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**Police Officers' and
Firefighters' Pension
Reform Commission**

**Report to the
COLORADO
GENERAL ASSEMBLY**

**Colorado Legislative Council
Research Publication No. 428
November 1997**

RECOMMENDATIONS FOR 1998

**POLICE OFFICERS' AND FIREFIGHTERS'
PENSION REFORM COMMISSION**

**Report to the
Colorado General Assembly**

**Research Publication No. 428
November 1997**

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November 14, 1997

To Members of the Sixty-first General Assembly:

Submitted herewith is the final report of the Police Officers' and Firefighters' Pension Reform Commission. This commission is a statutory committee established under Section 31-31-1001, C.R.S.

At its meeting on November 13, 1997, the Legislative Council reviewed the report of this commission. A motion to forward this report and the bills therein for consideration in the 1998 session was approved.

Respectfully submitted,

/s/ Representative Chuck Berry
Chairman
Legislative Council

CB/GJ/pw

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POLICE OFFICERS' AND FIREFIGHTERS' PENSION REFORM COMMISSION

Members of the Commission

Senator Ray Powers
Chairman
Senator Ben Alexander
Senator Michael Feeley
Senator Peggy Reeves
Senator MaryAnne Tebedo

Representative Kay Alexander
Representative Gayle Berry
Representative Doug Dean
Representative Russell George
Representative Steve Johnson
Representative Vi June
Representative Carl Miller
Representative Alice Nichol
Representative Todd Saliman
Representative Shirleen Tucker

Legislative Council Staff

Geoff Johnson
Research Associate

Office of Legislative Legal Services

Dan Cartin
Senior Staff Attorney

Gregg Fraser
Staff Attorney

STATUTORY AUTHORITY AND RESPONSIBILITIES

Commission Charge

In 1978, Senate Bill 46 (Parts 8 and 9, Article 30, Title 31, C.R.S.) created a statutory Police Officers' and Firefighters' Pension Reform Commission to study and develop legislation relating to the funding of police and fire pensions and the benefit designs of such plans. In 1996, Senate Bill 96-11 relocated these provisions to Articles 30.5 and 31 of Title 31, C.R.S.

Commission Activities and Recommendations

At its meeting on September 23, 1997, the Commission received an historical overview of state involvement in fire and police pension plans, a review of the 1996 Fire and Police Pension Association (FPPA) annual financial report, and detail about 1996 FPPA investment performance. The pension fund currently controls in excess of \$1.9 billion in assets. Year-to-date investment performance has been 13.8 percent.

The commission considered legislation requested by the Board of Directors of the FPPA. Following discussion and amendment by the Commission, Bills A, B, and C were recommended for consideration in the 1998 legislative session.

Bill A — Fire and Police Pensions — Compliance with Qualified Plan Requirements

Bill A conforms Colorado law concerning police officers' and firefighters' pension plans with the qualified plan requirements of the federal Internal Revenue Code. Specifically, the bill requires that volunteer firefighter pension plans satisfy qualification requirements of the Internal Revenue Code.

The bill makes conforming amendments to the statutes addressing "old hire pension plans" and specifies that benefits paid from these plans must be distributed in accordance with Internal Revenue Code requirements. The bill specifies that contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with the Internal Revenue Code.

Lastly, Bill A amends statutes concerning statewide defined benefit plans. To be "qualified" under the Internal Revenue Code a plan must meet certain criteria. The bill adds to these criteria a requirement that a member becomes fully vested upon attaining eligibility for a benefit.

Bill A is assessed as having no fiscal impact.

