

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 Criminal Justice Committee

BILL: SB 1932

INTRODUCER: Senator Altman

SUBJECT: Retirement/Special Risk Class

DATE: April 8, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Howes	Yeatman	CA	Favorable
2.	Erickson	Cannon	CJ	Favorable
3.			GO	
4.			WPSC	
5.				
6.				

I. Summary:

The bill creates the “Adam Pierce Act,” which revises the definition of “special risk member” to provide that any Florida Retirement System (FRS) member employed in the categories of law enforcement, firefighting, and criminal detention positions that suffers a disability in the line of duty through a qualifying injury may continue membership in the FRS Special Risk Class, even if employed in a position which would not otherwise qualify for Special Risk membership, if such member continues to work for the same employer for whom they were working when they sustained the qualifying injury. Members benefiting from this change are not eligible for Special Risk Administrative Support Class membership.

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

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was created by the Legislature in 1970 to consolidate then-existing state-administered retirement programs for state and county officers and employees, teachers, judges, and Highway Patrol officers.¹ 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.

¹ Information in the “Present Situation” section of the analysis is from the Analysis of SB 1932 by the Department of Management Services (DMS), dated April 2, 2010 (on file with the Senate Committee on Criminal Justice). Further references in the analysis to this source will be cited “DMS’ Analysis of SB 1932.”

FRS membership is broken down into five different classes: Regular; Special Risk (persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care); Special Risk Administrative Support; Elected Officers; and Senior Management Service. Each class is separately funded based upon the costs attributable to the members of that class, except for funding of the Deferred Retirement Option Program (DROP). The following table reflects the number of active FRS employees as of June, 30, 2009 by membership class:

Membership Class	Members
Regular Class	582,671
Special Risk Class	75,640
Special Risk Administrative Support Class	76
Senior Management Service Class	7,725
Elected Officer's Class	2,304

Special Risk Class

In creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, and criminal detention 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 this special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other 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 differs 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 vs. age 62) or with fewer years of service (25 years vs. 30 years) than a Regular Class member.
- 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 2009-2010 plan-year under the FRS, the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent (significantly higher

than the 8.69 percent retirement contribution rate for the Regular Class).² Therefore, 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.

Special Risk Class Membership Criteria

FRS members must meet specified eligibility requirements to qualify for membership in the Special Risk Class. These requirements limit membership to employees who meet the criteria for Special Risk membership as set forth in s. 121.0515, F.S., and who are employed by an FRS employer in one of the following positions:

- Law enforcement officer.
- Firefighter.
- Correctional officer.
- Correctional probation officer.
- Emergency medical technician.
- Paramedic.
- Youth custody officer.
- Persons in specified professional health care positions who spend at least 75 percent of their time performing duties involving inmate or patient contact in correctional or forensic institutions with the Department of Corrections or Department of Children and Families.
- Forensic professionals employed in certain forensic positions with the Department of Law Enforcement in the crime laboratory, or with the Division of State Fire Marshal in the forensic laboratory, or certain forensic employees of local government law enforcement agencies or medical examiner's offices who meet the criteria in the retirement laws and rules to qualify for this class.

Officer Adam Pierce

In 2005 Orange County Sheriff's Deputy Adam Pierce, then 25 years-of-age, was involved in a confrontation on Orange Blossom Trail regarding a suspected drug deal. Deputy Pierce was shot twice, once in the head and in the neck, severing his spine. He is paralyzed from the waist down.³

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.

² 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 ch. 121, F.S. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9 percent to 20 percent when the member moves from the Regular Class to the Special Risk Class.

³ Ernest Hooper, "Tragedy inspires innovative thinking," *St. Petersburg Times* (October 17, 2006), p. B3, and "2nd trial under way in shooting," *Orlando Sentinel* (July 7, 2006), p. B3.

Section 3 creates s. 121.0021(15)(f), F.S., to provide that effective August 1, 2008, a “special risk member” includes any member who meets the special criteria for continued membership set forth in Section 4 of the bill.

Section 4 amends s. 121.0515, F.S., to provide that any Florida Retirement System (FRS) member employed in the categories of law enforcement, firefighting, and criminal detention positions that suffers a disability in the line of duty through a qualifying injury may continue membership in the FRS Special Risk Class, even if employed in a position which would not otherwise qualify for Special Risk membership, if such member continues to work for the same employer for whom they were working when they sustained the qualifying injury.

“Qualifying injury” is defined to mean:

The employing agency certifies that the Special Risk Class member’s injury occurred in the line of duty and the injury does not result in total and permanent disability as defined in s. 121.091(4)(b), F.S.

