

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7105      PCB OTM 19-18      Death Benefits for Survivors of First Responders and Military Members  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Andrade and others  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	11 Y, 0 N	Card	Harrington
1) Appropriations Committee	26 Y, 0 N	Keith	Pridgeon
2) State Affairs Committee			

### SUMMARY ANALYSIS

Florida Constitutional Amendment 7 (Amendment 7) was approved by the voters in November 2018 and requires the payment of death benefits to the survivors of certain first responders, Florida National Guard (FLNG) members, and members of the United States Armed Forces. Current law provides various death benefits to many, but not all, of the first responders, FLNG 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 FLNG members on state active duty, firefighters, and law enforcement, correctional, and correctional probation officers by increasing the amount of the benefits as follows:

- From \$50,000 to \$75,000 when an eligible firefighter, FLNG 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.
- From \$50,000 to \$75,000 when an eligible firefighter, FLNG member, 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.
- From \$150,000 to \$225,000 when an eligible firefighter, FLNG member, or law enforcement, correctional, or correctional probation officer is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act while engaged in the performance of official duties.

The bill also provides these benefits to paramedics and emergency medical technicians and removes the annual Consumer Price Index adjustment of the benefit amounts.

The bill creates a new death benefit of \$75,000 for FLNG members who are killed while on federal active duty and engaged in performing official duties, as well as for U.S. Armed Forces members who are killed while on active duty, while either a resident of or duty posted within the state at the time of death.

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 FLNG 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 FLNG members who are killed while on federal active duty and U.S. Armed Forces members who are killed while on active duty.

The bill has an indeterminate fiscal impact on the state and local government expenditures. See *Fiscal Analysis & Economic Impact Statement*.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7105a.APC

DATE: 4/10/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Florida Constitutional Amendment 7

Florida Constitutional Amendment 7 (Amendment 7)<sup>1</sup> was approved by the voters in November 2018 and requires the payment of death benefits to the survivors of first responders,<sup>2</sup> Florida National Guard (FLNG) members, and active duty<sup>3</sup> members of the United States Armed Forces. The employer is required to pay the benefit when the first responder or FLNG member, while engaged in the performance of his or her official duties, is:

- Accidentally killed or receives accidental bodily injury that results in the loss of the individual's life, provided that such killing is not the result of suicide and such bodily injury is not intentionally self-inflicted; or
- Unlawfully and intentionally killed or dies because of such unlawful and intentional act or is killed during active duty.

For members of the U.S. Armed Forces, the benefit must be paid from the General Revenue Fund when the member is killed or receives bodily injury that results in the loss of the member's life, if such death is not the result of suicide and such bodily injury is not intentionally self-inflicted.

Amendment 7 also requires the state to waive certain educational expenses that the child or spouse of the deceased first responder, FLNG member, or active duty member of the U.S. Armed Forces incurs while obtaining a career certificate, an undergraduate education, or a postgraduate education.

To be eligible for the benefits provided under Amendment 7, a first responder must have been working for the state or any of its political subdivisions or agencies at the time of death. An eligible FLNG member or member of the U.S. Armed Forces 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.

Current law provides various death benefits to many, but not all, of the first responders, FLNG members, and members of the U.S. Armed Forces who are eligible for benefits under Amendment 7.

##### Florida Retirement System Death Benefits

The Florida Retirement System (FRS) provides death benefits for members of the FRS who are killed in the line of duty.<sup>4</sup> Employers required to participate in the FRS include the state and counties. Municipalities and special districts may choose to participate.<sup>5</sup> 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 surviving spouse's life or, if the member was vested, such spouse may elect to receive the member's pension.<sup>6</sup> If the member was not married, the

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<sup>1</sup> Amendment 7 is codified as art. X, s. 31 of the Florida Constitution.

<sup>2</sup> For purposes of this amendment, "first responder" includes firefighters; paramedics; emergency medical technicians; and law enforcement, correctional, and correctional probation officers.

<sup>3</sup> Section 250.01(1), F.S., defines the term "active duty" to mean full-time duty in active military service of the United States. The term includes federal duty such as full-time training, annual training, and attendance while a person is in active military service or in a school designated as a service school by law or by the secretary of the applicable military department. The term does not mean full-time duty in the National Guard. The term also includes the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause.

<sup>4</sup> Sections 121.091(7) and 121.591(4), F.S.

<sup>5</sup> Section 121.051(2)(b), F.S. Municipalities and special districts not participating in the FRS provide retirement benefits to first responders they employ and the benefits provided vary.