Bill B — Assets Held in the Fire and Police Members' Deferred Compensation Fund

The FPPA is authorized to create a voluntary deferred compensation plan to provide a supplementary retirement system for municipal firefighters and police officers. In response to concerns of members of Congress that creditors of a bankrupt employer could seek assets in such deferred compensation plans, Congress has mandated that assets in these plans be held in trust for the benefit of members of the plans. Bill B conforms Colorado law with the federal law by eliminating the requirement that the assets of each of the deferred compensation plans administered by the Board of Directors of the FPPA remain solely the property of the employer until made available to members or other beneficiaries. Instead, the bill requires that the assets of the plans be held for the exclusive purpose of providing benefits to participants and beneficiaries and for defraying expenses of the plan and any trust established to hold the assets of the plan. Bill B also specifies that the Board of Directors of the FPPA has the authority to invest and reinvest assets held in deferred compensation funds.

Bill B is assessed as having no fiscal impact.

Bill C — Taxability of Survivor Benefits Payable to the Survivors of a Member of the Statewide Death and Disability Plan

Bill C adds benefits for the beneficiary of any member of a fire and police new hire pension plan who is not eligible for the normal retirement pension who dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties, or as a result of an occupational disease arising out of and in the course of the members' employment. The bill requires the Board of Directors of the FPPA to promulgate rules for determining whether the death of a member is a result of such an injury or disease and for adjusting survivor benefit awards accordingly.

Bill C is assessed as having a fiscal impact, an insignificant reduction of state General Fund revenues. No additional spending authority is required to implement the bill.

MATERIALS AVAILABLE

The following materials relevant to the Police Officers' and Firefighters' Pension Reform Commission meeting are available from the Office of the Legislative Council.

1. *Staff Summary of Meeting*, September 23, 1997.
2. *Comprehensive Annual Financial Report of the Fire and Police Pension Association of Colorado*, FPPA, December 31, 1996.
3. *Supplementary Financial Data*, FPPA, September 23, 1997.

BILL A

By Representative Tucker

A BILL FOR AN ACT

CONCERNING REVISIONS TO THE STATUTORY PROVISIONS GOVERNING FIRE AND POLICE PENSION PLANS FOR PURPOSES OF COMPLIANCE WITH THE QUALIFIED PLAN REQUIREMENTS OF THE FEDERAL INTERNAL REVENUE CODE.

Bill Summary

"Qualified Fire & Police Pension Plans"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Police Officers' and Firefighters' Pension Reform Commission. Modifies and adds certain provisions regarding the qualification under the federal internal revenue code of firefighters' and police officers' pension plans as follows:

Volunteer firefighter pension plans.

Requires that any volunteer firefighter pension plan must satisfy the qualification requirements of the federal internal revenue code. Specifies the criteria such plans must follow in order to meet the qualification requirements.

Old hire pension plans.

Changes a reference to the internal revenue code definition of "eligible retirement plan" contained in the provision on transfers of eligible rollover distributions. Requires that benefits paid from an old hire pension fund must be distributed in accordance with certain internal revenue code requirements and specifies the criteria for meeting those requirements. Specifies that contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the internal revenue code.

Statewide defined benefit plan.

Modifies the definition of a "money purchase plan". Adds to the criteria a plan must follow to qualify under the internal revenue code the requirement that

upon attaining eligibility for a benefit, a member shall be fully vested. Deletes, from the provisions the plan is subject to in order to qualify under the internal revenue code, the prohibition on board determination of benefits that discriminates in favor of certain members. Specifies that a board may not engage in a transaction prohibited by the "Employee Retirement Income Security Act of 1974", instead of the internal revenue code. Changes a reference to the internal revenue code definition of eligible retirement plan contained in the provision on transfers of eligible rollover distributions.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 30 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-30-1133. Qualification requirements - internal revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED AND IN EFFECT ON JANUARY 1, 1989.

