

**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 456

INTRODUCER: Senator Latvala and others

SUBJECT: Firefighters

DATE: February 15, 2015

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

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Present</u> | <u>Yeatman</u> | <u>CA</u> | <b>Favorable</b>   |
| 2. | <u>McVaney</u> | <u>McVaney</u> | <u>GO</u> | <b>Pre-meeting</b> |
| 3. | _____          | _____          | <u>AP</u> | _____              |

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**I. Summary:**

SB 456 provides that any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered “in the line of duty” unless the contrary is shown by competent evidence. In the line of duty retirement compensates an employee whose disability or death arises out of and in the actual performance of employment. In the line of duty retirement provides greater compensation to the firefighter or his or her dependents than would otherwise be available.

In order to be entitled to the presumption, a firefighter hired after July 1, 2016, must successfully pass a pre-employment physical examination. If the employing agency fails to provide a pre-employment physical examination, the firefighter must successfully pass a physical examination after he or she enters into service in order to be entitled to the presumption. A firefighter employed on July 1, 2016, is not required to meet the physical examination requirement in order to be entitled to the presumption.

The bill provides that state and local governments may negotiate policy contracts for life and disability insurance which include accidental death benefits or double indemnity coverage and which recognize the presumption created by this bill.

The bill requires a state or local government agency that employs a firefighter to maintain a record of any reported exposure of a firefighter to a known carcinogen. The agency must notify the firefighter of the exposure within 48 hours after the exposure is reported.

Based on the results of a special actuarial study, the additional cost to the Florida Retirement System is expected to be about \$840,000 annually. The additional costs to other public sector retirement plans has not been determined.

The fiscal impact of this legislation as it relates to workers' compensation benefits has not been determined.

## II. Present Situation:

### The Florida Retirement System (FRS)

The FRS is the fifth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).<sup>1</sup> The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan. In 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>2</sup>

The FRS consists of 1,014 total employers. It is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.<sup>3</sup> Members of the FRS are required to make employee contributions of 3 percent of their salary.<sup>4</sup> As of June 30, 2014, the FRS had 622,089 active members, 362,216 retired members and beneficiaries, and 38,058 active members of the Deferred Retirement Option Program (DROP).<sup>5</sup>

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

- Regular Class<sup>6</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- Special Risk Class<sup>7</sup> includes 68,593 active members;
- Special Risk Administrative Support Class<sup>8</sup> has 84 active members;
- Elected Officers' Class<sup>9</sup> has 2,040 active members, plus 147 in renewed membership; and

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<sup>1</sup> Section 121.021(5), F.S.

<sup>2</sup> The Florida Retirement System Annual Report, July 1, 2013 – June 30, 2014, at 29, *available at* [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf) (last visited October 26, 2015).

<sup>3</sup> *Id.*, at 146.

<sup>4</sup> 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.

<sup>5</sup> Florida Retirement System 2013-2014 Annual Report, at 6.

<sup>6</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

- Senior Management Service Class<sup>10</sup> has 7,607 members, plus 184 in renewed membership.<sup>11</sup>

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.

### ***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. As of June 30, 2014, there were 68,593 active members<sup>12</sup> in the Special Risk Class of the FRS.

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.<sup>13</sup>

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: in the line of duty disability retirement and regular 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. 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

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<sup>10</sup> 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.

<sup>11</sup> All figures from Florida Retirement System 2013-2014 Annual Report, at 115.

<sup>12</sup> *Id.*

<sup>13</sup> Section 121.0515(1), F.S.

disability benefits.<sup>14</sup> To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.<sup>15</sup>

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.<sup>16</sup> 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 line of duty disability benefit of 65 percent of their average final compensation.<sup>17</sup>

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).<sup>18</sup> Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefits calculated the same as a similarly situated pension plan member.<sup>19</sup>

### ***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. Because those annuity options are based on the number of years of services and are discounted based on the age of the annuity recipient, the beneficiary of younger employees with few years of service receive a relatively small monthly amount.

