

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: SPB 7012

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Death Benefits Under the Florida Retirement System

DATE: October 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		Pre-meeting
2.				
3.				

I. Summary:

SPB 7012 primarily makes two changes to the Florida Retirement System (FRS). First, the bill increases the monthly survivor benefits available to the spouses and children of FRS pension plan members in the Special Risk Class when killed in the line of duty from 50 percent of the member's monthly salary at the time of death to 100 percent of the member's monthly salary at the time of death. These new benefits are funded through additional employer-paid contributions relating to the FRS pension plan.

Second, the bill permits the surviving spouse or children of an investment plan member in the Special Risk Class when killed in the line of duty to opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan. By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits much like the survivor benefits (described above) afforded to Special Risk Class members of the FRS pension plan. The investment plan survivor benefits program is funded by additional employer-paid contributions to the survivor benefits account of the FRS Trust Fund.

The new survivor benefits established by this bill are available to members in the Special Risk Class when killed in the line of duty on or after July 1, 2013.

The contributions paid into the FRS by employers participating in the FRS are increased by \$25 million annually. The bill appropriates the recurring amounts of \$5,445,337 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (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 added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Ch. 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted 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.⁴

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

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. (Section 121.021(12), F.S.)

⁶ 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.)

⁷ 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.

⁸ 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.

⁹ 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.)

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

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 investment 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.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management of the pension plan assets is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. (Section 121.4501(6)(b) – (d), F.S.)

¹³ Section 121.591, F.S.

¹⁴ Section 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the line of duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA.CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.²² For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

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

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan.²⁵ Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.²⁶ Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.²⁷ 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 her lifetime equal to one-half the member's monthly salary at death.²⁸ If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.²⁹ 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.³⁰

For 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.³¹ 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.³²

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ 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. Section 121.591, F.S.

²⁶ Section 121.091(7), F.S.

²⁷ 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.

²⁸ Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

²⁹ *Id.*

³⁰ Section 121.091(7)(b) and (d), F.S.

³¹ Section 121.091(7)(e), F.S.

³² Section 121.091(7)(f), F.S.

The following chart notes the Special Risk Class in the line of duty death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:³³

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Total
State Count	0	2	2	1	0	1	6
State Benefits	0	\$49,928	\$37,424	\$25,862	0	\$20,386	\$133,600
Local Count	5	5	4	2	1	2	19
Local Benefits	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$58,917	\$519,187

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.³⁴ The Bureau of Crime Prevention and Training within the Department of Legal Affairs annually adjusts the statutory amounts³⁵ for price level changes in the Consumer Price Index since 2002.³⁶ The table below shows the benefit amounts currently provided.³⁷

	Law Enforcement	Firefighters	Instructional Personnel
Accidental Death in performance of duties	\$65,773	\$65,773	None
Accidental Death in response to emergency	Additional \$65,773	Additional \$65,773	None
Death by intentional act of another	\$198,272	\$198,272	\$198,272

The payments outlined above for accidental death in performance of duties, accidental death in response to emergency and death by intentional act of another, for firefighters, law enforcement, correctional, and correctional probation officers, are made to the beneficiary designated by the firefighter or officer in writing.³⁸ If no designation is made, payments are made to the firefighter

³³ E-mail from Department of Management Services dated September 30, 2015.

³⁴ For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

³⁵ Sections 112.19(2)(a), 112.19(2)(b), 112.19(2)(c), and 112.1915(3)(a), F.S.

³⁶ Sections 112.19(2)(j) and 112.191(2)(i), F.S.

³⁷ Conversation with Rick Nuss, Office of the Attorney General, Bureau of Criminal Justice Programs (Feb. 13, 2015).