(2) ANY VOLUNTEER FIREFIGHTER PENSION PLAN ESTABLISHED BY THIS PART 11 TO PROVIDE RETIREMENT BENEFITS FOR VOLUNTEER FIREFIGHTERS SHALL SATISFY THE QUALIFICATION REQUIREMENTS SPECIFIED IN SECTION 401 OF THE INTERNAL REVENUE CODE, AS APPLICABLE TO GOVERNMENTAL PLANS. IN ORDER TO MEET THOSE REQUIREMENTS, SUCH PLANS ARE SUBJECT TO THE FOLLOWING PROVISIONS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 11:

(a) THE BOARD SHALL DISTRIBUTE THE CORPUS AND INCOME OF THE PENSION PLAN TO MEMBERS AND THEIR BENEFICIARIES IN ACCORDANCE WITH THIS PART 11 AND THE RULES ADOPTED BY THE BOARD.

(b) NO PART OF THE CORPUS OR INCOME OF THE PENSION PLAN MAY BE USED FOR OR DIVERTED TO ANY PURPOSE OTHER THAN THAT OF PROVIDING BENEFITS TO PARTICIPANTS AND THEIR BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PENSION PLAN.

(c) FORFEITURES ARISING FROM SEVERANCE OF EMPLOYMENT, DEATH, OR ANY OTHER REASON MAY NOT BE APPLIED TO INCREASE THE BENEFITS ANY MEMBER WOULD OTHERWISE RECEIVE UNDER THIS PART 11.

(d) IF THE PENSION PLAN IS TERMINATED, OR IF ALL CONTRIBUTIONS TO THE PENSION PLAN ARE PERMANENTLY DISCONTINUED, THE RIGHTS OF EACH AFFECTED MEMBER TO THE BENEFITS ACCRUED AT THE DATE OF THE TERMINATION OR DISCONTINUANCE, TO THE EXTENT THEN FUNDED, ARE NONFORFEITABLE.

(e) UPON ATTAINING THE ELIGIBILITY REQUIREMENTS FOR A BENEFIT, A MEMBER SHALL BE FULLY VESTED IN THE BENEFITS SUCH MEMBER HAS ACCRUED.

(f) ALL BENEFITS PAID FROM THE PENSION PLAN SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 401 (a) (9) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED UNDER THAT SECTION. IN ORDER TO MEET THOSE REQUIREMENTS, THE PENSION PLAN IS SUBJECT TO THE FOLLOWING PROVISIONS:

(I) THE LIFE EXPECTANCY OF A MEMBER, THE MEMBER'S SPOUSE, OR THE MEMBER'S BENEFICIARY SHALL NOT BE RECALCULATED AFTER THE INITIAL DETERMINATION, FOR PURPOSES OF DETERMINING BENEFITS.

(II) IF A MEMBER DIES BEFORE THE DISTRIBUTION OF THE MEMBER'S BENEFITS HAS BEGUN, DISTRIBUTIONS TO BENEFICIARIES MUST BEGIN NO LATER THAN DECEMBER 31 OF THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER DIED.

(III) THE AMOUNT OF AN ANNUITY PAID TO A MEMBER'S BENEFICIARY MAY NOT EXCEED THE MAXIMUM DETERMINED UNDER THE INCIDENTAL DEATH BENEFIT REQUIREMENT OF THE INTERNAL REVENUE CODE.

(g) BENEFITS PAID UNDER ANY PENSION PLAN MAY NOT EXCEED THE LIMITATIONS SPECIFIED BY SECTION 415 OF THE INTERNAL REVENUE CODE, INCLUDING THE SPECIAL RULE UNDER SECTION 415 (b) (10) OF THE INTERNAL REVENUE CODE.

(h) THE COMPENSATION TAKEN INTO ACCOUNT UNDER THIS PART 11 MAY NOT EXCEED THE APPLICABLE AMOUNT UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE.

(i) THE BOARD MAY NOT ENGAGE IN A TRANSACTION PROHIBITED BY SECTION 406 OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED.

