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0578 Interim Committee on Police Officers' and Firefighters Pension Reform



**Report to the
Colorado General Assembly**

**Interim Committee on
Police Officers' and Firefighters'
Pension Reform Commission**

*The Colorado Legislative Council
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December 2008*

Police Officers' and Firefighters' Pension Reform Commission

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December 2008

To Members of the Sixty-sixth General Assembly:

Submitted herewith is the final report of the Police Officers' and Firefighters' Pension Reform Commission, created pursuant to Section 31-31-1001, C.R.S. The purpose of the commission is to oversee legislation relating to the funding and investment management of police and fire pensions and the benefit designs of such plans.

At its meeting on October 15, 2008, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2009 session was approved.

Respectfully Submitted,

/s/ Representative Andrew Romanoff
Chairman

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This report is also available on line at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2008/08interim.htm

Commission Charge

The Fire and Police Pension Association (FPPA) was established in 1980 and administers a statewide multiple employer public employee retirement system providing defined benefit plan coverage as well as death and disability coverage for police officers and firefighters throughout the state of Colorado. Pursuant to Section 31-31-1001, C.R.S., the Police Officers' and Firefighters' Pension Reform Commission has the responsibility to study and develop proposed legislation relating to funding police officers' and firefighters' pensions in this state and the benefit designs of such pension plans. The statute directs the commission to study, review, and propose legislation regarding the following, among other subjects:

- normal retirement age and compulsory retirement;
- payment of benefits prior to normal retirement age;
- service requirements for eligibility;
- rate of accrual of benefits;
- disability benefits;
- survivors' benefits;
- vesting of benefits;
- employee contributions;
- post-retirement increases;
- creation of an administrative board;
- creation of a consolidated statewide system;
- distribution of state funds;
- coordination of benefits with other programs; or
- the volunteer firefighter pension system.

Commission Activities

The commission held one meeting during the 2008 interim. At the meeting, the commission received an overview of the state's involvement in fire and police pension plans, the types of plans available to members, and details about recent investment performance. The commission's activities focused on the financial status of the Fire and Police Pension Association (FPPA) investment portfolio given the 2008 national economic downturn. The commission also took up a discussion on two proposed measures for 2009.

Recent investment performance. Given the recent second and third quarter market slide in 2008 and the correction in the housing market, the FPPA presentation on the investment portfolio became the focus of this year's meeting. Generally, investment performance for the FPPA portfolio was strong over the past few years after the economic decline of 2000. However, events related to the national economy in 2008 such as the national financial crisis, correction in the housing sector, and tight credit markets, have resulted in a downward plunge of the equity (stock) markets that in turn, have lowered the value of many pension funds in the nation, including FPPA pension funds.

Many pension funds in the nation rely on investment gains from the equity markets and other asset holdings. Pension plans in the United States that are dependent on equities that are tied to real estate holdings are experiencing larger devaluations than plans that are more diversified and less dependent on the housing markets.

Prior to the events in 2008, the total market value of the FPPA's pension fund investment portfolio increased from \$3.4 billion at the close of 2006 to \$3.7 billion in 2007, an increase of about \$352 million (10.5 percent). In 2008, the continued economic downturn along with growing uncertainties about the duration of the national slowdown, continue to reduce the value of most pension plans in the nation. Similar to other public pension plans, the FPPA investment portfolio and fund's annual return has shrunk. Annual returns year-to-date through the third quarter were estimated to decline 13 percent to 15 percent year-to-date through September. The FPPA's diversified investment portfolio is expected to allow the fund to be more stable and see fewer losses than other pension funds. In addition, the FPPA portfolio has less exposure to real estate securities than other pension funds and thus, may be better-positioned to recover its lost value when the equity markets rebound.

Proposed legislation. Testimony was provided by representatives of the Fire and Police Pension Association (FPPA). An FPPA representative provided an overview of two bills that were considered by the FPPA Board of Directors and recommended to the commission for introduction in the 2009 legislative session.