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.<sup>20</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.<sup>21</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 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 one-half the member's monthly salary at death.<sup>22</sup> If the spouse dies, the benefit continues until the member's youngest child

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<sup>14</sup> Florida Retirement System Employer Handbook, Disability Retirement, ch. 10-2, available at [https://www.rol.frs.state.fl.us/forms/EH\\_ch10.pdf](https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf) (last visited Nov. 6, 2015).

<sup>15</sup> Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

<sup>16</sup> Section 121.091(4)(f), F.S.

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

<sup>18</sup> Section 121.591(2), F.S.

<sup>19</sup> Section 121.591(2)(g), F.S.

<sup>20</sup> Section 121.091(7), F.S.

<sup>21</sup> 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.

<sup>22</sup> Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

reaches 18 or is married, whichever occurs first.<sup>23</sup> 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.<sup>24</sup>

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 member's death.<sup>25</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 service eligible for purchase, to purchase enough service credit to vest the member posthumously.<sup>26</sup>

Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary.<sup>27</sup>

### **Retirement Plans for Municipalities and Special Districts**

Chapters 175 and 185, F.S., provide funding mechanisms for municipal firefighters' and police officers' pension plans. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers 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 or police officer.<sup>28</sup> 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 and 185.35, F.S., respectively.

### **Workers' Compensation under Chapter 440, F.S.**

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.<sup>29</sup> 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.<sup>30</sup>

Compensation for permanent total disability is equal to 2/3rds of the employee's average weekly wages payable to the employee during the continuance of the total disability.<sup>31</sup>

Compensation for temporary total disability is equal to 2/3rds of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed

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<sup>23</sup> *Id.*

<sup>24</sup> Section 121.091(7)(b) and (d), F.S.

<sup>25</sup> Section 121.091(7)(e), F.S.

<sup>26</sup> Section 121.091(7)(f), F.S.

<sup>27</sup> Section 121.591(3), F.S.

<sup>28</sup> Sections 175.191 and 185.18, F.S.

<sup>29</sup> Section 440.09(1), F.S.

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

<sup>31</sup> Section 440.15(1)(a), F.S.

104 weeks. At the earlier of the 104<sup>th</sup> week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.<sup>32</sup>

Where the disability or death of an employee results from an "occupational disease", it will be treated as an injury by accident.<sup>33</sup> 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."<sup>34</sup>

### **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 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 employee has the burden of proof when claiming in the line of duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.<sup>35</sup> If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

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<sup>32</sup> Section 440.15(2)(a), F.S.

<sup>33</sup> Section 440.151(1)(a), F.S.

<sup>34</sup> Section 440.151(2), F.S.

<sup>35</sup> Sections 121.091(4)(c) and (7)(d), F.S.

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,<sup>36</sup> it may be difficult for an employee to meet this burden.

### **Special Actuarial Study of Firefighter in line of duty Cancer Presumption**

On February 11, 2016, a special study<sup>37</sup> was completed to determine the contribution rates necessary to fund the FRS benefits that may be paid based on the presumptions proposed under this legislation for ten cancers.<sup>38</sup> The results of this study determined that the contribution rates for the Special Risk Class (for both the pension plan and the investment plan) will need to be increased by 2 basis points (0.02%) to fund the costs of this legislation associated with the FRS.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 112.1816, F.S., to provide a presumption that any condition or impairment of the health of a firefighter employed full time by the state or a local government which is caused by cancer and results in total or partial disability or death was accidental and was suffered in the line of duty. The presumption can be overcome by competent evidence to the contrary. This presumption shifts the burden of proof from the employee or the survivors of the employee to the employer.

The bill provides that in order to be entitled to the presumption, a new employee must successfully pass a pre-employment physical examination that does not reveal any evidence of a cancer-causing health condition. If the employing agency fails to provide a pre-employment physical examination, the firefighter must successfully pass such an examination after he or she enters into service in order to be entitled to the presumption. This physical examination requirement does not apply to existing firefighters. In addition, the presumption does not apply to benefits payable under or granted in a life insurance or disability insurance policy unless the insurer and insured have negotiated for the additional benefits to be included in the policy contract.

