

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193

Retirement

SPONSOR(S): Plakon

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			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Special Risk Class of the Florida Retirement System 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, and emergency and forensic medical care 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 option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.

The bill revises the definition of "special risk member" to include certain FRS members who suffer from a qualifying injury and are no longer employed in a Special Risk Class eligible position. Any member employed in a law enforcement, firefighting or criminal detention position who suffers a disability in the line of duty through a qualifying injury could continue membership in the FRS Special Risk Class, if such member continues 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." Members benefiting from this proposed change are not eligible for Special Risk Administrative Support Class membership.

The actuary results show a \$30,000 unfunded liability to the Special Risk Class but this liability does not require an increase to the Special Risk Class contribution rate.

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, and 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, 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.<sup>1</sup>

Though it existed in several forms before the establishment of the FRS in December 1970, the Special Risk Class under the FRS was created as the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care 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 and 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 economic deprivation compared to Regular Class members with normal retirement after 30 years of service or age 62 and vested. The comparison of equivalent benefits was determined when 25 years at a 2 percent Special Risk Class accrual value resulted in 50 percent of the average final compensation compared to 48 percent of average final compensation for a Regular Class member with 30 years of service at a 1.60 percent per year accrual value.

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 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.
- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 v. age 62) or with fewer years of service (25 years v. 30 years) than a Regular Class member.

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<sup>1</sup> *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](https://www.rol.frs.state.fl.us/forms/2008-09_Annual_Report.pdf))

- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2009-10 plan year under the FRS, 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.<sup>2</sup> Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions required for that group increases by over 2.25 times for affected employees.

### **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 the 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 eligible to perform the duties of his or her former Special Risk Class position but who has recovered and is able to work in a new position for the same employer. This change shifts the burden of funding lost future retirement benefits from the workers compensation coverage of the individual employer to all employers in the FRS. There will be an additional cost for employers with Special Risk Class members.

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, that does not result in total and permanent disability.<sup>3</sup> An injury is not a qualifying injury unless it is a physical injury to the member’s physical body resulting in a 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 employer at the time the injury occurred.

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.

In addition to certification of loss of at least two of the previously mentioned limbs, the certifications from the licensed medical physicians must include, at a minimum, that:

- 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 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.

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<sup>2</sup> 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.

<sup>3</sup> 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.”

- 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:**

The actuary results show a \$30,000 unfunded liability to the special risk class but this liability does not require an increase to the Special Risk Class contribution rate. There is no impact on the contribution rates, and the possible shift of salaries from the Regular Class to Special Risk is expected to be so minimal, the blended rates are not impacted.<sup>4</sup>

## **III. COMMENTS**

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<sup>4</sup> 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).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; however, an exemption applies because the bill creates an insignificant fiscal impact.

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,<sup>5</sup> 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.

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<sup>5</sup> *Id.*