<sup>6</sup> Section 121.091(7)(d)1., F.S.

benefits are paid to the children.<sup>7</sup> If the member dies in the line of duty and was a member of the Special Risk Class,<sup>8</sup> which includes firefighters, paramedics, emergency medical technicians, and law enforcement, correctional, and correctional probation officers, the surviving spouse or children are entitled to an additional one-half of the member's monthly salary.<sup>9</sup> As such, the death benefit provided under the FRS for those members equals 100 percent of the member's salary.

#### Chapter 112, F.S., Supplemental Death Benefits

Chapter 112, F.S., provides death benefits, such as monetary payments and educational expense waivers, which are supplemental to the benefits afforded under the FRS or another local government plan for law enforcement officers, correctional officers, correctional probation officers, and firefighters. Monetary payments to a designated beneficiary are made in an amount that varies based on the type of death of the officer or firefighter. The benefit amount of \$50,000 is paid when a firefighter or an officer is accidentally killed or receives accidental bodily injury that results in the loss of life, if such killing is not the result of suicide and such bodily injury is not intentionally self-inflicted.<sup>10</sup> An additional benefit amount of \$50,000 is paid if the accidental death is under certain special circumstances, such as in response to an emergency or traffic accident or the result of participation in a training exercise.<sup>11</sup> The benefit amount of \$150,000 is paid when a firefighter or an officer is unlawfully and intentionally killed or dies because of an unlawful and intentional act.<sup>12</sup>

These benefits are paid to the firefighter's or officer's designated beneficiary, which may or may not be the spouse.<sup>13</sup> If the officer or firefighter does not designate a beneficiary, the benefit is paid in equal amounts to the surviving spouse and children.<sup>14</sup> If there is no surviving spouse or children, the benefit is paid to the parents. If there is no surviving spouse, child, or parent, the money is paid to the estate. The benefit amounts are adjusted annually by rule based on the Consumer Price Index for All Urban Consumers (CPI).<sup>15</sup>

If an officer or a firefighter is killed unlawfully and intentionally<sup>16</sup> or under certain aggravating circumstances,<sup>17</sup> then the state will waive certain educational expenses of the surviving spouse and children.<sup>18</sup> To be eligible, the spouse or child must be obtaining a career certificate, an undergraduate education, or a postgraduate education.<sup>19</sup> The amount waived by the state must be an amount equal to the cost of tuition and matriculation and registration fees for 120 credit hours. The child or spouse may attend a state career center, a Florida College System institution, or a state university on a full-time or part-time basis. If the officer or firefighter is killed accidentally, but not under certain aggravating circumstances, the spouse and children are not eligible for educational expense waivers.

Additional benefits provided under ch. 112, F.S. include funeral and burial expenses<sup>20</sup> and payment of health insurance premiums.<sup>21</sup>

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

<sup>8</sup> Section 121.0515, F.S.

<sup>9</sup> Section 121.091(i), F.S.

<sup>10</sup> Sections 112.19(2)(a) and 112.191(2)(a), F.S.

<sup>11</sup> Sections 112.19(2)(b) and 112.191(2)(b), F.S.

<sup>12</sup> Sections 112.19(2)(c) and 112.191(2)(c), F.S.

<sup>13</sup> Sections 112.19(2)(d) and 112.191(2)(d), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Sections 112.19(2)(j) and 112.191(2)(i).

<sup>16</sup> Sections 112.19(2)(b) and 112.191(2)(b), F.S.

<sup>17</sup> Sections 112.19(2)(c) and 112.191(2)(c), F.S.

<sup>18</sup> Sections 112.19(3) and 112.191(3), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 112.19, F.S.; Funeral and burial expenses are available to full-time law enforcement, correctional, and correctional probation officers employed by a state agency under specified circumstances. The law requires payment of \$1,000 to the family and authorizes up to \$5,000 to be paid directly to the funeral home. Funeral and burial expenses are not available to firefighters.

<sup>21</sup> Sections 112.19 and 112.191, F.S.; Payment of the entire health insurance premiums for surviving family members are available to those family members of full-time firefighters, law enforcement officers, and correctional officers.

The supplemental death benefits available to firefighters and law enforcement, correctional, and correctional probation officers provided for in ch. 112, F.S., are not provided to paramedics and emergency medical technicians. In addition, the education benefits provided to firefighters and law enforcement, correctional, and correctional probation officers do not apply if such first responder is accidentally killed or receives accidental bodily injury that results in the loss of the individual's life. The current education benefit also does not apply to paramedics or emergency medical technicians.