(j) ANY DISTRIBUTEE WHO IS ENTITLED TO AN ELIGIBLE ROLLOVER DISTRIBUTION, AS DEFINED IN SECTION 402 (c) (4) OF THE INTERNAL REVENUE CODE, FROM THE STATEWIDE PENSION PLAN ON AND AFTER JANUARY 1, 1993, MAY ELECT TO HAVE THE PORTION OF SUCH DISTRIBUTION THAT WOULD OTHERWISE BE INCLUDED IN THE GROSS INCOME OF THE DISTRIBUTEE FOR FEDERAL INCOME TAX PURPOSES TRANSFERRED DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN, AS DEFINED IN SECTION 402 (c) (8) (B) OF THE INTERNAL REVENUE CODE, DESIGNATED BY THE DISTRIBUTEE.

(k) NOTWITHSTANDING ANY PROVISION OF A PENSION PLAN TO THE CONTRARY, CONTRIBUTIONS, BENEFITS, AND SERVICE CREDIT WITH RESPECT TO QUALIFIED MILITARY SERVICE SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 414 (u) OF THE INTERNAL REVENUE CODE.

SECTION 2. 31-30.5-212 (8), Colorado Revised Statutes, is amended, and the said 31-30.5-212 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-30.5-212. Qualification requirements - internal revenue code.

(8) Any distributee who is entitled to an eligible rollover distribution, as defined in section 402 (c) (4) of the internal revenue code, from the pension fund on or after January 1, 1993, may elect to have the portion of such distribution that would otherwise be included in the gross income of the distributee for federal income tax purposes transferred directly to an eligible retirement plan, as defined in ~~section 402 (a) (5) (E) (iv)~~ SECTION 402 (c) (8) (B) of the internal revenue code, designated by the distributee.

(9) ALL BENEFITS PAID FROM AN OLD HIRE PENSION FUND SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 401 (a) (9) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED UNDER THAT SECTION. IN ORDER TO MEET THOSE REQUIREMENTS, AN OLD HIRE PENSION FUND IS SUBJECT TO THE FOLLOWING PROVISIONS:

(a) THE LIFE EXPECTANCY OF AN OLD HIRE MEMBER, THE MEMBER'S SPOUSE, OR THE MEMBER'S BENEFICIARY SHALL NOT BE RECALCULATED AFTER THE INITIAL DETERMINATION, FOR PURPOSES OF DETERMINING BENEFITS.

(b) IF AN OLD HIRE MEMBER DIES BEFORE THE DISTRIBUTION OF THE MEMBER'S BENEFITS HAS BEGUN, DISTRIBUTIONS TO BENEFICIARIES MUST BEGIN NO LATER THAN DECEMBER 31 OF THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER DIED.

(c) THE AMOUNT OF AN ANNUITY PAID TO AN OLD HIRE MEMBER'S BENEFICIARY MAY NOT EXCEED THE MAXIMUM DETERMINED UNDER THE INCIDENTAL DEATH BENEFIT REQUIREMENT OF THE INTERNAL REVENUE CODE.

(10) NOTWITHSTANDING ANY PROVISION OF AN OLD HIRE PENSION PLAN TO THE CONTRARY, CONTRIBUTIONS, BENEFITS, AND SERVICE CREDIT WITH RESPECT TO QUALIFIED MILITARY SERVICE SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 414 (u) OF THE INTERNAL REVENUE CODE.

SECTION 3. 31-31-102 (5), Colorado Revised Statutes, is amended to read:

31-31-102. Definitions. As used in this article, unless the context otherwise requires:

(5) "Money purchase plan" OR "MONEY PURCHASE PENSION PLAN" means a ~~program~~ RETIREMENT PLAN under which: ~~member and employer contributions are accumulated with interest to purchase a benefit at retirement. The benefit amount is determined by actuarially converting the accumulated sum in a member's retirement account into a monthly benefit based on uniform actuarial assumptions approved by the board for such plans. The term does not include a plan that provides for minimum benefits or other defined benefits.~~

(a) THE EMPLOYER HAS A FIXED OBLIGATION TO MAKE AN ANNUAL CONTRIBUTION TO THE PLAN;

(b) THE PLAN PROVIDES FOR AN INDIVIDUAL ACCOUNT FOR EACH MEMBER; AND

(c) THE MEMBER'S BENEFITS ARE BASED SOLELY ON THE AMOUNT CONTRIBUTED TO THE MEMBER'S ACCOUNT AND ANY INCOME, EXPENSES, GAINS, AND LOSSES ALLOCATED TO THE MEMBER'S ACCOUNT.

