

**Constitution Revision Commission  
General Provisions Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 49

Relating to: MISCELLANEOUS, creates new section

Introducer(s): Commissioners Gainey and Timmann

Article/Section affected: Art. X; creates new section

Date: December 7, 2017

|    | REFERENCE | ACTION             |
|----|-----------|--------------------|
| 1. | <u>GP</u> | <b>Favorable</b>   |
| 2. | <u>FT</u> | <b>Pre-meeting</b> |

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**I. SUMMARY:**

Proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

An individual working for the State of Florida or a political subdivision who is killed in the line of duty and employed as a first responder in one of the following positions:

- Firefighter
- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

Or, an Active Duty Member of the United States Armed Services who is a resident of Florida or stationed in Florida at the time of death

The beneficiary must be designated in writing by the covered individual. If no beneficiary is designated the survivor benefit is paid in the following order of succession to the individual's:

- Surviving spouse and/or children in equal portion; or
- Surviving parent or parents if no surviving spouse or children, or
- Estate

These survivor benefit payments are in addition to any workers' compensation or pension benefit payments owed to the individual and are exempt from attachment or garnishment.

The surviving spouse or child can benefit from a state waiver of educational expenses for full-time or part-time attendance at a state career center, a Florida College System institution or a state university. The waiver is for up to 120 credit hours equal to the cost of tuition, matriculation, and registration fees while obtaining a career certificate, an undergraduate degree or a post-graduate degree. The education waiver is available for the surviving child until his or her 25<sup>th</sup> birthday or to the surviving spouse for up to five years and is available until the tenth anniversary after the individual's death.

The in-line-of-duty survivor benefits created by this proposal are not payable for a death resulting from an unlawful action by the individual or an intentionally self-inflicted bodily

## **II. SUBSTANTIVE ANALYSIS:**

### **A. PRESENT SITUATION:**

Currently there is no provision within the Florida Constitution that guarantees death benefits to first responders. There are existing laws that guarantee a death benefit for law enforcement, correctional, and correctional probation officers<sup>1</sup> as well as Firefighters.<sup>2</sup> The statutes are written so that the employing agency of the first responder is responsible to pay the death benefit to their employer. The amounts of the benefit are contingent on the circumstances of the death and range from \$150,000 if an officer is killed due to an unlawful act by another individual, to \$50,000 if the death was the result of an accident. Members of the Florida National Guard who are killed while on active state duty are entitled to benefits in line with those provided to Law enforcement officers killed in the line of duty.<sup>3</sup> While there are benefits for law enforcement officers and firefighters, there are no statutory guarantees of benefits for emergency medical technicians, paramedics, or active duty military members. However, active duty military members qualify for a federal benefit program, and are automatically insured under Servicemembers' Group Life Insurance (SGLI) for the maximum amount of \$400,000 unless an election is filed reducing the insurance by \$50,000 increments or canceling it entirely.<sup>4</sup>

In 2016, the legislature passed SB 7012, which created death benefits under the Florida retirement system for surviving spouses and children of Special Risk Class members.<sup>5</sup> This created the benefit of a monthly pension equal to one half of the decedent's monthly salary for the rest of the surviving spouse's lifetime, or if the decedent was vested, a lump sum. If the decedent leaves no survive spouses but is survived by a child under 18, the benefits extend to the child up until the 25<sup>th</sup> birthday as long as the child is unmarried and enrolled as a full-time student.

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<sup>1</sup> F.S. §112.19

<sup>2</sup> F.S. §112.191

<sup>3</sup> F.S. §250.34

<sup>4</sup> <https://www.benefits.va.gov/insurance/sgli.asp> (last visited 11/25/17).

<sup>5</sup> F.S. §121.091

Education benefits are also available for the spouse and children of a deceased law enforcement, correctional, or correctional probation officers pursuant to Florida law.<sup>6</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

The proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

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- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

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## **C. FISCAL IMPACT:**

The following was provided by the Department of Management Services (DMS)<sup>7</sup>: The proposal is silent on the benefit amount provided under this program. Additionally, while the proposal specifies that benefits for active duty military members will be funded from

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<sup>6</sup> See F.S. §112.19(3)

<sup>7</sup> DMS Analysis on CRC Proposal 49 (on file with CRC staff).

General Revenue, it is silent on the source of funding for benefits for government employees.<sup>8</sup>

To administer this benefit, Florida governmental employers could be responsible for administering the benefit which is payable to the named surviving beneficiary for the impacted employees working for that government employer. The payment to beneficiaries of the active Armed Services members may pose administrative challenges. Challenges may also arise from personnel being reassigned between bases in and out of Florida, maintaining current beneficiary information for individuals outside of the workforce of Florida governmental employers and coordinating any ongoing benefits for the survivors of active Armed Services members. There are 55,862 active military members and 36,387 reservists stationed in Florida.<sup>9</sup>

Administering this Florida survivor benefit for military members cannot be assigned to the federal employer. There would have to be a Florida-based administrator for the program such as a Florida government agency or a contracted third party administrator.

The first responder positions covered may require more detail to ensure the benefit program is structured as envisioned by the proposal. For example:

- Are correctional officers and correctional probation officers limited to those employed by the Department of Corrections or are these terms inclusive of the correctional officers working in county jails and detention centers and the probation officers employed by local governments?
- Are correctional officers, correctional probation officers and law enforcement officers based on a definition in current law or on some other basis?
- Will volunteer firefighters become covered in addition to firefighters employed by state and local governments?

Currently, certain governmental positions, including firefighters, law enforcement officers and correctional officers who die of specified conditions enumerated in section 112.18, Florida Statutes, (tuberculosis, heart disease and hypertension) are presumed to have died in the line of duty for workers' compensation and retirement benefits. It is unclear whether this presumption will apply under this benefit program as well. If this presumption does apply, current federal requirements under the HEART Act which specify that an employee be considered "returned to work" for survivor benefit eligibility do not create an in line of duty presumption for members of the armed services.

The structure of the benefit program and how benefits are paid could trigger financial reporting requirements under the Governmental Accounting Standards Board requiring the employers participating in the program (whether an individual employer or in some

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<sup>8</sup> At the General Provisions Committee meeting on 11/28/17, Commissioner Gainey clarified that the employing agency is responsible for payment.

<sup>9</sup> According to the September 2017 report by the Defense Management Data Center for the Department of Defense.

multiple employer or agent retirement plan) to record long-term financial liabilities on their financial statements for the benefits paid under this provision.

The educational benefits for the surviving spouse or children for other employees killed in the line of duty are currently coordinated through the employer to verify eligibility of the requirement when the survivors are seeking access to education within the Florida career centers, the State Community College System or the State University System. A similar approach could continue for the survivors of first responders employed by that agency but the survivors of active duty Armed Services personnel stationed in Florida will require a different approach since there is no Florida governmental employer to verify eligibility for access or define the time limitations for the educational component of this benefit.

### **III. Additional Information:**

#### **A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

#### **B. Amendments:**

None.

#### **C. Technical Deficiencies:**

None.

#### **D. Related Issues:**

None.