#### Death Benefits for Florida National Guard Members

A FLNG member who is killed or who dies due to injuries received while on active state duty under competent orders qualifies for the same benefits provided to law enforcement officers under ch. 112, F.S.<sup>22</sup> However, if the federal government activates a FLNG member for active duty and the FLNG 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 FLNG 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:<sup>23</sup>

- 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 from the General Revenue Fund. None of the other benefits provided for members of the U.S. Armed Forces are paid from general revenue.

#### **Effect of the Bill**

The bill expands the supplemental death benefits available to firefighters, FLNG members on state active duty, and law enforcement, correctional, and correctional probation officers under ch. 112, F.S., by increasing the amount of the benefits as follows:

- From \$50,000 to \$75,000 when an eligible firefighter, FLNG 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.
- From \$50,000 to \$75,000 when an eligible firefighter, FLNG member, 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.
- From \$150,000 to \$225,000 when an eligible firefighter, FLNG member, or law enforcement, correctional, or correctional probation officer is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act while engaged in the performance of official duties.

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<sup>22</sup> Section 250.34(4), F.S.

<sup>23</sup> 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](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...).

The bill also provides these death benefits to paramedics and emergency medical technicians and removes the annual Consumer Price Index adjustment of the benefit amounts.

The bill creates a new death benefit of \$75,000 for FLNG members who are killed while on federal active duty and engaged in performing official duties and U.S. Armed Forces members who are killed while on active duty.

The bill expands the death benefits for educational expenses of surviving spouses and children under ch. 112, F.S., by providing the benefits to firefighters, law enforcement officers, correctional officers, correctional probation officers, and FLNG members who are accidentally killed or receive accidental bodily injury resulting in loss of life. These benefits are also provided to paramedics and emergency medical technicians, as well as FLNG members who are killed while on federal active duty and U.S. Armed Forces members who are killed while on active duty.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 112.19, F.S., relating to death benefits for law enforcement, correctional, and correctional probation officers.

**Section 2.** Amends s. 112.191, F.S., relating to death benefits for firefighters.

**Section 3.** Creates s. 112.1911, F.S., relating to death benefits for paramedics and emergency medical technicians.

**Section 4.** Creates s. 112.1912, F.S., relating to the creation of death benefits for educational expenses for first responders.

**Section 5.** Amends s. 250.34, F.S., relating to benefits for FLNG members.

**Section 6.** Creates 250.342, F.S., relating to death on active duty benefits to FLNG members and active duty members of the U.S. Armed Forces.

**Section 7.** Amends s. 295.01, F.S., relating to benefits for children and spouses of deceased or disabled veterans or servicemembers.

**Section 8.** Provides that the act fulfills an important state interest.

**Section 9.** Provides an effective date of July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a significant, yet indeterminate, fiscal impact to state expenditures and an indeterminate fiscal impact to local government expenditures. As prescribed in the bill, and based on constitutional requirements, the bill provides certain death benefits for individuals who die under specific circumstances and certain education benefits to their surviving spouse and children. The total impact to state and local governments is indeterminate as it would depend on the number of covered deaths that occur in any given fiscal year.

The bill increases certain death benefits provided for firefighters; law enforcement, correctional, and correctional probation officers; and FLNG members who die while in the line of duty. The bill also establishes new death benefits for paramedics and emergency medical technicians who die in the line of duty to mirror those benefits provided for firefighters; law enforcement, correctional, and correctional probation officers; and FLNG members.

The death benefits are paid by the employer and are increased to and established at the following amounts:

- Accidental deaths - \$75,000;
- Accidental deaths under certain aggravating circumstances - \$75,000; and
- Unlawful and intentional deaths - \$225,000.

The bill establishes a new \$75,000 death benefit for members of the U.S. Armed Forces and FLNG members for deaths that occurs while on active (federal) duty. The FLNG is responsible for the payment associated with its members. However, members of the U.S. Armed Forces, who must have been a resident or duty posted in this state at the time of death, must be paid for by the Chief Financial Officer from the General Revenue Fund.

The bill also waives certain educational expenses for the child and spouse of a deceased individual if specific requirements are met. The State Board of Education and the Board of Governors are tasked with adopting regulations and procedures necessary to implement the new educational requirements. It is anticipated that children and spouses of deceased individuals will be included in the Education Estimating Conference on Student Financial Aid.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. By July 1, 2019, art. X, s. 31 of the Florida Constitution requires the Legislature to implement by general law death benefits for certain enumerated groups, including a requirement that certain educational benefits be waived.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the State Board of Education to adopt rules and procedures, and the Board of Governors to adopt regulations and procedures, to implement the death benefit for educational expenses for firefighters; law enforcement, correctional, and correctional probation officers; FLNG members; and active duty members of the U.S. Armed Forces.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.