

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Retirement

SPONSOR(S): Plakon and others

TIED BILLS: IDEN./SIM. BILLS: SB 1932

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	9 Y, 0 N	Haug	Williamson
2)	Government Operations Appropriations Committee	13 Y, 0 N	Delaney	Topp
3)	Economic Development & Community Affairs Policy Council		Haug	Tinker
4)				
5)				

SUMMARY ANALYSIS

The Special Risk Class of the Florida Retirement System consists of state and local government employees whose positions meet certain criteria. The class covers persons employed in law enforcement, firefighting, criminal detention, emergency medical care and certain forensic classes who meet statutory criteria for membership as set forth in current law. As of June 30, 2009, with 75,640 active members in the Special Risk Class and 75 members in the Special Risk Administrative Support Class, special risk employees made up 11.3 percent of the active FRS membership.

A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum benefit payment based on the average of their highest five years of salary.

The bill revises the definition of "special risk member" to include FRS members who suffer from a qualifying injury and are no longer capable of being employed in a Special Risk Class eligible position. Any member employed in a law enforcement, firefighting or criminal detention position who suffers a qualifying injury in the line of duty could continue membership in the FRS Special Risk Class. However, such member must continue to work for the same employer for whom they were working when they sustained the qualifying injury. In addition, the bill defines the term "qualifying injury" as the physical loss, or loss of use, of two or more limbs.

An actuarial study determined that the fiscal impact of the bill is insignificant due to the limited number of individuals that are projected to be eligible.

This bill is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Special Risk Class of the Florida Retirement System (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, emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2009, there were 75,640 active members in the Special Risk Class, comprising 11.3 percent of the active FRS membership.¹

The Special Risk Class under the FRS was created by the Legislature to recognize that persons employed in certain categories of law enforcement, firefighting, and criminal detention positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public or their coworkers.

In response, the Legislature established a special class to permit these employees to retire at an earlier age, and with less service, without suffering an economic deprivation compared to Regular Class members. As a result, they increased the accrual rate from 1.6 percent to 2 percent for Special Risk Class members and reduced the required number of years of service from 30 to 25. In comparison, member of the Regular Class with 30 years of service will receive a retirement benefit equal to 48 percent of their average final compensation, while a member of the Special Risk Class with 25 years of service would earn a retirement benefit equal to 50 percent of their average final compensation. Approximately the same retirement benefit with 5 fewer years of service.

Special Risk Class membership benefits have improved over the years and now differ from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of 3 percent of their average final compensation (AFC) for each year of service, as opposed to the 1.60 percent to 1.68 percent credit per year of service earned by a Regular Class member.

¹ *The Florida Retirement System Annual Report, July 1, 2008 – June 30, 2009* at 43. (https://www.rol.frs.state.fl.us/forms/2008-09_Annual_Report.pdf)

- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular Class member.
- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum benefit payment while a Regular Class member similarly disabled qualifies for a 42 percent minimum benefit payment.

The enhanced benefits provided to members of the Special Risk Class are funded by higher employer contributions. For the 2009-10 plan year, the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent, which is significantly higher than the 8.69 percent retirement contribution rate for the Regular Class.² Thus, when a class or position is moved from the Regular Class to the Special Risk Class, the monthly employer contributions required for that group or individuals increases from 8.69 to 19.76 percent.

Officer Adam Pierce

In 2005 Orange County Sheriff's Deputy Adam Pierce, then 25 years-of-age, was involved in a confrontation on Orange Blossom Trail regarding a suspected drug deal. Deputy Pierce was shot twice, once in the head and in the neck, severing his spine. He is paralyzed from the waist down.³

Effect of Proposed Change

The bill changes the nature of disability benefits under the Florida Retirement System. It names the act the "Adam Pierce Act" and provides a statement of important state interest.

The bill allows a member of the Special Risk Class employed in a law enforcement, firefighting, or criminal detention position, who suffers a disability in line of duty, to maintain his or her status in the Special Risk Class provided the disability is a qualifying injury that prevents the member from being able to perform the duties of his or her former Special Risk Class position. However, the employee must be employed by the same employer.

The bill defines "qualifying injury" to mean an injury sustained in the line of duty, as certified by the Special Risk Class member's employing agency, which does not result in total and permanent disability.⁴ An injury is not a qualifying injury unless it is an injury to the member's body resulting in the physical loss, or loss of use, of at least two of the following: right arm, left arm, right leg, or left leg. An injured Special Risk Class member who continues participation in the class after suffering a qualified injury loses Special Risk Class membership when the member stops working for the same employer.

To be eligible for continued Special Risk Class membership:

- The member must have already qualified for and be actively participating in Special Risk Class at the time of the qualifying injury and must not be receiving disability retirement benefits; and
- Two licensed medical physicians, one of whom is a primary treating physician of the member, must certify the existence of the physical injury and medical condition that constitutes a qualifying injury and that the member has reached maximum medical improvement after August 1, 2008.

The certifications from the licensed medical physicians must include, at a minimum, that:

² Chapter No. 2009-76, Laws of Florida. Regardless of whether an individual member elects to participate, in the FRS Pension Plan or the FRS Investment Plan, the employer pays the same contribution rate for each class or subclass of membership by blending the rates for both plans as required under the uniformed contribution rate system of the FRS as provided in Part III of Chapter 121, F.S. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.

³ Ernest Hooper, "Tragedy inspires innovative thinking," *St. Petersburg Times* (October 17, 2006), p. B3, and "2nd trial under way in shooting," *Orlando Sentinel* (July 7, 2006), p. B3.

⁴ Section 121.091(4)(b), F.S., provides that a member is "considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee."

- The physical loss or loss of use is total and permanent, except in the event that the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least a 75-percent loss of motor function with respect to each arm or leg affected.
- This physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her Special Risk Class position.
- Notwithstanding this physical loss or loss of use, the member is able to perform the essential job functions required by the member's new position.
- Use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job functions of the member's position.
- The physical loss or loss of use is a direct result of a physical injury and not of any mental, psychological, or emotional injury.

B. SECTION DIRECTORY:

Section 1: Providing a short title.

Section 2: Providing a statement of important state interest.

Section 3: Amends s. 121.021(15), F.S., adding a new paragraph (f) to the definition of "special risk member."

Section 4: Amends s. 121.0515, F.S., providing eligibility requirements for membership in the Special Risk Class.

Section 5: Provides that the bill is effective upon becoming a law.

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:

While the actuary results indicated that the bill will create a \$30,000 unfunded actuarial liability in the Special Risk Class, the possible shift of salaries from the Regular Class to Special Risk is expected to

be so minimal, the employer contribution rates are not impacted.⁵ As a result, the fiscal impact is determined insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

Art. X, s. 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.

According to the actuarial study,⁶ the bill complies with this requirement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

⁵ Letter from Robert S. Dezube, FSA, Milliman, Inc., to Sarabeth Snuggs, State Retirement Director, Division of Retirement, February 19, 2010 (on file with the Governmental Affairs Policy Committee).

⁶ *Id.*