FPPA plan compliance with the Internal Revenue Code. In response to increased scrutiny of government pension plans by the Internal Revenue Service (IRS), the commission took up a discussion on legislation that would bring FPPA pension plans into compliance with the Internal Revenue Code (IRC). A representative of the FPPA noted that one bill proposed by the FPPA board, Bill A, affects old hire pension plans, volunteer firefighter pension plans, and plans in the fire and police pension association defined benefit system and require these plans to be in compliance with governmental plans established under the IRC.

The bill authorizes the FPPA to amend the master old hire plan as a way to respond to the IRS's ongoing efforts to make government pension plans comply with the IRC. The bill also strikes language in current law to give the board the authority it needs to draft a master plan that can apply to the different FPPA pension plans that must conform to the IRC.

Pension plan benefit and term changes. To respond to the changes in pension plan terms and benefits that have occurred over the years, the commission discussed another bill proposed by the board, Bill B, which makes changes to police officers' and firefighters' disability and survivor benefit plans. A representative of the FPPA noted that the changes found in the legislation will not result in increased benefits that trigger higher costs, but will generate some long-term pension plan savings. The bill allows more fairness and flexibility to members in terms of the benefits they receive from plans. Finally, some provisions in the bill will result in administrative cost savings for both the board and plan administrators. To reduce administrative costs, the bill:

- simplifies state laws and reduces the verification costs tied to administering plan benefits;
- clarifies state laws that authorize remarriage without penalizing the survivor; and
- clarifies statutory changes that were made to these plans five years ago.



Summary of Recommendations

As a result of the committee's activities, the following two bills are recommended to the Colorado General Assembly.

Bill A — FPPA Plan Compliance with the Internal Revenue Code

FPPA pension plans must meet the qualification requirements that apply to government plans established by the Internal Revenue Code (IRC). Bill A addresses the ongoing compliance issues raised by the IRS by bringing FPPA pension plans into compliance with the IRC. The legislation authorizes the FPPA to amend and submit a master old hire plan to the IRS as a way to respond to the ongoing efforts of the IRS to ensure that all government pension plans are in compliance with the IRC. The bill also strikes language in current law to give the board the authority it needs to draft a master plan that can apply to the varied FPPA pension plans that need to be brought into compliance.

Bill B — Pension Plan Benefit and Term Changes

The changing structure of government pension plans require ongoing statutory changes that affect the administration of these plans. Bill B addresses the need for ongoing administrative changes in FPPA pension plans by:

- repealing the earned income offset for occupational disability benefits (Section 31-31-804 (1), C.R.S.);
- repealing the dependent child eligibility requirements with regard to education for dependent children between the ages of 19 and 23 (Section 31-31-801 (2), C.R.S.);
- repealing the termination of benefits upon remarriage for survivors of members awarded total disability benefits (Section 31-31-809, C.R.S.);
- repealing the board's authority to implement the supplemental disability benefit program (Sections 31-31-801(1) (a) (II), 31-31-803 (2) (b) (II) and (III), and 31-31-803.5, C.R.S.);
- including an offset for statewide defined benefits for a member or survivor who subsequently receives a disability or survivor benefit (Sections 31-31-803 (7) (b) and 31-31-808, C.R.S.);
- including a requirement for payment by the employer of the excess contribution over a 16 percent rate for members in the FPPA defined benefit system (for those members paying the re-entry rate) who are found temporarily disabled and subsequently receive a normal retirement benefit (Section 31-31-805 (2.5) C.R.S.);

- clarifying the applicability of on-duty status for temporary occupational benefits and permanent occupational benefits (Section 31-31-806.5 (2), C.R.S.); and
- repealing an obsolete section of state law allowing totally disabled members to elect a new survivor benefit upon the implementation of the flat benefit in 2000 (Section 31-31-803 (1) (d), C.R.S.).



Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-4900). The following meeting summaries, memoranda, and reports are available on our web site at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2008/08interim.htm

Meeting Date and Topics Discussed

September 30, 2008 Historical overview, membership information, investment performance

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL A

LLS NO. 09-0099.02 Esther van Mourik

HOUSE BILL

HOUSE SPONSORSHIP

Labuda, Benefield, Gardner B., King, Liston, Peniston, Rice, Riesberg

SENATE SPONSORSHIP

Tochtrop, Morse, Williams

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING FIREFIGHTER AND POLICE OFFICER PENSION PLAN
102 COMPLIANCE WITH REQUIREMENTS SET FORTH IN THE INTERNAL
103 REVENUE CODE.