- An injury is not a qualifying injury unless the injury 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: left arm, right arm, left leg, or right leg. The physical loss or loss of use must also be 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 must be permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.
- An injury that would otherwise qualify as a qualifying injury shall not be considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

The ability for this member to qualify for continued Special Risk membership shall occur when two licensed medical physicians, one of whom is a primary treating physician of the member, 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. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg, and:

- That this 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.
- That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.
- That, notwithstanding this physical loss or loss of use, the individual is able to perform the essential job functions required by the member’s new position.
- That 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.

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

The new position, the essential job functions of which the member is able to perform notwithstanding the member's physical loss or loss of use, is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether the new position exists and is available to the member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

The new provision for continued Special Risk membership does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

The bill also amends a subsection relating to retention of the Special Risk normal retirement to specify that this subsection does not apply to any Special Risk member who qualifies for continued membership as provided in the bill. The effect of this amendment is to indicate that members benefitting from the continued employment provided in the bill are not eligible for Special Risk Administrative membership as provided in this subsection.

Section 5 provides that the act takes effect upon becoming law.

Other Potential Implications:

The DMS has provided the following additional comments regarding provisions of the bill:

- The bill "would change the nature of disability benefits under the Florida Retirement System." "This change would shift the burden of funding lost future retirement benefits from the workers compensation coverage of the individual employer to all employers in the FRS for as long as the impacted individual continues to work. SB 1932 may eventually result in a higher employer contribution rate for employers with Special Risk Class members, if future actuarial valuations and experience studies of the FRS indicate that changes to the demographics and actuarial experience of the Special Risk Class, resulting from this bill, require an increase in the Special Risk Class contribution rate."
- "There will likely be litigation from injured members who do not meet all of the requirements set forth under Section 121.0515(2)(k)1. but claim they are nonetheless unable to perform in their special risk class position due to an on the job injury, and therefore should qualify for special risk class membership. Further, litigation may ensue from those who do meet these requirements but are unable to obtain an available position (due to the lack thereof) with their current employer. It is also likely that this bill will cause other special risk positions not currently included in this group to seek the same benefits."
- "The intent of the legislature in creating the special risk class was to recognize and reward the hazardous and physically demanding nature of the work performed by persons employed in specified job categories. This bill allows members in non-hazardous or physically demanding positions to continue membership in this class, seemingly against the purpose and intent of this class. It also reshapes state disability benefits, allowing members to obtain a benefit from the state retirement system for injuries that do not render them totally and permanently disabled."

- “SB 1932 would add s. 121.021(15)(f), F.S., to provide an effective date of August 1, 2008, for the term ‘special risk member’ to include the new criteria for continued membership set forth in s. 121.0515(2)(k). However, the effective date of this bill is upon becoming law. This would create an additional workload to determine how many members would have qualified for these new provisions had this law been in effect from August 1, 2008, instead of prospectively from the effective date of this bill.
- “This bill is specific that if a member sustains a qualifying injury with one employer and goes to work for another employer they would not be eligible for continued enrollment in the Special Risk Class. Being compensated for loss of future earnings or benefits from a partial permanent work-related injury is generally handled through settlements with the employer and its workers compensation carrier after reaching maximum medical improvement and not through the retirement system where costs are shared by all employers who have Special Risk Class retirees. If a future increase in the Special Risk Class contribution rate is required due to changes to the demographics and actuarial experience of the Special Risk Class resulting from this bill, this change could transfer individual employer costs to other employers in the FRS regardless of whether their employees could benefit from this proposal.”
- “This bill adds a new disability standard and provision for the Florida Retirement System. This will create additional workload for the Division of Retirement staff because each person affected would have to be evaluated individually for the criteria in this bill for continued Special Risk Class participation.”
- “The retirement contribution cost for each employer using this provision will be greater than the rate would be if the position was filled by another employee who is assigned to the Regular Class or the Senior Management Service Class.”
- “The bill limits the types of qualifying injuries. Injuries such as; loss of hearing, partial loss of sight, back injuries, spinal cord injuries, etc., do not necessarily qualify for coverage under this bill.”
- “[T]he bill classifies that some of the injuries will require a 75 [percent] loss of motor function. If it is determined that a Special Risk Class member has a 50 [percent (or some other percentage less than 75 percent)] loss of motor function, resulting from a qualifying injury, yet still is unable to perform the duties of the Special Risk position, this member would be excluded from coverage by this proposed change.”
- “Employers with Special Risk Class members that would be included under this new ‘qualifying injury’ provision could establish a separate retirement program or other forms of compensation for their employees for the same service within their own agency to cover any economic loss suffered by their employees who would qualify for benefits under this bill. This would address the limitation to employment with the same employer at the time of injury required by this bill without creating additional cost to other FRS employers to create this new benefit. The employer would be providing the additional benefits only if their own employees were affected, rather than amending the FRS to make it a requirement for all agencies with Special Risk Class members described in this bill.”
- “An informal survey of the 175 FRS-participating employers who would be most likely to ever have employees covered by this bill, i.e., those currently employing members in Special Risk Class positions covered by this bill, indicated that there are approximately four members who have sustained what might be a ‘qualifying injury’ and was limited to the personal knowledge of the respondent based on their period of employment in the areas we