SECTION 4. 31-31-409 (2) (f), (2) (i), and (2) (j), Colorado Revised Statutes, are amended, and the said 31-31-409 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-31-409. Qualification requirements - internal revenue code. (2) The statewide defined benefit plan established by this part 4 to provide retirement benefits for members hired on or after April 8, 1978, shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. In order to meet those requirements, the statewide defined benefit plan is subject to the following provisions, notwithstanding any other provision of this part 4:

(f) ~~The board may not determine eligibility for benefits, compute rates of contribution, or compute benefits of members or beneficiaries in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under section 401 (a) (4) of the internal revenue code.~~

(i) The board may not engage in a transaction prohibited by ~~section 503 (b) of the internal revenue code~~ SECTION 406 OF THE FEDERAL "EMPLOYMENT RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED.

(j) Any distributee who is entitled to an eligible rollover distribution, as defined in section 402 (c) (4) of the internal revenue code, from the statewide pension plan on and after January 1, 1993, may elect to have the portion of such distribution that would otherwise be included in the gross income of the distributee for federal income tax purposes transferred directly to an eligible retirement plan, as defined in ~~section 402 (a) (5) (E) (iv)~~ SECTION 402 (c) (8) (B) of the internal revenue code, designated by the distributee.

(k) UPON ATTAINING THE ELIGIBILITY REQUIREMENTS FOR A BENEFIT, A MEMBER SHALL BE FULLY VESTED IN THE BENEFITS SUCH MEMBER HAS ACCRUED.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 98-105
Prime Sponsor(s): Rep. Tucker

Date: November 21, 1997
Bill Status: Police Officer's and
Firefighter's Pension
Reform Commission
Fiscal Analyst: Steve Tammeus (866-2756)

TITLE: CONCERNING REVISIONS TO THE STATUTORY PROVISIONS GOVERNING FIRE AND POLICE PENSION PLANS FOR PURPOSES OF COMPLIANCE WITH THE QUALIFIED PLAN REQUIREMENTS OF THE FEDERAL INTERNAL REVENUE CODE.

Summary of Assessment

This bill adds requirements to the law that any volunteer firefighter pension plan must satisfy the qualification requirements of the federal internal revenue code, and specifies the criteria such plans must follow to meet the requirements.

The bill also adds requirements that benefits paid from an old hire pension fund must be distributed in accordance with certain internal revenue code requirements and specifies the criteria for meeting those requirements. The bill also specifies that contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the internal revenue code.

The bill revises the term "money purchase plan" to "money purchase pension plan", and further replaces the current definition of a money purchase plan with requirements for:

- the employer's fixed obligation to make annual contributions to the plan;
- the plan to provide an individual account for each member; and
- the member's benefits to be based solely on the amount contributed to the member's account, and any income, expenses, gains, and losses allocated to the member's account.

The bill specifies that upon attaining the eligibility requirements for a benefit, a member shall be fully vested in the benefits the member has accrued. The bill makes other conforming amendments.

The provisions of this bill require that fire and police pension plans comply with federal internal revenue code requirements for qualified pension plans. The bill does not affect state or local government contributions to the plans, distributions from the plans, or administrative expenses of the Fire and Police Pension Association.

The bill does not affect state, or local government, revenue or expenditures. Therefore, the bill is assessed as having no fiscal impact. The bill would become effective upon the signature of the Governor.

Departments Contacted

Fire and Police Pension Association

Local Affairs

BILL B

By Senator Alexander

A BILL FOR AN ACT

CONCERNING THE ASSETS HELD IN THE FIRE AND POLICE MEMBERS' DEFERRED
COMPENSATION FUND.