Bill Summary

(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.
Requires old hire pension plans to meet the qualification requirements that apply to governmental plans established by the internal revenue code.

For old hire pension plans, volunteer firefighter pension plans, and plans in the fire and police pension association defined benefit system:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.

DRAFT

Dashes through the words indicate deletions from existing statute.

- Eliminates specific requirements that were intended to ensure that the plans meet the qualification requirements established by the internal revenue code; and
- Grants the applicable governing board the authority to adopt any provision for a plan that is necessary to comply with the internal revenue code.

Allows the board of directors of the fire and police pension association (board) to create a master plan document for old hire pension plans and to submit the master plan document to the internal revenue service (IRS) for a determination of the document's status as a qualified plan under the internal revenue code. Establishes what must be included in the master plan document and when the master plan document may be modified or amended. Establishes that the board may require an affiliated board to adopt the master plan document or to obtain IRS approval for its own old hire pension plan. Specifies that an affiliated board is not precluded from seeking IRS approval for its own old hire pension plan.

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

2 **SECTION 1.** 31-30-1133, Colorado Revised Statutes, is amended
3 to read:

4 **31-30-1133. Qualification requirements - internal revenue**
5 **code - definitions.** (1) As used in this section, "internal revenue code"
6 means ~~the federal "Internal Revenue Code of 1954", as in effect on~~
7 ~~September 1, 1974, as applicable to governmental plans, or, to the extent~~
8 ~~not inconsistent,~~ the federal "Internal Revenue Code of 1986", as
9 amended. ~~and in effect on January 1, 1989.~~

10 (2) Any volunteer firefighter pension plan established by this part
11 11 to provide retirement benefits for volunteer firefighters shall satisfy
12 the qualification requirements specified in section 401 of the internal
13 revenue code, as applicable to governmental plans. ~~In order to meet those~~
14 ~~requirements, such plans are subject to the following provisions;~~
15 ~~notwithstanding any other provision of this part 11:~~

16 (a) ~~The board shall distribute the corpus and income of the~~

1 ~~pension plan to members and their beneficiaries in accordance with this~~
2 ~~part 11 and the rules adopted by the board.~~

3 ~~(b) No part of the corpus or income of the pension plan may be~~
4 ~~used for or diverted to any purpose other than that of providing benefits~~
5 ~~to participants and their beneficiaries and defraying reasonable expenses~~
6 ~~of administering the pension plan, except for an assignment for child~~
7 ~~support debt pursuant to section 14-14-104, C.R.S., child support~~
8 ~~arrearages as requested as part of an enforcement action under article 5~~
9 ~~of title 14, C.R.S., or child support arrearages that are the subject of~~
10 ~~enforcement services provided under section 26-13-106, C.R.S., and~~
11 ~~except for income assignments for child support purposes pursuant to~~
12 ~~section 14-14-111.5, C.R.S., and a writ of garnishment that is the result~~
13 ~~of a judgment taken for arrearages for child support or for child support~~
14 ~~debt.~~

15 ~~(c) Forfeitures arising from severance of employment, death, or~~
16 ~~any other reason may not be applied to increase the benefits any member~~
17 ~~would otherwise receive under this part 11.~~

18 ~~(d) If the pension plan is terminated, or if all contributions to the~~
19 ~~pension plan are permanently discontinued, the rights of each affected~~
20 ~~member to the benefits accrued at the date of the termination or~~
21 ~~discontinuance, to the extent then funded, are nonforfeitable.~~

22 ~~(e) Upon attaining the eligibility requirements for a benefit, a~~
23 ~~member shall be fully vested in the benefits such member has accrued.~~

24 ~~(f) All benefits paid from the pension plan shall be distributed in~~
25 ~~accordance with the requirements of section 401 (a) (9) of the internal~~
26 ~~revenue code and the regulations promulgated under that section. In~~
27 ~~order to meet those requirements, the pension plan is subject to the~~