³⁸ Sections 112.191(2)(d) and 112.19(2)(d), F.S.

or officer's surviving spouse and children in equal amounts.³⁹ If there is no surviving spouse or children, payment is made to the firefighter's or officer's parents.⁴⁰ If there is no surviving spouse, child or parent, payment will be made to the firefighter's or officer's estate.⁴¹

If instructional personnel dies as a result of an intentional act of another and a beneficiary is not designated, the instructional staff's or school administrator's estate receives the money.⁴²

Other death benefits under ch. 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;⁴³ and instructional staff and school administrator employed by school district);⁴⁴
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer);⁴⁵ full-time firefighter;⁴⁶ and instructional staff and school administrator);⁴⁷
- Family health insurance premium payments for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,⁴⁸ or firefighter⁴⁹ employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;⁵⁰ firefighter;⁵¹ and instructional staff or school administrator).⁵²

Death benefits available under Chapter 185, F.S.

Chapter 185, 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;⁵³
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;⁵⁴ and

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Section 112.1915(1)(f), F.S.

⁴³ Section 112.19(2)(f), F.S.

⁴⁴ Section 112.1915(3)(b), F.S.

⁴⁵ Section 112.19(2)(g), F.S.

⁴⁶ Section 112.191(2)(f), F.S.

⁴⁷ Section 112.1915(3)(c), F.S.

⁴⁸ Section 112.19(2)(h), F.S.

⁴⁹ Section 112.191(2)(g), F.S.

⁵⁰ Section 112.19(3), F.S.

⁵¹ Section 112.191(3), F.S.

⁵² Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

⁵³ Section 185.21(1), F.S.

⁵⁴ *Id.*

- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).⁵⁵

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.⁵⁶

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 receive:⁵⁷

- A refund of all contributions made by the firefighter to the pension trust fund;⁵⁸
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;⁵⁹ and
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).⁶⁰

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.

Compensation for death under Chapter 440, F.S.

The Workers' Compensation Law provides that the death of an employee of the state or one of its subdivisions, which results from an injury arising out of and in the course of employment, is a basis for a right to compensation.⁶¹ When a death results within one year of an accident, or within five years following continuous disability, the employer pays:⁶²

- Actual funeral expenses up to \$7,500;
- Compensation to enumerated dependents in the form of a percentage of the deceased employee's weekly wages, not to exceed \$150,000; and
- Payment of postsecondary student fees for the surviving spouse.

Survivor Death Benefits from the Public Safety Officers' Benefits Program

The Public Safety Officers' Benefits Program (PSOB), administered by the U.S. Department of Justice, provides education benefits and a one-time death benefit to eligible survivors of federal, state or local public safety officers who die in the line of duty. The amount of the PSOB benefit is \$339,310 for eligible deaths occurring on or after October 1, 2014.⁶³

⁵⁵ Section 185.21(2), F.S.

⁵⁶ *Id.*

⁵⁷ 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.

⁵⁸ Section 175.201(1), F.S.

⁵⁹ *Id.*

⁶⁰ Section 175.201(2), F.S.

⁶¹ Section 440.02, F.S.

⁶² Section 440.16(1), F.S.

⁶³ U.S. Dep't of Justice Office of Justice Programs, *Public Safety Officers' Benefits Programs*, available at <https://www.psob.gov/index.html> (last visited Feb. 13, 2015).

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to increase the Florida Retirement System (FRS) pension plan's survivor benefits available to the spouse and children of members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. Rather than receiving 50 percent of the member's salary at the time of death, the new survivor benefit is increased to 100 percent of the member's salary at the time of death. This survivor benefit is payable in lieu of the member's normal retirement benefits based on service credits and average final compensation.

The survivor benefits are payable for the life of the surviving spouse. If there is no surviving spouse or the spouse dies, the member's children will receive the benefits until the youngest child's eighteen birthday. The benefits may be extended to the 25th birthday of an unmarried child enrolled as a full time student.

These survivor benefits are payable to the surviving spouse and children and supersede any beneficiary designation made by the member.

Section 2 amends s. 121.571, F.S., to specify that the new employer-paid contribution rates must be embedded in the system-wide blended rates assessed pursuant to s. 121.71, F.S.

