

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: SB 7098

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Death Benefits

DATE: April 15, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------------|----------------|------------|---------------------------------------|
| | <u>McVaney</u> | <u>McVaney</u> | | GO Submitted as Committee Bill |
| 1. | <u>McSwain/Shettle</u> | <u>Betta</u> | <u>AEG</u> | Pre-meeting |
| 2. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 7098 implements Amendment 7 to the State Constitution, which was approved by the voters in November 2018 to require the payment of death benefits to the survivors of certain first responders, Florida National Guard members, and members of the United States Armed Forces. Current law provides various death benefits to many, but not all, of the first responders, Florida National Guard members, and members of the U.S. Armed Forces who are eligible for benefits under Amendment 7. Therefore, the Legislature must expand some of the current death benefits to comply with the requirements of Amendment 7.

The bill expands the death benefits currently provided to Florida National Guard members on state active duty, firefighters, and law enforcement, correctional, and correctional probation officers and sets the amount of the benefits as follows:

- \$75,000 when an eligible firefighter, Florida National Guard member, or law enforcement, correctional, or correctional probation officer is accidentally killed or receives accidental bodily injury that results in the loss of the individual's life.
- An additional \$75,000 when an eligible firefighter or law enforcement, correctional, or correctional probation officer is accidentally killed in the above manner and meets additional requirements, such as the accidental death occurs as a result of the response to an emergency.
- \$225,000 when an eligible firefighter, Florida National Guard member, or law enforcement, correctional, or correctional probation officer is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act while engaged in the performance of official duties.

The bill also provides the benefits described above to paramedics and emergency medical technicians.

The bill removes the annual Consumer Price Index adjustment of the benefit amounts.

The bill creates a new death benefit of \$75,000 for members of the U.S. Armed Forces, including Florida National Guard members, who are killed while on federal active duty and engaged in performing official duties. Other members of the U.S. Armed Forces who are killed while on active duty but not engaged in the performance of their official duties are entitled to a \$25,000 death benefit.

The bill expands death benefits for certain educational expenses of surviving spouses and children by providing them to firefighters, law enforcement officers, correctional officers, correctional probation officers, and Florida National Guard members who are accidentally killed or receive accidental bodily injury resulting in loss of life. These benefits for educational expenses are also provided to paramedics and emergency medical technicians, as well as Florida National Guard members who are killed while on federal active duty and U.S. Armed Forces members who are killed while on active duty.

The bill appears to have an indeterminate fiscal impact on the state and local governments. The proposed bill includes a continuing appropriation from the General Revenue Fund to pay for any monetary benefits related to deceased members of the U.S. Armed Forces.

The bill takes effect July 1, 2019.

II. Present Situation:

Constitutional Requirements

Amendment 7 created Article X, s. 31 of the State Constitution to require a death benefit to be paid by the employing agency and the state to waive certain education expenses when a law enforcement officer, correctional officer, correctional probation officer, firefighter, paramedic, emergency medical technician or a member of the Florida National Guard, while engaged in the performance of official duties, is killed accidentally, unlawfully and intentionally, or during active duty. The surviving child or children and spouse are eligible to benefit from the waiver of educational expenses while obtaining a career certificate, an undergraduate education, or a postgraduate education.

In addition, the State Constitution requires a death benefit to be paid from the General Revenue Fund and the state to waive certain education expenses when a member of the United States Armed Forces, including a Florida National Guard member on federal active duty, is killed accidentally, unlawfully and intentionally, or during active duty. The surviving child or children and spouse are eligible to benefit from the waiver of educational expenses while obtaining a career certificate, an undergraduate education, or a postgraduate education.

To be eligible for the benefits under the State Constitution, the law enforcement officer, correctional officer, correctional probation officer, firefighter, paramedic, and emergency medical technician must be employed by the state or any of its subdivisions at the time of death. For a member of the military to be eligible, the member must have been a resident of the state or his or her duty post must have been within the state, at the time of death.

The constitutional provision takes effect July 1, 2019.

Statutorily-Authorized Death Benefits

State law provides a variety of death benefits for public employees. The current statutory benefits may be associated with supplemental benefits provided under chapter 112, F.S., death benefits provided under state and local government retirement systems, emergency responder death benefits administered by the Department of Legal Affairs, and workers compensation.

Supplemental Benefits Under Chapter 112, Florida Statutes

Law Enforcement Officers, Correctional Officers, Correctional Probation Officers, and Firefighters

Sections 112.19 and 112.191, F.S., provide death benefits, including a monetary payment, waiver of educational costs, and health insurance premiums, to surviving family members of law enforcement officers, correctional officers, correctional probation officers, and firefighters killed under certain circumstances.