The bill provides that, at a minimum, the physical examination must include the following tests, as appropriate to the examinee's gender:

- Physical breast examination and mammogram for female breast cancer;
- Digital rectal examination, proctosigmoidoscopy, and blood stool test for colon and rectal cancer;
- Rectal examination for prostate cancer;
- Pap test for cervical or uterine cancer;

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<sup>36</sup> "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 October 27, 2015).

<sup>37</sup> Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 11, 2016 (on file with the Committee on Governmental Oversight and Accountability).

<sup>38</sup> The cancers included in the study are brain cancer, breast cancer, colon cancer, leukemia, malignant melanoma, multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, skin cancer, and testicular cancer.

- Pelvic examination for ovarian cancer; and
- Radiographic examination for lung cancer.

The bill also provides that state and local governments may negotiate policy contracts for life and disability insurance which include accidental death benefits or double indemnity coverage and which recognize the presumption created by this bill.

The bill also requires a state and local government agency that employs a firefighter to maintain a record of any reported exposure of a firefighter to a known carcinogen as defined by the International Agency for Research on Cancer. The agency must notify the firefighter of the exposure within 48 hours after the exposure is reported.

The bill also states that a firefighter employed on July 1, 2016, is not required to meet the physical examination requirement in order to be entitled to the presumption.

**Section 2** provides an effective date of July 1, 2016.

#### **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.”

As drafted, the bill does not contain a finding that the bill fulfills an important state interest. However, 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 to be binding upon the counties and municipalities participating in the FRS.

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. 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.

As drafted, this bill does not provide the funding necessary to offset the costs to the FRS resulting from this legislation. Actuarial impact statements for local government pension plans are also required.<sup>39</sup>

Article X, section 14 of the Florida Constitution is implemented by statute under part VII of chapter 112, Florida Statutes, the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “...prohibit 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:**

The costs associated with the FRS will increase by roughly \$840,000 annually. This includes \$200,000 paid by state agencies and about \$600,000 paid by counties.<sup>40</sup>

The impact of the presumption on workers’ compensation claims determinations may be similar to the impact on the FRS.<sup>41</sup> However, the presumption could have a greater impact because the threshold eligibility test for workers’ compensation is whether the disability arose “out of and in the course of employment.” If the disability did not arise “out of and in the course of employment,” the employee is not eligible to receive workers’ compensation benefits. There is no provision under ch. 440, F.S., for a non-duty related disability as may be found in many retirement plans.

<sup>39</sup> Department of Management Services, *Senate Bill 456 Legislative Bill Analysis*, 5 (Oct. 29, 2016).

<sup>40</sup> Milliman, *supra* at p. 2 of Table 2.

<sup>41</sup> Department of Management Services, *supra* at 5.

If successful workers' compensation claims increase due to the presumption afforded by the bill, assessments paid by carriers and employers of the Special Disability Trust Fund may increase.<sup>42</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The reference to “a known carcinogen as defined by the International Agency for Research on Cancer” may be unclear. There is no definition or listing entitled “known carcinogens” published by the International Agency for Research on Cancer. The reference probably would include the list entitled: “Group 1: Carcinogenic to humans” (117 items); but it is unclear whether “Group 2A: Probably carcinogenic to humans” (74 items) and perhaps even “Group 2B: Possibly carcinogenic to humans” (287 items) would be included.<sup>43</sup> In contrast, the 13th Report on Carcinogens (2014), published by the National Toxicology Program of the United States Department of Health and Human Services, has identified 56 substances or exposures occurring in the workplace that are classified as “known” to be human carcinogens and 187 substances or exposures that are “reasonably anticipated” to be human carcinogens.<sup>44</sup>

**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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<sup>42</sup> *Id.* at 5.

<sup>43</sup> International Agency for Research on Cancer, *Agents Classified by the IARC Monographs, Volumes 1-114*, available at <http://monographs.iarc.fr/ENG/Classification/index.php> (last visited October 27, 2015).

<sup>44</sup> United States Department of Health and Human Services, *13<sup>th</sup> Report on Carcinogens (2014)*, available at [http://ntp.niehs.nih.gov/ntp/roc/content/introduction\\_508.pdf](http://ntp.niehs.nih.gov/ntp/roc/content/introduction_508.pdf) (last visited October 27, 2015).