Section 3 amends s. 121.591, F.S., to provide survivor benefits to the spouse and children of investment plan members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. The spouse and children may elect to transfer the balance of the member's investment plan account to the survivor benefits program and receive the survivor benefits described in section 1 above (100 percent of the member's salary at the time of death). In addition to the transfer of moneys from the deceased member's investment account, additional employer-paid contributions into the survivor benefit account of the FRS Trust Fund are used to pay the survivor benefits.

Section 4 creates s. 121.5912, F.S., to establish legislative intent regarding the implementation of a survivor benefit program for the spouses and children of investment plan members in the Special Risk Class when killed in the line of duty. The program is intended to meet all applicable requirements of a qualified plan under the Internal Revenue Code. If the SBA or Department of Management Services (DMS) receives notification that a portion of this program will cause the FRS to be disqualified for tax purposes, that portion of the program ceases to be applicable.

Section 5 creates s. 121.735, F.S., to allocate 0.82 percentage points of the employer-paid contribution rate for investment plan members of the Special Risk Class to the survivor benefit program of the FRS investment plan. These contribution rates are applied as a percentage of the investment plan members' gross compensation for the calendar month.

Section 6 amends s. 121.71, F.S., to make a conforming change relating to the calculation by the system actuary of the contributions required for the FRS.

Section 7 amends s. 121.74, F.S., to make a technical correction relating to the contributions required by FRS employers to the FRS Trust Fund.

Section 8 amends s. 121.75, F.S., to make a conforming change relating to the distribution of contributions paid into the FRS Trust Fund.

Section 9 provides that, for the 2016-2017 fiscal year only, upon notification by the DMS that sufficient funds are not available to make the survivor benefit payments authorized by the bill, the State Board of Administration shall transfer sufficient funds from the Administrative Trust Fund to the survivor benefits account in the FRS Trust Fund in order to ensure timely payment of survivor benefits.

Section 10 increases the employer-paid contributions into the Florida Retirement System by 0.58 percentage points for the Special Risk Class and 0.06 percentage points for the Deferred Retirement Option Program.

Section 11 provides that the Legislature finds that this act fulfills an important state interest.

Section 12 appropriates the recurring amounts of \$5,445,537 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

Section 13 provides that this bill will take effect on 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.”

This bill includes legislative findings that the bill fulfills an important state interest (see section 11), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System with employees in the Special Risk Class and DROP), including state agencies, school boards, community colleges, counties, and municipalities. 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.

An actuarial study has been completed to comply with Article X, section 14 of the Florida Constitution. The bill provides adjustments to contribution rates consistent with that actuarial study and concurrent with the adjustments in retirement benefits.⁶⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SPB 7012, spouses and children of members in the Special Risk Class when killed in the line of duty may receive higher benefits than available under current law.

C. Government Sector Impact:

Employers participating the FRS whose employees are members of the Special Risk Class or DROP will incur higher retirement contributions to fund these new benefits. The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2015-2016 will increase by approximately \$25 million when compared to the employer contributions paid in Fiscal Year 2014-2015. However, the impacts on particular employers vary significantly based on whether the employers have members in the Special Risk Class or DROP. The impacts by employer group for Fiscal Year 2015-2016 are noted below.

⁶⁴ *Re: Actuarial Study – Special Risk Class In Line of Duty (ILOD) Death Benefits*, from Milliman, Inc., to Dan Drake, State Retirement Director, dated April 1, 2015. (on file with the Senate Committee on Governmental Oversight and Accountability)

Employer Group	Impact on Contributions
State Agencies	\$5.4 m
Universities	\$0.2 m
Colleges	\$0.1 m
School Boards	\$0.8 m
Counties	\$17.2 m
Other	\$1.3 m
Total	\$25.1 m

The bill appropriates the recurring amounts of \$5,445,537 from the General Revenue Fund and \$1,062,991 from trust funds to Administered Funds, to fund the increased employer contribution rates to be paid under the bill by state agencies, state universities, state colleges, and school districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.091, 121.571, 121.591, and 121.75.

The bill creates the following sections of the Florida Statutes: 121.5912 and 121.735.

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.