1 following provisions:

2 ~~(f) The life expectancy of a member, the member's spouse, or the~~
3 ~~member's beneficiary shall not be recalculated after the initial~~
4 ~~determination of the amount of benefits that are payable.~~

5 ~~(H) If a member dies before the distribution of the member's~~
6 ~~benefits has begun, distributions to beneficiaries must begin no later than~~
7 ~~December 31 of the calendar year immediately following the calendar~~
8 ~~year in which the member died.~~

9 ~~(HH) The amount of an annuity paid to a member's beneficiary may~~
10 ~~not exceed the maximum determined under the incidental death benefit~~
11 ~~requirement of the internal revenue code.~~

12 ~~(g) Benefits paid under any pension plan may not exceed the~~
13 ~~limitations specified by section 415 of the internal revenue code,~~
14 ~~including the special rule under section 415 (b) (10) of the internal~~
15 ~~revenue code.~~

16 ~~(h) The compensation taken into account under this part 11 may~~
17 ~~not exceed the applicable amount under section 401 (a) (17) of the~~
18 ~~internal revenue code.~~

19 ~~(i) Any distributee who is entitled to an eligible rollover~~
20 ~~distribution, as defined in section 402 (c) (4) of the internal revenue code,~~
21 ~~from the statewide pension plan on and after January 1, 1993, may elect~~
22 ~~to have the portion of such distribution that would otherwise be included~~
23 ~~in the gross income of the distributee for federal income tax purposes~~
24 ~~transferred directly to an eligible retirement plan, as defined in section~~
25 ~~402 (c) (8) (B) of the internal revenue code, designated by the distributee.~~

26 (3) A BOARD MAY ADOPT ANY PROVISION FOR A PLAN THAT IS
27 NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

28 SECTION 2. 31-30.5-102 (1), Colorado Revised Statutes, is

1 amended, and the said 31-30.5-102 is further amended BY THE
2 ADDITION OF A NEW SUBSECTION, to read:

3 **31-30.5-102. Definitions.** As used in this article, unless the
4 context otherwise requires:

5 (1) ~~"Board" means the board of trustees established as the~~
6 ~~governing body of the firefighters' or police officers' old hire pension~~
7 ~~fund as provided in sections 31-30.5-202 and 31-30.5-203~~ "AFFILIATED
8 BOARD" MEANS ANY BOARD AFFILIATED, AS SPECIFIED IN SECTION
9 31-31-701, WITH THE FIRE AND POLICE PENSION ASSOCIATION CREATED IN
10 SECTION 31-31-201.

11 (1.5) "BOARD" MEANS THE BOARD OF TRUSTEES ESTABLISHED AS
12 THE GOVERNING BODY OF THE FIREFIGHTERS' OR POLICE OFFICERS' OLD
13 HIRE PENSION FUND AS PROVIDED IN SECTIONS 31-30.5-202 AND
14 31-30.5-203.

15 **SECTION 3.** 31-30.5-212, Colorado Revised Statutes, is
16 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17 **31-30.5-212. Qualification requirements - internal revenue**
18 **code - definitions.** (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
19 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
20 AMENDED.

21 (2) OLD HIRE PENSION PLANS SHALL SATISFY THE QUALIFICATION
22 REQUIREMENTS SPECIFIED IN SECTION 401 OF THE INTERNAL REVENUE
23 CODE, AS APPLICABLE TO GOVERNMENTAL PLANS.

24 (3) A BOARD, AS DEFINED IN SECTION 31-30.5-102 (1.5), MAY
25 ADOPT ANY PROVISION FOR AN OLD HIRE PENSION PLAN THAT IS
26 NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

27 (4)(a) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION

1 ASSOCIATION ESTABLISHED BY SECTION 31-31-201 MAY CREATE A MASTER
2 PLAN DOCUMENT FOR OLD HIRE PENSION PLANS AND MAY SUBMIT THE
3 MASTER PLAN DOCUMENT TO THE INTERNAL REVENUE SERVICE FOR A
4 DETERMINATION OF ITS STATUS AS A QUALIFIED PLAN UNDER THE
5 INTERNAL REVENUE CODE. THE MASTER PLAN DOCUMENT SHALL INCLUDE
6 PROVISIONS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