In 2002, the monetary payment was adjusted statutorily to \$50,000 and has been adjusted annually by the growth in the Consumer Price Index. The benefit for law enforcement officers, correctional officers, and correctional probation officers is set by rules adopted by the Department of Legal Affairs. The benefit for firefighters is set by rules adopted the Department of Financial Services. The benefits for Fiscal Year 2018-2019¹ are shown in the table below.

| Fiscal Year | Department of Legal Affairs | | | Department of Financial Services | | |
|--------------------|------------------------------------|--------------------------|-----------------------------|---|--------------------------|-----------------------------|
| | Accident | Enhanced Accident | Intentional/Unlawful | Accident | Enhanced Accident | Intentional/Unlawful |
| 2018-19 | \$65,641.62 | \$65,641.62 | \$197,875.61 | \$69,801.94 | \$69,801.94 | \$194,470.19 |

The educational benefits are provided to the following public employees:

- A law enforcement officer, correctional officer, and correctional probation officer killed accidentally or as a result of accidental injuries and the accidental death occurs:
 - As a result of the officer’s response to fresh pursuit;
 - As a result of the officer’s response to what is reasonably believed to be an emergency;
 - At the scene of a traffic accident to which the officer has responded; or
 - While the officer is enforcing what is reasonably believed to be a traffic law or ordinance.
- A firefighter killed accidentally or as a result of accidental injuries and the accidental death occurs:
 - As a result of the firefighter’s response to what is reasonably believed to be an emergency involving the protection of life or property; or
 - As a result of the firefighter’s participation in a training exercise.
- A law enforcement officer, correctional officer, correctional probation officer, or firefighter who is unlawfully and intentionally killed or is injured by an unlawful and intentional act of another person and dies as a result of the injury.

¹ Rules 2A-8.005 and 69A-64.005, Florida Administrative Code.

The educational benefit is granted to the surviving children and spouse of the deceased employee. This benefit is a waiver, by the state educational institution, of the tuition and fees associated with attaining a career certificate, an undergraduate education, or a postgraduate education. An eligible child may use the waiver until the child's 25th birthday. An eligible spouse may use the waiver until the 10th anniversary of the employee's death.

Florida National Guard

Section 250.34(4), F.S., provides that a Florida National Guard member who is killed or who dies due to injuries received while on active state duty qualifies for the same benefits provided to law enforcement officers under s. 112.19, F.S. However, when the federal government activates a Florida National Guard member for active duty and the member dies in the line of duty while on active federal duty, the death benefit is determined by federal law and is paid by the federal government. There are no state benefits provided if the member dies while on federal active duty.

Death Benefits for U.S. Armed Forces Members

Survivors of active duty members of the U.S. Armed Forces receive certain payments or benefits regardless of whether the in-service death is due to combat, accident, or disease, including:²

- Burial benefits, which may include a gravesite in any VA national cemetery with available space, perpetual care of the grave at no cost to the family, a government headstone or marker, Presidential Memorial Certificate, and a U.S. burial flag;
- Dependency and indemnity compensation for a surviving spouse and dependent children; and
- Life insurance.

Florida provides postsecondary scholarships for dependent children and surviving spouses who have not remarried and meet certain eligibility requirements, including requirements that the deceased service member was a resident of the state for one year immediately preceding the death and that the spouse applied for benefits within five years after the service member's death. The scholarships are distributed on a first-come, first-served basis by the Department of Education and are funded by general revenue. None of the other benefits provided for members of the U.S. Armed Forces are paid from general revenue.

Florida Retirement System Death Benefits

The Florida Retirement System (FRS) provides death benefits for members who are killed in the line of duty.³ Employers participating in the FRS include state agencies, counties, cities, special districts, school boards, and state universities and colleges. The surviving spouse of a member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the spouse's life, or, if the member had a vested retirement benefit, the spouse could elect to receive the member's

² Off. Pub. Aff. Media Rel., Deaths on Active Duty – Survivor Benefits, DEP'T VETERANS AFF., Jan. 2009, available at https://www.va.gov/opa/publications/factsheets/fs_survivor_benefits.pdf; U.S. Dep't. of Veterans Aff., Veterans Benefits Administration – Dependents and Survivors' Benefits, DEP'T VETERANS AFF., Oct. 2018, available at <https://benefits.va.gov/benefits/factsheets.asp#BM6> (last visited March 30, 2019).

³ Sections 121.091(7), and 121.591(4), F.S.

retirement benefit.⁴ If the member was not married, benefits are paid to the surviving children.⁵ If the member dies in the line of duty and was a member of the Special Risk Class,⁶ which includes firefighters, law enforcement officers, correctional officers, correctional probation officers, paramedics and emergency medical technicians, the surviving spouse or children are entitled to an additional one-half of the member's monthly salary.⁷ As such, the death benefit provided under the FRS for those members equals 100 percent of the member's salary.

Emergency Responder Death Benefits

Section 960.194, F.S., allows the Department of Legal Affairs to award up to \$50,000 to the surviving family members of a law enforcement officer, firefighter, paramedic, or emergency medical technician who, as a result of a crime, is killed answering a call for service in the line of duty.