Bill Summary

"FPPA Deferred Compensation Plans"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Police Officers' and Firefighters' Pension Reform Commission. Eliminates the requirement that the assets of each of the deferred compensation plans administered by the board of the fire and police pension association remain solely the property of the employer until made available to the members or other beneficiaries of a plan, and instead requires such assets to be held for the exclusive purpose of providing benefits to participants and beneficiaries and for defraying expenses of the plan and any trust established to hold the assets of the plan.

Specifies that the board shall have the authority to invest and reinvest assets held in the fire and police members' deferred compensation fund subject to the provisions of the "Colorado Uniform Prudent Investor Act".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 31-31-901 (3), Colorado Revised Statutes, is amended to read:

31-31-901. Deferred compensation plan. (3) There is hereby created the fire and police members' deferred compensation fund, which shall consist of the assets of deferred compensation plans administered by the board pursuant to the

provisions of this section. The board shall be the trustee of the fund and shall keep a separate account of the assets of each deferred compensation plan held within the fund. The assets of each deferred compensation plan shall ~~remain solely the property of the employer until made available to the members or other beneficiaries of such plan~~ BE HELD FOR THE EXCLUSIVE PURPOSE OF PROVIDING BENEFITS TO PARTICIPANTS AND BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES OF THE PLAN AND ANY TRUST ESTABLISHED TO HOLD THE ASSETS OF THE PLAN. The board shall have full and unrestricted discretionary power and authority to invest and reinvest assets held within the fund subject to the provisions of ~~section 15-1-304, C.R.S.~~ THE "COLORADO UNIFORM PRUDENT INVESTOR ACT" SET FORTH IN ARTICLE 1.1 OF TITLE 15, C.R.S., or to provide for the investment and reinvestment of such assets.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 98-106**Prime Sponsor(s):** Sen. Alexander**Date:** November 21, 1997**Bill Status:** Police Officer's and
Firefighter's Pension
Reform Commission**Fiscal Analyst:** Steve Tammeus (866-2756)

TITLE: CONCERNING THE ASSETS HELD IN THE FIRE AND POLICE MEMBER'S
DEFERRED COMPENSATION FUND.

Summary of Assessment

This bill requires the assets of deferred compensation plans administered by the Board of the Fire and Police Pension Association (FPPA) to be held for the exclusive purpose of providing benefits to participants and beneficiaries, and for defraying expenses of the plan and any trust established to hold the assets of the plan. Current law requires the assets to remain solely for the property of the employer until made available to the members or beneficiaries. The bill also authorizes the board to invest assets held in the FPPA deferred compensation fund subject to the provisions of the "Colorado Uniform Prudent Investor Act".

The provisions of this bill conform with federal internal revenue code requirements for deferred compensation plans. The bill does not affect state or local government contributions to the fire and police deferred compensation plans, distributions from the plans, or administrative expenses of the FPPA.

The bill does not affect state, or local government, revenue or expenditures. Therefore, the bill is assessed as having no fiscal impact. The bill would become effective upon the signature of the Governor.

Departments Contacted

Fire and Police Pension Association

Local Affairs

BILL C

By Representative Dean

A BILL FOR AN ACT

CONCERNING THE TAXABILITY OF SURVIVOR BENEFITS PAYABLE TO THE SURVIVORS OF A MEMBER OF THE STATEWIDE DEATH AND DISABILITY PLAN.

Bill Summary

"Police & Fire Survivor Benefits"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Police Officers' and Firefighters' Pension Reform Commission. Provides survivor benefits for a surviving spouse and children of a member of the statewide death and disability plan if the member dies while in active service as a result of an injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment. Requires the board of the fire and police pension association to promulgate rules to establish standards and procedures for determining whether a member's death is the result of such an injury or disease and for reviewing and changing existing survivor benefit awards if the member's death was a result of such an injury or disease.

