

**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.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1932

INTRODUCER: Senator Altman

SUBJECT: Retirement/Special Risk Class

DATE: March 15, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Howes	Yeatman	CA	<b>Favorable</b>
2.			CJ	
3.			GO	
4.			WPSC	
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:

### Florida Retirement System

The Florida Retirement System (FRS) was established by the Legislature in 1970 to consolidate then-existing state administered retirement programs for state and county employees and officers, teachers, judges, and highway patrol officers.<sup>1</sup> Membership in the FRS is compulsory for all state and county employees that work in regularly established positions; however, certain elected officials are permitted to withdraw from the FRS under s. 121.052(3), F.S. Cities and special districts are given the option to participate in the FRS<sup>2</sup>.

FRS membership is broken down into five different classes: Regular, Special Risk (law enforcement officers, firefighters, etc), Special Risk Administrative Support, Elected Officers,

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<sup>1</sup> Section 121.051, F.S.

<sup>2</sup>Department of Management Services, *Senate Bill 660 Analysis* (Jan. 26, 2010) (on file with the Senate Committee on Community Affairs) (stating that approximately 181 cities and 221 independent special districts in Florida have become members of the FRS as of June 30, 2009).

and Senior Management Service. The following table reflects the number of active FRS employees in 2009 by membership class:

Membership Class <sup>3</sup>	Members
Regular Class	582, 568
Special Risk Class	75, 640
Special Risk Administrative Support Class	76
Senior Management Service Class	7, 725
Elected Officer's Class	2,304

The FRS is composed of two programs: The Defined Benefit Program (FRS Pension Plan) and the Defined Contribution Program (FRS Investment Plan), properly known as the Public Employee Optional Retirement Program (PEORP). The term 'defined contribution' for the FRS Investment Plan means that employer *contributions* are defined; [whereas] in the FRS Pension Plan, the *benefit* is defined.<sup>4</sup>

Eligible new employees are automatically enrolled into the Pension Plan and are given five months to join the Investment Plan before they are defaulted into the Pension Plan. FRS employees are also given a one-time second election option during the course of their employment in which they are permitted to change their retirement plan.

#### ***The Defined Benefit Program***

The Defined Benefit Program is also known as the FRS Pension Plan. As of June 30, 2009, the FRS Pension Plan had 668,416 active members.<sup>5</sup> Retirement benefits under the Pension Plan are calculated by the following formula

$$\{\text{Years of Service (x) Accrual Rate (x) Average Final Compensation}\}$$

This formula awards long term employees by averaging the employee's five highest fiscal years to determine their *average final compensation*. An employee's *accrual rate* is the retirement credit that he or she earns for each year of service; this rate varies depending upon the employee's membership class. According to the Department of Management Services, the current credit accrual rate for each membership classes is:

Membership Class <sup>6</sup>	Credit Accrual Rate
Regular Class	1.60 %, 1.63 %, 1.65% or 1.68% per year
Special Risk Class	3.00% per year
Special Risk Administrative Support Class	1.60 %, 1.63 %, 1.65% or 1.68% per year
Senior Management Service Class	2.00% per year

<sup>3</sup> *Id.* at 3.

<sup>4</sup> MyFRS *FRS Investment Plan Summary Plan Description*, (July 1, 2009) available at [http://www.myfrs.com/imageserver/pdf/forms/frs\\_ip\\_spd.pdf](http://www.myfrs.com/imageserver/pdf/forms/frs_ip_spd.pdf) (last visited on Feb. 24, 2010) [emphasis added].

<sup>5</sup> Department of Management Services, *Senate Bill 660 Analysis* (Jan. 26, 2010) (on file with the Senate Committee on Community Affairs).

<sup>6</sup> *Id.*

Elected Officer's Class	
• Justices and Judges	3.33% per year
• Others	3.00% per year

Under the FRS Pension Plan, employers assume the investment risk and guarantee each employee a lifetime benefit. Employee benefits are handled by professional money managers and account for annual cost-of-living adjustments.<sup>7</sup> Any investment shortfalls under the Pension Plan are recovered by the government.<sup>8</sup>

Membership in the Pension Plan vests after six years of service. However, benefits accrued under the Pension Plan are not transferable and any unvested benefits are lost if an employee chooses to leave an FRS employment position.

### ***The Defined Contribution Program***

In 2002 the Legislature adopted ch. 2000-169, L.O.F., to provide FRS employees with an optional investment program that would allow employees to have more flexibility in managing their own retirement investments.<sup>9</sup> This program is officially known as the “Public Employee Optional Retirement Program”, but is also referred to as the Defined Contribution Program or the FRS Investment Plan. According the State Board of Administration, the FRS Investment Plan had 122,716 members and \$4,721 billion in assets as of November 30, 2009.<sup>10</sup>

The FRS Investment Plan shifts the investment risks from the employer to the employee by allowing the individual employee to select and manage their own investment options- similar to private 401(k) plans. Unlike the Pension Plan, benefits under the Investment Plan vest after only one year of service and are portable to other employer's plan or private 401(k) plans. Since the value of employee benefits under the Investment Plan are subject to changes in the market, improper planning or poor market performance can cause some employees to outlive their benefits. Employees under the FRS Investment Plan are not eligible to participate in the Deferred Retirement Option Program (DROP) and cannot receive a Health Insurance Subsidy (HIS) until they reach the age of 62 (55 for Special Risk members).<sup>11</sup>

Over the years, the Legislature has enacted additional programs such as the Senior Management Service Optional Annuity Program (SMSOAP), the State Community College System Optional Retirement Program (CCORP), and the State University System Optional Retirement Program (SUSORP).<sup>12</sup>

<sup>7</sup> Section 121.01, F.S.