III. Effect of Proposed Changes:

Section 1 reenacts and amends s. 112.19, F.S., to set the level of death benefits for law enforcement officers, correctional officers, and correctional probation officers. If the officer, while engaged in the performance of the officer's official duties, is accidentally killed or receives an accidental bodily injury which results in death, the death benefit is \$75,000. If the officer is accidentally killed under certain circumstances, an additional death benefit of \$75,000 is payable. If the officer, while engaged in the performance of the officer's official duties, is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act, the death benefit is \$225,000. Because the statutorily-authorized death benefit amounts are no longer adjustable, the rulemaking authority of the Department of Legal Affairs is eliminated. The death benefits continue to be payable by the employer the same way such benefits are payable under current law. All monetary death benefits established in this section are payable by the employer, including the state, cities, counties, universities, colleges, school boards, and special districts.

Section 1 continues the education benefits currently afforded to survivors of law enforcement officers, correctional officers and correctional probation officers killed prior to July 1, 2019.

Section 2 reenacts and amends s. 112.191, F.S., to set the level of death benefits for firefighters. The benefits are expanded to include part-time firefighters. If the firefighter, while in the performance of the firefighter's official duties, is accidentally killed or receives an accidental bodily injury which results in death, the death benefit is \$75,000. If the firefighter is accidentally killed under certain circumstances, an additional death benefit of \$75,000 is payable. If the firefighter, while in the performance of the firefighter's official duties, is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act, the death benefit is \$225,000. Because the statutorily-authorized death benefit amounts are no longer adjustable, the rulemaking authority of the Bureau of Crime Prevention and Training is eliminated. The death benefits continue to be payable by the employer the same way such benefits are payable under

⁴ Section 121.091(7)(d)1., F.S.

⁵ Section 121.091(7)(d)3., F.S.

⁶ Section 121.0515, F.S.

⁷ Section 121.091(7)(i), F.S.

current law. All monetary death benefits established in this section are payable by the employer, including the state, cities, counties, universities, colleges, school boards, and special districts.

Section 2 continues the education benefits currently afforded to survivors of firefighters killed prior to July 1, 2019.

Section 3 creates s. 112.1911, F.S., to set the level of death benefits for paramedics and emergency medical technicians (EMT). If the paramedic or EMT, while in the performance of official duties, is accidentally killed or receives an accidental bodily injury which results in death, the death benefit is \$75,000. If the paramedic or EMT is accidentally killed under certain circumstances, an additional death benefit of \$75,000 is payable. If the paramedic or EMT, while in the performance of official duties, is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act, the death benefit is \$225,000. The death benefits are payable by the employer. All monetary death benefits established in this section are payable by the employer, including the state, cities, counties, universities, colleges, school boards, and special districts.

Section 4 creates s. 112.1912, F.S., to establish educational benefits for children and spouses of first responders killed in the line of duty on or after July 1, 2019. The benefits are similar to the benefits currently provided under ss. 112.19 and 112.191, F.S. However, the eligibility for benefits is expanded to include any first responders accidentally killed while engaged in the performance of their official duties and paramedics and EMTs killed while engaged in the performance of their duties. The educational benefits established in this section are funded through waivers by the educational institutions attended by the eligible survivors.

Section 5 amends s. 250.34, F.S., to establish a \$75,000 death benefit for a member of the Florida National Guard who is killed accidentally or receives accidental bodily injury resulting in death, while on state active duty and engaged in official duties. A death benefit of \$225,000 is granted if the member is killed unlawfully and intentionally while on state active duty and engaged in official duties. The section also makes the survivors of the members of the Florida National Guard killed in these circumstances eligible for the educational benefits provided in s. 112.1912, F.S., created by section 4 of this bill. The monetary benefits established by this section are payable by the state.

Section 6 reenacts and amends s. 295.01, F.S., to clarify that a person using benefits under this provision is not eligible to use benefits under s. 295.061, F.S., created in section 7 of this act. The eligible child or spouse is permitted to elect to use either the scholarship or the waiver of tuition and fees to seek education benefits.

Section 7 creates s. 295.061, F.S., to provide death benefits to members of the U.S. Armed Forces who are either residents of the State of Florida or whose duty station is located in Florida. If the service member is killed while on active duty and engaged in official duties, the death benefit is \$75,000, payable by the state. If the service member is killed while on active duty but under other circumstances, the death benefit is \$25,000, payable by the state.

This section also established an educational benefit for survivors of service members killed while on active duty. The benefits are mirror the benefits provided pursuant to s. 112.1912, F.S., created in section 4 of this bill.

Section 8 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill implements constitutional provisions requiring government entities to pay death benefits for certain first responders employed by government entities and killed while engaged in the performance of their official duties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The overall impact on state and local government expenditures is indeterminate.

The state and local governments may incur additional costs for the monetary death benefits granted to the surviving family members of first responders killed while engaged in the performance of their official duties. These benefits are paid by the employers of the employee.

The state may incur additional costs for the monetary death benefits granted to the surviving family members of a member of the U.S. Armed Forces killed while on active duty. These benefits are paid from the General Revenue Fund.

State universities and colleges will forego tuition and fee revenues associated with the waivers granted by the state to children and spouses of emergency medical technicians, paramedics, and eligible members of the U.S. Armed Forces killed while on active duty.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.19, 112.191, 250.34, and 295.01.

This bill creates the following sections of the Florida Statutes: 112.1911, 112.1912, and 295.061.

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.