Makes the bill's provisions effective 60 days after the association receives a ruling from the internal revenue service that the survivor benefits paid pursuant to such provisions are excludable from gross income for tax purposes.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 8 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-31-807.5. Death of member - line of duty - survivor benefits. (1) IF A MEMBER WHO IS NOT ELIGIBLE FOR THE NORMAL RETIREMENT PENSION

DESCRIBED IN SECTION 31-31-403 DIES WHILE IN ACTIVE SERVICE AS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AS A RESULT OF AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF THE MEMBER'S EMPLOYMENT AND LEAVES A SURVIVING SPOUSE OR DEPENDENT CHILDREN, OR BOTH, ONE OF THE FOLLOWING SURVIVOR BENEFITS SHALL BE PAID, UNLESS THE MEMBER IS ELIGIBLE FOR A NORMAL RETIREMENT PENSION UNDER AN OLD HIRE PENSION ESTABLISHED PURSUANT TO ARTICLE 30.5 OF THIS TITLE THAT PROVIDES FOR POSTRETIREMENT SURVIVOR BENEFITS TO A SPOUSE AND DEPENDENT CHILDREN IN THE EVENT THE MEMBER DIES IN ACTIVE SERVICE WHILE ELIGIBLE FOR NORMAL RETIREMENT:

(a) WHEN THERE IS A SURVIVING SPOUSE AND NO DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE TWENTY-FIVE PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH PLUS ONE-HALF OF ONE PERCENT OF SUCH SALARY FOR EACH YEAR OF THE MEMBER'S ACTIVE SERVICE IN EXCESS OF TWENTY-FIVE YEARS, BUT SUCH BENEFIT SHALL NOT EXCEED THIRTY-FIVE PERCENT OF SUCH SALARY.

(b) WHEN THERE IS A SURVIVING SPOUSE AND ONE DEPENDENT CHILD, THE MONTHLY BENEFIT SHALL BE FORTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(c) WHEN THERE IS A SURVIVING SPOUSE AND TWO OR MORE DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FIFTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(d) WHEN THERE IS NO SURVIVING SPOUSE AND THREE OR MORE DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FIFTY PERCENT OF THE MONTHLY BASE SALARY PAID TO EACH MEMBER IMMEDIATELY PRECEDING DEATH.

(e) WHEN THERE IS NO SURVIVING SPOUSE AND TWO DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FORTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(f) WHEN THERE IS NO SURVIVING SPOUSE AND ONE DEPENDENT CHILD, THE MONTHLY BENEFIT SHALL BE TWENTY-FIVE PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(2) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY STANDARDS AND ESTABLISH PROCEDURES FOR DETERMINING WHETHER A MEMBER'S DEATH IS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF A MEMBER'S EMPLOYMENT AND, IN THE CASE OF A LINE OF DUTY DEATH, WHETHER ANY OF THE EXCEPTIONS SPECIFIED IN SECTION 101 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, ARE APPLICABLE. THE PROCEDURES ESTABLISHED BY THE BOARD MAY INCLUDE THE APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(3) (a) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY THE METHOD OF REVIEWING EXISTING SURVIVOR BENEFIT AWARDS TO:

(I) DETERMINE WHETHER A MEMBER'S DEATH WAS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AS A RESULT OF AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF THE MEMBER'S EMPLOYMENT;

(II) DETERMINE, IN THE CASE OF LINE-OF-DUTY DEATHS OCCURRING AFTER DECEMBER 31, 1996, WHETHER ANY OF THE EXCEPTIONS SPECIFIED IN SECTION 101 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, ARE APPLICABLE;

(III) ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATIONS, INCLUDING THE APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(b) THE DETERMINATIONS MADE BY THE BOARD PURSUANT TO THIS SUBSECTION (3) SHALL BE MADE ON THE BASIS OF THE MEDICAL EVIDENCE THAT WAS PREVIOUSLY SUBMITTED IN CONNECTION WITH THE APPLICATION FOR SURVIVOR BENEFITS AND OTHER RELEVANT NONTESTIMONIAL EVIDENCE.