<sup>8</sup> Office of Program Policy Analysis & Government Accountability (OPPAGA) *FRS Defined Contribution Plan Costs Are Typically Lower and More Predictable...* (Feb. 2010) (on file with the Senate Committee on Community Affairs).

<sup>9</sup> Enacted as HB 2393, located in part II, ch. 121, F.S.

<sup>10</sup> State Board of Administration, *Senate Bill 660 Fiscal Analysis* (Dec. 10, 2009) (on file with the Senate Committee on Community Affairs).

<sup>11</sup> MyFRS, *Plan Comparison Charts: The FRS Investment Plan*, available at [http://www.myfrs.com/portal/server.pt/community/comparing\\_the\\_plans/235](http://www.myfrs.com/portal/server.pt/community/comparing_the_plans/235) (last visited on Feb. 24, 2010).

<sup>12</sup> See ss. 121.055, 121.35, and 121.355, F.S.

### Employer Contribution Rates

FRS employers are responsible for contributing a set percentage of their employee's monthly compensation to the Division of Retirement to be distributed into the Florida Retirement System Contributions Clearing Trust Fund. The employer is required to make these contributions no later than the fifth working day of the month following the end of the payroll period.<sup>13</sup>

The employer contribution rate is a "blended contribution rate" set by statute, which is the same percentage regardless of which plan their employee participates in. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.<sup>14</sup> The current employer contribution rate for each membership class is:

<b>Membership Class<sup>15</sup></b>	<b>Effective July 1, 2009</b>	<b>Effective July 1, 2010</b>
Regular Class	8.69 %	9.63 %
Special Risk Class	19.76 %	22.11 %
Special Risk Administrative Support Class	11.39 %	12.10 %
Elected Officer's Class <ul style="list-style-type: none"> <li>Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</li> <li>Justices and Judges</li> <li>County Officers</li> </ul>	13.32 % 18.40 % 15.37 %	15.20 % 20.65 % 17.50 %
Senior Management Class	11.96 %	13.43 %

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas benefits under the Pension Plan are placed into the FRS Trust Fund.<sup>16</sup>

### Actuarial Soundness

Section 14, Art. X, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.

SECTION 14: State retirement systems 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 unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.<sup>17</sup>

<sup>13</sup> Section 121.78, F.S.

<sup>14</sup> Section 112.63, F.S.

<sup>15</sup> Section 121.71, F.S.

<sup>16</sup> See ss. 121.4503 and 121.72, F.S.

<sup>17</sup> Art. X, section 14 of the Florida Constitution (1976).

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this Act is 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 tax payers.”<sup>18</sup>

In order to meet this requirement, actuarial studies estimate future benefit costs through demographic and economic assumptions that include: the member’s life expectancy and retirement age, pre-vesting plan terminations, disability rates, plan investment return rates, employee pay raises and attrition. When a retirement plan’s actual experiences do not mirror the assumptions in the actuarial study, it creates an unfunded actuarial liability and the plan’s contribution assets will not be sufficient to cover its liabilities.<sup>19</sup>

In the past, the actuarial value of assets under the FRS has always exceeded the actuarial liabilities, creating a surplus of \$8.2 billion as of July 1, 2008. However, the 2009 Actuarial Valuation Report concluded that the actuarial liabilities exceeded the actuarial assets for the first time in history- creating a \$15.4 billion unfunded actuarial liability (not including additional liabilities created through DROP). According to the report, the unfunded actuarial liability is attributed to unfavorable investment experiences and assumption or benefit changes.<sup>20</sup> The following charts taken from the Actuarial Valuation Report demonstrate the increase in actuarial liabilities and the decrease in cash flow from 1987 to 2009:

### **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.

## **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** creates s. 121.0021(15)(f), F.S., to provide that effective August 1, 2008, “special risk member” includes any member who meets the special criteria for continued membership.

**Section 4** amends s. 121.0515, F.S., to revise the definition of “special risk member” for members employed in law enforcement, firefighters and criminal detention positions and who suffer a qualifying injury while in the line of duty, but are not receiving disability retirement benefits.

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<sup>18</sup> Section 112.61, F.S.

<sup>19</sup> The information in this paragraph was obtained from the OPPAGA report. *See supra* note 8 at 2.

<sup>20</sup> Milliman Actuarial Report to Department of Management Services, *Florida Retirement System Actuarial Valuation Report as of July 1, 2009* (Dec. 2009) (on file with the Senate Committee on Community Affairs).

A qualifying injury must be certified by two licensed medical physicians. "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.,<sup>21</sup> and must be a physical injury to the member's physical body resulting in a physical loss of, or loss of use of, at least two of the arms or legs. 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. With the loss, the member must be unable to perform the essential job functions of his/her special risk position.

A member may be employed in a new position for which he/she is able to perform the essential job functions. The new position may not entitle the member to special risk membership based on the current criteria, but with the qualifying injury, the member is eligible for membership in the Special Risk Class. Whether a new position is available to the "special risk member" is to be determined by the employer and does not grant or create additional rights for the member to continued employment or to be hired or rehired that are not already provided.

**Section 5** provides that the act will take effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill initially falls under subsection (a) of section 18 of Article VII, Florida Constitution. Subsection (a) provides that counties and municipalities are not bound by general laws that require them to spend funds or to take action that requires the expenditure of funds unless certain exemptions or exceptions are met. Counties and cities will incur costs in connection with providing additional benefits to special risk class members who have qualifying injuries. However, it is unlikely that this cost will exceed \$1.88 million so it appears as if the exemption for bills with an insignificant fiscal impact would apply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

None.

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<sup>21</sup> 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.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Florida Department of Law Enforcement reports that this bill creates no financial impact on state agencies. The Florida Department of Law Enforcement reports that it is unknown what financial impact this will have on local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.