surveyed. However, these potentially identified members have not had their circumstances fully vetted, as they relate to the applicability of the provisions of this bill. Nonetheless, the results of this survey indicated that passage of the bill would require an increase in the UAL [unfunded actuarial liability] of approximately \$30,000 while providing a limited benefit to the FRS membership.”

- “The bill’s requirement that one of the certifying physicians be the member’s ‘primary treating physician’ places an additional burden on affected members that is not placed upon other similarly-situated applicants for disability retirement under the FRS, neither of whose certifying physicians are required to be their ‘primary treating physician’.”⁴

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the State Constitution provides that counties and municipalities are not bound by general laws that require them to spend funds or limit their ability to raise revenue or receive state tax revenue, unless certain conditions are met. First, the Legislature must have determined that the law fulfills an important state interest. The law must also meet one or more additional criteria, including that the “expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.”

As noted in DMS’ analysis of the bill, the estimated fiscal impact on local governments is the same as the estimated fiscal impact on state government. A special actuarial study performed in 2010 determined that the Special Risk Class employer contribution rate would not require an increase to fund the benefit improvement provided by the bill.⁵

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, Section 14 of the State Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as provided:

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

⁴ Additional comments from DMS are from the DMS’s Analysis of SB 1932.

⁵ DMS’ Analysis of SB 1932.

concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, Section 14 of the State 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.”

Senate professional staff concurs with DMS’ assessment that the bill complies with the requirements of Article X, Section 14 of the State Constitution and the provisions of Part IV, ch. 112, F.S.⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE) does not report any fiscal impact to the department as a result of the bill. The FDLE provided the following comment: “At this time FDLE does not have a member who has sustained a qualifying injury as defined in the bill. In the event an FDLE Special Risk Member should incur a qualifying injury, the additional costs that may be incurred are expected to be minimal. As budget reductions continue, and available vacancies decline, providing an injured member with a different position may be problematic.”⁷

The DMS noted that a special study performed in 2010⁸ determined that while there is an actuarial cost, because of previously agreed upon rounding procedures, the additional impact did not result in an increase in the Special Risk Class employer contribution rate (rates are rounded to the nearest 0.01 percent). The DMS also noted:

The special study further found that this benefit improvement would result in an increase in the UAL [unfunded actuarial liability] of approximately \$30,000, and could have future impacts on the actuarial experience of the Regular Class, or

⁶ DMS’ Analysis of SB 1932.

⁷ Analysis of SB 1932, Florida Department of Law Enforcement, dated March 5, 2010 (on file with the Senate Committee on Criminal Justice).

⁸ The “Fiscal Note” in the “Actuarial Statement of Fiscal Soundness” section of the DMS’ Analysis of SB 1932 is signed by Robert Dezube, Enrolled Actuary, Milliman Inc., dated March 25, 2010.

other classes, to which affected members would otherwise transfer without this benefit improvement. Any changes to the demographics and actuarial experience of the Special Risk Class or other classes resulting from this bill would be reflected in future actuarial valuations and experience studies of the FRS.

Also, employers of future affected members would not see a specific decrease to the Regular Class contribution rate as a result of this benefit improvement; the impact will show up in total changes found during future valuations and experience studies. Any cumulative increase to the Special Risk Class contribution rate would also come out of overall valuation and experience study results. The employers would continue to pay the Special Risk Class contributions required for members impacted by this bill and all employers with Special Risk Class employees share in this cost regardless of whether any of their employees are eligible or become covered by this provision.

Since the increase in cost does not result in at least a 0.01 percent increase in the Special Risk Class employer contribution rate, the contribution rate for the Special Risk Class does not have to be specifically amended to implement this change.

The DMS stated the estimated fiscal impact on local governments is the same as the estimated fiscal impact on state government.⁹

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁹ Information pertaining to DMS' fiscal impact estimates is from the DMS' Analysis of SB 1932.