(c) ANY DECISION MADE BY THE BOARD TO CHANGE AN EXISTING SURVIVOR BENEFIT AWARD TO AN ON-DUTY SURVIVOR BENEFIT UNDER THIS SUBSECTION (3) SHALL OPERATE ON A PROSPECTIVE BASIS FROM THE DATE OF THE BOARD'S DECISION.

SECTION 2. Effective date. This act shall take effect sixty days after the date on which the fire and police pension association receives a letter from the internal revenue service containing a favorable ruling to the effect that benefits paid to the survivors of deceased police officers or firefighters as a result of on-duty personal injuries or service-related or occupational diseases under this act are excludable from the gross income of the recipients pursuant to section 104 (a) (1) of the federal "Internal Revenue Code of 1986", as amended, if such ruling is received by December 31, 1999; except that, if a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, if approved by the people, shall take effect sixty days after receipt by the fire and police pension association of a favorable ruling if such ruling is received by December 31, 1999.

Colorado Legislative Council Staff

**STATE
FISCAL NOTE**
General Fund Revenue Impact

Drafting Number: LLS 98-107
Prime Sponsor(s): Rep. Dean

Date: November 21, 1997
Bill Status: Police Officer's and
Firefighter's Pension
Reform Commission

Fiscal Analyst: Steve Tammeus (866-2756)

TITLE: CONCERNING THE TAXABILITY OF SURVIVOR BENEFITS PAYABLE TO THE SURVIVORS OF A MEMBER OF THE STATEWIDE DEATH AND DISABILITY PLAN.

Summary of Legislation

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/2000
State Revenues		
General Fund	Insignificant Reduction	Insignificant Reduction
Other Fund		
State Expenditures		
General Fund		
Other Fund		
FTE Position Change	None	None
Local Government Impact — None.		

This bill adds certain benefits for the beneficiary of any member of a fire and police new hire pension plan who is not eligible for the normal retirement pension who dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties, or as a result of an occupational disease arising out of and in the course of the members' employment.

The bill requires the Board of the Fire and Police Pension Association (FPPA) to promulgate rules to specify standards and establish procedures for evaluating and qualifying the conditions of the member's death. The bill authorizes the board to appoint hearing officers to conduct hearings. The bill requires the board, in the case of a line of duty death occurring after December 31, 1996, to determine whether any of the exceptions in section 101(h)(2) of the federal internal revenue code are applicable. This provision would exclude the benefits paid to the survivors of deceased police officers or firefighters as a result of on-duty personal injuries or service-related or occupational diseases from the recipient's taxable federal gross income.

Bill C

This bill will not affect local government revenue or expenditures, or state expenditures. The bill will, however, affect state General Fund revenue. Therefore, the bill is assessed as having a fiscal impact.

The bill will become effective upon signature of the Governor and 60 days after the FPPA receives a letter from the internal revenue service with a favorable ruling that benefits paid to survivors are excludable from gross income for tax purposes.

State Revenues

This bill would exclude the benefits paid to the survivors of deceased police officers of firefighters as a result of on-duty personal injuries or service-related or occupational diseases from the recipient's taxable federal gross income. This reduction in taxable federal income will also reduce the recipient's taxable state income which will reduce annual state General Fund revenue. However, the reduction is considered to be insignificant and has not been estimated.

Fire and Police Pension Association Impact

The bill does not affect state or local government contributions to the plans, or distributions from the plans. The FPPA will be able to absorb within existing resources any additional administrative expenditures to promulgate rules, conduct hearings, or employ hearing officers.

Spending Authority

This fiscal note would imply that no additional spending authority is required to implement the provisions of the bill for FY 1998-99.

Departments Contacted

Fire and Police Pension Association

Local Affairs

Revenue