

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the Special Risk Class to include certain existing members who are no longer able to perform in their Special Risk Class position due to a “qualifying injury” suffered in the line of duty.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members,³ 264,000 retirees and surviving beneficiaries,⁴ and 31,000 Deferred Retirement Option Program participants.⁵ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁶	588,204 members	86.46% of membership
2. Special Risk Class ⁷	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁸	74 members	0.01% of membership
4. Elected Officers' Class ⁹	2,078 members	0.31% of membership
5. Senior Management Service Class ¹⁰	7,562 members	1.11% of membership ¹¹

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹²

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs) [hereafter referred to as FRS Annual Report].

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

¹² *See, e.g.*, s. 121.055(3)(a)1., F.S.

nature of the work they perform,¹³ might need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹⁴ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹⁵ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁶

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁷ emergency medical technicians and paramedics;¹⁸ community-based correctional probation officers;¹⁹ certain employees of correctional or forensic facilities or institutions;²⁰ youth custody officers;²¹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²²

Special Risk Class members who suffer an injury or disability that does not render them totally and permanently disabled,²³ but renders them unable to perform the duties of their Special Risk Class position, are ineligible for disability retirement benefits.²⁴ If such member subsequently is retained or reemployed by an FRS employer in a non-Special Risk position, he or she is designated as a member of the applicable class and no longer a member of the Special Risk Class.

OFFICER ADAM PIERCE

In 2005, Orange County Sheriff's Deputy Officer Adam Pierce was involved in a confrontation on Orange Blossom Trail regarding a suspected drug deal. Officer Pierce was shot twice, once in the head and in the neck, severing his spine. At the age of 25, he is paralyzed from the mid section down. His twin brother and father are law enforcement officers.

PROPOSED CHANGES

This bill is designated the "Adam Pierce Special Risk Retirement Act." It expands the Special Risk Class to include Special Risk Class members employed in the categories of law enforcement,

¹³ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹⁴ Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹⁵ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁶ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁷ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁸ Ch. 99-392, L.O.F., s. 23.

¹⁹ Ch. 2000-169, L.O.F., s. 29.

²⁰ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager).

²¹ Ch. 2001-125, L.O.F., s. 43.

²² Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²³ Section 121.091(4)(b), F.S., defines "total and permanent disability" as being "prevented, by reason of a medically determinable physical or mental impairment, from rendering service as an officer or employee."

²⁴ Section 121.091(4)(a)1. and (c)4., F.S.

firefighting, and criminal detention who suffer a disability in the line of duty due to a qualifying injury. The injury must render them unable to perform the duties of their former Special Risk Class position, but allow them to work in a new position, for the same employer, after recovery.

This bill defines the term “qualifying injury” to mean an injury sustained in the line of duty, as certified by the member’s employing agency, by a Special Risk Class member whose injury does not result in total and permanent disability. An injury is not a qualifying injury:

- Unless the injury is a physical injury to the member’s physical body resulting in a loss, or loss of use, of one or both arms, legs, hands, or feet; or
- If the member is no longer employed by the same employer as when he or she was injured.

The member is no longer eligible for “qualifying injury” status upon terminating employment with the employer for whom the member was providing special risk services on the date the injury occurred. As such, Special Risk Class membership terminates at such time.

Eligibility requirements for membership in the Special Risk Class as a member who sustained a “qualifying injury” are as follows:

- The member must have already qualified and be an active participant in the Special Risk Class in the category of law enforcement, firefighting, or criminal detention at the time of the qualifying injury, and cannot be receiving disability retirement benefits.
- 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 constitute a qualifying injury, and that the member has reached Maximum Medical Improvement (MMI) after August 1, 2007. The certification from the licensed medical physicians must include six criteria:
 - The injury to the special risk member has resulted in a physical loss or loss of use of one or both arms, legs, hands, or feet.
 - The physical loss or loss of use is total and permanent, except in the event of a physical injury to the member’s brain, in which event the loss of use is: permanent and total with respect to at least one hand or foot, or permanent with at least 75-percent loss of motor function with respect to at least one arm or leg.
 - The physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.
 - Notwithstanding the physical loss or loss of use, the individual 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 of one or both arms, legs, hands, or feet is a direct result of a physical injury and not of any mental, psychological, or emotional injury.

C. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 provides a statement of important state interest.

Section 3 amends s. 121.021, F.S., to revise the definition of “Special Risk Member” to include certain members suffering a qualifying injury.

Section 4 amends s. 121.0515, F.S., to provide eligibility requirements for membership in the Special Risk Class for certain members suffering a qualifying injury.

Section 5 provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill cannot be determined until an actuarial special study is completed.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill cannot be determined until an actuarial special study is completed.²⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services offered the following fiscal note:

As HB 389 is currently written, the impact on FRS employers and employees is prospective. The bill neither provides for nor funds retroactive service upgrade to members that may have already sustained a qualifying injury prior to the effective date of this bill. If the bill becomes amended to allow the upgrade of previous service, then the fiscal impact to the FRS would be greater and would require a revised actuarial special study.²⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill apply to all persons similarly situated, including state and local governments, the bill appears to satisfy the requirements of Article VII, s. 18 of the State Constitution.

2. Other:

Article X, s. 14 of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

provisions for funding the increase in benefits are made on a sound actuarial basis.²⁸ The provisions of this bill require an actuarial special study to establish the required contribution rate to fund these benefits in an actuarially sound manner. An actuarial study has been requested.²⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

²⁸ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Article X, s. 14 of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

²⁹ Letter from Mr. Attkisson, Chair of the Government Efficiency & Accountability Council, to the Division of Retirement, dated January 29, 2008 (on file with the Government Efficiency & Accountability Council).