of Management Services dated Jan. 12, 2015

<sup>10</sup> Section 121.4501(6)(a), F.S.

<sup>11</sup> Section 121.4501(6)(b), F.S.

<sup>12</sup> Section 121.591, F.S.

<sup>13</sup> Sections 121.4501(16) and 121.591, F.S.

<sup>14</sup> Section 121.091(4)(f), F.S.

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 designated investment providers<sup>15</sup>. 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.

Like the Investment Plan, the SUSORP does not provide a minimum death benefit for those members killed in the line of duty.

#### State Community College System Optional Retirement Program

In 1995, the Florida Legislature enacted provisions<sup>16</sup> 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 provisions<sup>17</sup> 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, and it appears that the additional benefits proposed by SB 136 would not be available to a law enforcement officer employed in senior management service class.

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<sup>15</sup> 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.

<sup>16</sup> See chapter 95-392, Laws of Florida.

<sup>17</sup> See chapter 86-149, Laws of Florida.

**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.<sup>18</sup> The 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.<sup>19</sup>

	Law Enforcement	Firefighters	Instructional Personnel <sup>20</sup>
Accidental Death in performance of duties	\$50,000 <sup>21</sup>	\$50,000 <sup>22</sup>	None.
Accidental Death in response to emergency	Additional \$50,000 <sup>23</sup>	Additional \$50,000 <sup>24</sup>	None.
Death by intentional act of another	\$150,000 <sup>25</sup>	\$150,000 <sup>26</sup>	\$75,000 <sup>27</sup>

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

<sup>18</sup> 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; 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.

<sup>19</sup> Sections 112.19(2)(j) and 112.191(2)(i), F.S.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> 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.

firefighter or officer in writing.<sup>28</sup> If no designation is made, payments are made to the firefighter or officer's surviving spouse and children in equal amounts.<sup>29</sup> If there is no surviving spouse or children, payment is made to the firefighter's or officer's parents.<sup>30</sup> If there is no surviving spouse, child or parent, payment will be made to the firefighter's or officer's estate.<sup>31</sup> 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.<sup>32</sup>

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 circumstances<sup>33</sup>; and instructional staff and school administrator employed by school district<sup>34</sup>);
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (Full-time law enforcement officer or correctional officer;<sup>35</sup> full-time firefighter;<sup>36</sup> and instructional staff and school administrator<sup>37</sup>);
- Family health insurance premium payments for catastrophic injury (Full-time law enforcement, correctional, correctional probation officer,<sup>38</sup> or firefighter<sup>39</sup> employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;<sup>40</sup> firefighter;<sup>41</sup> and instructional staff or school administrator<sup>42</sup>).

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.091, F.S., to provide that the qualifying survivor of a law enforcement officer<sup>43</sup> or a firefighter<sup>44</sup> 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 a law enforcement officer or as a firefighter, is eligible for the following minimum benefits.

<sup>28</sup> Sections 112.191(2)(d) and 112.19(2)(d), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Section 112.1915(1)(f), F.S.

<sup>33</sup> Section 112.19(2)(f), F.S.

<sup>34</sup> Section 112.1915(3)(b), F.S.

<sup>35</sup> Section 112.19(2)(g), F.S.

<sup>36</sup> Section 112.191(2)(f), F.S.

<sup>37</sup> Section 112.1915(3)(c), F.S.

<sup>38</sup> Section 112.19(2)(h), F.S.

<sup>39</sup> Section 112.191(2)(g), F.S.

<sup>40</sup> Section 112.19(3), F.S.

<sup>41</sup> Section 112.191(3), F.S.

<sup>42</sup> Section 112.1915(3)(d), F.S., (surviving children only, not spouse)

<sup>43</sup> As this term is defined in Section 943.10(1), F.S.

<sup>44</sup> As this term is defined in Section 121.191(1)(b), F.S.

The overall monthly benefit (combined with the existing benefit paid under current law for ILOD death) is equal to 100 percent of monthly salary at time of the law enforcement officer or firefighter's death. The monthly benefit is payable:

- a. For the surviving spouse's lifetime.
- b. If the surviving spouse dies, for the use and benefit of member's child or children under 18 years of age and unmarried until 18<sup>th</sup> birthday of member's youngest child, or until end of calendar year that member's youngest child reaches 25 years of age if child is enrolled as full-time student.
- c. If no surviving spouse but a surviving child or children under 18, for the use and benefit of member's child or children under 18 years of age and unmarried until 18<sup>th</sup> birthday of member's youngest child, or until end of calendar year that member's youngest child reaches 25 years of age if child is enrolled as a full-time student.
- d. If no surviving spouse or children, but a surviving parent(s), for the use and benefit of such member's parents for period not to exceed 5 years.

Additionally, this section provides for an annual appropriation from the General Revenue Fund to the Florida Retirement System Trust Fund to cover the additional costs associated with payment of the benefits authorized by this section to the extent that the costs of such benefits exceed other benefits provided by law.

**Section 2** provides an effective date of July 1, 2015.

SB 136 only affords the new benefits to law enforcement officers and firefighters who are employed by the state and are members of the FRS Pension Plan. The bill does not apply to any members of the investment plan or any other state-administered retirement plan.

SB 136 does not specifically exclude members who are participating in the Deferred Retirement Option Program (DROP) who have already retired for benefit accrual purposes and chosen an optional form of payment that dictates survivor benefits. If a member was not married when entering DROP and subsequently married and killed in the line of duty as outlined in the bill, the FRS will have the current cost the survivor benefit for the option selected and an ongoing general revenue funded benefit to the spouse.

#### **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.

**D. Other Constitutional Issues:**

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--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.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill will require an actuarial study to determine the fiscal impact on the FRS. As drafted, the costs of the new benefits will be funded by appropriations from the General Revenue Fund to the Florida Retirement System Trust Fund. It is unclear whether the amount appropriated in a given year will be limited to the additional benefits paid during that particular fiscal year or the actuarial equivalent of the obligations arising from the covered deaths occurring in a given year.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 121.091 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.