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 HB 1193, Engrossed 1

2010 Legislature

1 A bill to be entitled
 2 An act relating to retirement; providing a short title;
 3 providing legislative findings; providing a statement of
 4 important state interest; amending s. 121.021, F.S.;
 5 revising the definition of "special risk member" to
 6 include certain members suffering a qualifying injury;
 7 amending s. 121.0515, F.S.; providing eligibility
 8 requirements for membership in the Special Risk Class for
 9 certain members suffering a qualifying injury; providing
 10 medical certification requirements; providing a
 11 definition; prohibiting the grant or creation of
 12 additional rights; providing retroactive effect; amending
 13 s. 112.191, F.S.; revising provisions providing death
 14 benefits for firefighters; expanding activities entitling
 15 firefighters to death benefits to include participation in
 16 training exercises and injury by an unlawful and
 17 intentional act that results in death; providing
 18 legislative findings that the act fulfils an important
 19 state interest; providing for application; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. This act may be cited as the "Adam Pierce Act."
 25 Section 2. The Legislature finds that persons employed in
 26 law enforcement, firefighting, and criminal detention positions
 27 perform state and municipal functions; that it is their duty to
 28 protect life and property at their own risk and peril; that it

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29 is their duty to instruct school personnel, public officials,
 30 and private citizens about safety; and that their activities are
 31 vital to public safety. Therefore, the Legislature finds that it
 32 is a proper and legitimate state purpose to provide a uniform
 33 retirement system for the benefit of persons employed in law
 34 enforcement, firefighting, and criminal detention positions and
 35 finds, in implementing the provisions of s. 14, Art. X of the
 36 State Constitution relating to pension trust fund systems and
 37 plans, that such retirement systems or plans be managed,
 38 administered, operated, and funded in such manner as to maximize
 39 the protection of pension trust funds. Pursuant to s. 18, Art.
 40 VII of the State Constitution, the Legislature determines and
 41 declares that the provisions of this act fulfill an important
 42 state interest.

43 Section 3. Paragraph (f) is added to subsection (15) of
 44 section 121.021, Florida Statutes, to read:

45 121.021 Definitions.—The following words and phrases as
 46 used in this chapter have the respective meanings set forth
 47 unless a different meaning is plainly required by the context:

48 (15)

49 (f) Effective August 1, 2008, "special risk member"
 50 includes any member who meets the special criteria for continued
 51 membership set forth in s. 121.0515(2)(k).

52 Section 4. Paragraphs (g) through (j) of subsection (2) of
 53 section 121.0515, Florida Statutes, are amended, paragraph (k)
 54 is added to that subsection, and paragraph (d) is added to
 55 subsection (7) of that section, to read:

56 121.0515 Special risk membership.—

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57 (2) CRITERIA.—A member, to be designated as a special risk
58 member, must meet the following criteria:

59 (g) The member must be employed as a youth custody officer
60 and be certified, or required to be certified, in compliance
61 with s. 943.1395. In addition, the member's primary duties and
62 responsibilities must be the supervised custody, surveillance,
63 control, investigation, apprehension, arrest, and counseling of
64 assigned juveniles within the community; ~~or~~

65 (h) Effective October 1, 2005, through June 30, 2008, the
66 member must be employed by a law enforcement agency or medical
67 examiner's office in a forensic discipline recognized by the
68 International Association for Identification and must qualify
69 for active membership in the International Association for
70 Identification. The member's primary duties and responsibilities
71 must include the collection, examination, preservation,
72 documentation, preparation, or analysis of physical evidence or
73 testimony, or both, or the member must be the direct supervisor,
74 quality management supervisor, or command officer of one or more
75 individuals with such responsibility. Administrative support
76 personnel, including, but not limited to, those whose primary
77 responsibilities are clerical or in accounting, purchasing,
78 legal, and personnel, shall not be included; ~~or~~

79 (i) Effective July 1, 2008, the member must be employed by
80 the Department of Law Enforcement in the crime laboratory or by
81 the Division of State Fire Marshal in the forensic laboratory in
82 one of the following classes:

- 83 1. Forensic technologist (class code 8459);
- 84 2. Crime laboratory technician (class code 8461);

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85 3. Crime laboratory analyst (class code 8463);
 86 4. Senior crime laboratory analyst (class code 8464);
 87 5. Crime laboratory analyst supervisor (class code 8466);
 88 6. Forensic chief (class code 9602); or
 89 7. Forensic services quality manager (class code 9603);~~;~~
 90 (j) Effective July 1, 2008, the member must be employed by
 91 a local government law enforcement agency or medical examiner's
 92 office and must spend at least 65 percent of his or her time
 93 performing duties that involve the collection, examination,
 94 preservation, documentation, preparation, or analysis of human
 95 tissues or fluids or physical evidence having potential
 96 biological, chemical, or radiological hazard or contamination,
 97 or use chemicals, processes, or materials that may have
 98 carcinogenic or health-damaging properties in the analysis of
 99 such evidence, or the member must be the direct supervisor of
 100 one or more individuals having such responsibility. If a special
 101 risk member changes to another position within the same agency,
 102 he or she must submit a complete application as provided in
 103 paragraph (3) (a); or—
 104 (k) The member must have already qualified for and be
 105 actively participating in special risk membership under
 106 paragraph (a), paragraph (b), or paragraph (c), must have
 107 suffered a qualifying injury as defined in this paragraph, must
 108 not be receiving disability retirement benefits as provided in
 109 s. 121.091(4), and must satisfy the requirements of this
 110 paragraph.
 111 1. The ability to qualify for the class of membership
 112 defined in s. 121.021(15) (f) shall occur when two licensed

