

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 798

INTRODUCER: Senators Dean and Gaetz

SUBJECT: Retirement/Special Risk Class

DATE: March 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Favorable
2.			CJ	
3.			GO	
4.			GA	
5.				
6.				

I. Summary:

This bill creates the "Adam Pierce Act" to provide continuing membership in the Special Risk Category of the Florida Retirement System (FRS) for certain special risk members who have suffered a qualifying injury, and to provide eligibility requirements and benefits for those members.

This bill substantially amends ss. 121.021 and 121.0515, Florida Statutes.

II. Present Situation:

Profile of the FRS and the Special Risk Class¹

The FRS was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers, judges, and Highway Patrol Officers. Today, the FRS is the fourth largest public retirement system in the United States, covering 680,302 active employees, 264,763 retirees and their surviving beneficiaries, and more than 31,562 participants of the Deferred Retirement Option Program (DROP). As of June, 2007, state employees (including university employees) represent 21- percent of the FRS membership. Remaining members are employed by local agencies, including all counties, district school boards, and community colleges, as well as cities and special districts that have opted to join the FRS.

¹ Information in the "Present Situation" section of this bill analysis is from an analysis of the bill provided by the Department of Management Services, Division of Retirement, dated February 6, 2008.

The active membership of the FRS is divided into five membership classes: the Regular Class, the Special Risk Class, the Special Risk Administrative Support Class, the Elected Officers' Class, and the Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

Special Risk Class. The Special Risk Class (SRC) of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons who are employed as law enforcement officers, firefighters, correctional officers, correctional probation officers, emergency medical technicians or paramedics, specified forensic and health care workers, and youth custody officers, who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2007, with over 74,000 active members in the SRC and 74 members in the Special Risk Administrative Support Class, special risk employees made up nearly 11 percent of the active FRS membership.

SRC membership differs from Regular Class membership in the following ways:

- SRC members earn retirement credit at the rate of 3 percent of average final compensation for each year of service. Regular Class members earn retirement credit at the rate of 1.60 to 1.68 percent per year of service.
- SRC members qualify for normal retirement at age 55 or with 25 years of service. Regular Class members qualify at age 62 or with 30 years of service.
- SRC members who are totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment. Regular Class members similarly disabled qualify for a 42 percent minimum option 1 benefit payment.²

The benefit improvements enjoyed by members of the SRC are funded by higher employer contributions. For the 2007-2008 plan year³ under the FRS, the retirement portion of the employer contribution rate is 19.76 percent – more than twice the 8.69 percent retirement contribution rate for the Regular Class. When a membership group moves from the Regular Class to the SRC, the monthly employer contributions more than double for affected employees.

Special Risk Administrative Support Class- SRC members who are moved or reassigned to, or subsequently employed in, a non-special risk law enforcement, firefighting, correctional, or emergency medical care administrative support position within the same agency or within any other similar agency under the FRS become a member of the Special Risk Administrative Support Class and earn retirement credit at the same rate as a Regular Class Member. However, service in the Special Risk Administrative Support Class does apply towards satisfaction of the SRC normal retirement date.

Officer Adam Pierce

In 2005 Orange County Sherriff'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

² FRS members may choose to receive benefits from the Pension Plan in one of four ways. Option 1 provides the greatest amount, but is unaccompanied by survivor benefits.

³ See s. 121.71, F.S., establishing the employer contribution rates for Regular Class and Special Risk Class members effective July 1, 2007. Effective July 1, 2008, employer contribution rates are established at 9.59% for Regular Class and 22.01% for Special Risk Class members.

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.

Art. X, section 14 of the Florida Constitution

Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement benefit changes.—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 until such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of ch. 112, F.S.

Article X, section 14 of the Florida Constitution, is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."

Part I of ch. 121, F.S.

Section 121.091(10), F.S., provides that "it is the intent of the Legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192."

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the "Adam Pierce Act."

Section 2 establishes legislative findings and provides a declaration of important state interest.

Section 3 amends s. 121.021, F.S., to provide that effective August 1, 2007, the SRC includes members who meet the qualifying injury special criteria being created in the bill.

Section 4 amends s. 121.0515, F.S., to establish that law enforcement officers, firefighters, and correctional officers who are SRC members in the FRS, have suffered a qualifying injury, and who are not receiving FRS disability retirement benefits, will qualify for membership in the new class, if they meet the following requirements:

- Two licensed medical physicians, one of whom must be the member's primary treating physician, certify the existence of a physical injury and medical condition that constitutes a qualifying injury.
- The physical injury and medical condition certification must include that:

- The qualifying injury has resulted in the physical loss, or loss of use, of one or both arms, legs, hands or feet; and
- The physical loss or loss of use is total and permanent.
- In the event of a physical injury to the member's brain, total and permanent loss includes the lost of use of one hand or foot, or the loss of 75 percent of motor function in one hand or foot.
- The member must have reached maximum medical improvement after August 1, 2007.
- The physical loss or loss of use renders the member physically unable to perform the essential job functions required under the member's special risk position.
- Notwithstanding the physical loss or loss of use, the member is able to perform the essential job functions of the member's new position.
- The use of artificial limbs is 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 limbs is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

"Qualifying injury" is defined as an injury sustained by a special risk member in the line of duty, as certified by the member's employing agency. The injury may not result in total and permanent disability as defined in s. 121.091(4)(b), F.S.,⁴ and must be a physical injury to the member's physical body resulting in a physical loss of, or loss of use of, one or both arms, legs, hands, or feet. Once a member ceases employment with the special risk employer for whom he or she was providing services, such physical injury will no longer be considered a qualifying injury.

The new position in which the member is employed need not be a position whose essential job functions entitle the member to special risk membership, but the decision as to the availability of the new position is a decision of the employer. Finally, any member with a qualifying injury who is moved to a non-special risk position will earn retirement credit at the SRC rate instead of the Special Risk Administrative Class rate which earns retirement credit at the same percentage rate as a member of the Regular Class.

Section 3 provides that the act will take effect October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ Paragraph (4)(b) in s. 121.091, F.S., provides that a member shall be 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.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill does not comply with the requirements of Art. X, s. 14, of the Florida Constitution, because it does not provide for funding of the increase in the bill and no actuarial study was conducted.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SRC members who incur qualifying injuries will be eligible to retain membership in the SRC and will accrue retirement credit at the higher rate.

C. Government Sector Impact:

The Division of State Retirement in the Department of Management Services reports that the financial impact of the bill on FRS employers and employees is prospective and actual cost will be determined by an actuarial study.

VI. Technical Deficiencies:

The bill does not provide or fund retroactive service upgrades to FRS members who may have sustained a qualifying injury prior to the effective date of the bill.

VII. Related Issues:

If the bill is amended to retroactively upgrade prior service, the fiscal impact to the FRS will be greater and will require a revised actuarial special study.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.