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113 medical physicians, one of whom is a primary treating physician
 114 of the member, certify the existence of the physical injury and
 115 medical condition that constitute a qualifying injury as defined
 116 in this paragraph and that the member has reached maximum
 117 medical improvement after August 1, 2008. The certifications
 118 from the licensed medical physicians must include, at a minimum,
 119 that the injury to the special risk member has resulted in a
 120 physical loss, or loss of use, of at least two of the following:
 121 left arm, right arm, left leg, or right leg; and:

122 a. That this physical loss or loss of use is total and
 123 permanent, except in the event that the loss of use is due to a
 124 physical injury to the member's brain, in which event the loss
 125 of use is permanent with at least 75-percent loss of motor
 126 function with respect to each arm or leg affected.

127 b. That this physical loss or loss of use renders the
 128 member physically unable to perform the essential job functions
 129 of his or her special risk position.

130 c. That, notwithstanding this physical loss or loss of
 131 use, the individual is able to perform the essential job
 132 functions required by the member's new position, as provided in
 133 subparagraph 3.

134 d. That use of artificial limbs is either not possible or
 135 does not alter the member's ability to perform the essential job
 136 functions of the member's position.

137 e. That the physical loss or loss of use is a direct
 138 result of a physical injury and not a result of any mental,
 139 psychological, or emotional injury.

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140 2. For the purposes of this paragraph, "qualifying injury"
 141 means an injury sustained in the line of duty, as certified by
 142 the member's employing agency, by a special risk member that
 143 does not result in total and permanent disability as defined in
 144 s. 121.091(4)(b). An injury is a qualifying injury when the
 145 injury is a physical injury to the member's physical body
 146 resulting in a physical loss, or loss of use, of at least two of
 147 the following: left arm, right arm, left leg, or right leg.
 148 Notwithstanding anything in this section to the contrary, an
 149 injury that would otherwise qualify as a qualifying injury shall
 150 not be considered a qualifying injury if and when the member
 151 ceases employment with the employer for whom he or she was
 152 providing special risk services on the date the injury occurred.

153 3. The new position, as described in sub-subparagraph
 154 1.c., that is required for qualification as a special risk
 155 member under this paragraph is not required to be a position
 156 with essential job functions that entitle an individual to
 157 special risk membership. Whether a new position as described in
 158 sub-subparagraph 1.c. exists and is available to the special
 159 risk member is a decision to be made solely by the employer in
 160 accordance with its hiring practices and applicable law.

161 4. This paragraph does not grant or create additional
 162 rights for any individual to continued employment or to be hired
 163 or rehired by his or her employer that are not already provided
 164 within the Florida Statutes, the State Constitution, the
 165 Americans with Disabilities Act, if applicable, or any other
 166 applicable state or federal law.

167 (7) RETENTION OF SPECIAL RISK NORMAL RETIREMENT DATE.—

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168 (d) Notwithstanding any provision of this subsection to
 169 the contrary, this subsection does not apply to any special risk
 170 member who qualifies for continued membership pursuant to the
 171 provisions of paragraph (2) (k).

172 Section 5. Paragraphs (b) and (c) of subsection (2) of
 173 section 112.191, Florida Statutes, are amended to read:

174 112.191 Firefighters; death benefits.—

175 (2)

176 (b) The sum of \$50,000, as adjusted pursuant to paragraph
 177 (i), shall be paid as provided in this section if a firefighter
 178 is accidentally killed as specified in paragraph (a) and the
 179 accidental death occurs as a result of the firefighter's
 180 response to what is reasonably believed to be an emergency
 181 involving the protection of life or property or the
 182 firefighter's participation in a training exercise. This sum is
 183 ~~shall be~~ in addition to any sum provided ~~for~~ in paragraph (a).
 184 Notwithstanding any other provision of law, ~~in no case shall~~ the
 185 amount payable under this subsection may not be less than the
 186 actual amount stated therein.

187 (c) If a firefighter, while engaged in the performance of
 188 his or her firefighter duties, is unlawfully and intentionally
 189 killed, is injured by an unlawful and intentional act of another
 190 person and dies as a result of such injury, dies as a result of
 191 a fire which has been determined to have been caused by an act
 192 of arson, or subsequently dies as a result of injuries sustained
 193 therefrom, the sum of \$150,000, as adjusted pursuant to
 194 paragraph (i), shall be paid as provided in this section.
 195 Notwithstanding any other provision of law, ~~in no case shall~~ the

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196 amount payable under this subsection may not be less than the
197 actual amount stated therein.

198 Section 6. The Legislature finds that this act fulfills an
199 important state interest.

200 Section 7. This act shall take effect upon becoming a law,
201 and applies to firefighter deaths occurring on or after November
202 1, 2003.