7 (b) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION
8 ASSOCIATION ESTABLISHED BY SECTION 31-31-201 MAY:

9 (I) AMEND THE MASTER PLAN DOCUMENT AS MAY BE NECESSARY
10 TO COMPLY WITH THE INTERNAL REVENUE CODE; AND

11 (II) REQUIRE AN AFFILIATED BOARD TO ADOPT THE MASTER PLAN
12 DOCUMENT OR TO OBTAIN INTERNAL REVENUE SERVICE APPROVAL FOR ITS
13 OLD HIRE PENSION PLAN.

14 (c) NOTHING IN THIS SUBSECTION (4) SHALL PRECLUDE AN
15 AFFILIATED BOARD FROM SUBMITTING ITS PLAN DOCUMENT TO THE
16 INTERNAL REVENUE SERVICE FOR A DETERMINATION OF ITS PLAN
17 DOCUMENT'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL
18 REVENUE CODE.

19 **SECTION 4.** 31-31-204 (3), Colorado Revised Statutes, is
20 amended to read:

21 **31-31-204. Defined benefit system. (3) Qualification**
22 **requirements - internal revenue code - definitions.** (a) As used in this
23 ~~section~~ SUBSECTION (3), "internal revenue code" means the federal
24 ~~"Internal Revenue Code of 1954", as in effect on September 1, 1974, if~~
25 ~~permitted with respect to governmental plans, or, to the extent not~~
26 ~~inconsistent with the federal "Internal Revenue Code of 1954", as in~~
27 ~~effect on September 1, 1974, "internal revenue code" means the federal~~
28 ~~"Internal Revenue Code of 1986", as amended. and in effect on January~~

1 ~~1, 1989.~~

2 (b) The defined benefit system and each of the plans established
3 by part 2, 4, 7, or 11 of this article included within the system shall satisfy
4 the qualification requirements specified in section 401 of the internal
5 revenue code, as applicable to governmental plans. ~~In order to meet those~~
6 ~~requirements, the statewide defined benefit plan is subject to the~~
7 ~~following provisions, notwithstanding any other provision of this article:~~

8 (I) ~~The board shall distribute the corpus and income of the pension~~
9 ~~plan to members and their beneficiaries in accordance with this article~~
10 ~~and the plan documents and rules adopted by the board.~~

11 (II) ~~No part of the corpus or income of the pension plan may be~~
12 ~~used for or diverted to any purpose other than that of providing benefits~~
13 ~~to participants and their beneficiaries, including assignments for child~~
14 ~~support purposes as provided for in section 14-14-104, C.R.S., child~~
15 ~~support arrearages as requested as part of an enforcement action under~~
16 ~~article 5 of title 14, C.R.S., or child support arrearages that are the subject~~
17 ~~of enforcement services provided under section 26-13-106, C.R.S.,~~
18 ~~income assignments for child support purposes pursuant to section~~
19 ~~14-14-111.5, C.R.S., writs of garnishment that are the result of a~~
20 ~~judgment taken for arrearages for child support or for child support debt,~~
21 ~~and payments made in compliance with a properly executed court order~~
22 ~~approving a written agreement entered into pursuant to section 14-10-113~~
23 ~~(6), C.R.S., and defraying reasonable expenses of administering the plan.~~

24 (III) ~~Forfeitures arising from severance of employment, death, or~~
25 ~~any other reason shall not be applied to increase the benefits any member~~
26 ~~would otherwise receive under this article.~~

27 (IV) ~~If the pension plan is terminated, or if all contributions to the~~

1 pension plan are permanently discontinued, the rights of each affected
2 member to the benefits accrued at the date of the termination or
3 discontinuance, to the extent then funded, are nonforfeitable.

4 (V) All benefits paid from the pension plan shall be distributed in
5 accordance with the requirements of section 401 (a) (9) of the internal
6 revenue code and the regulations promulgated under that section. In
7 order to meet those requirements, the pension plan is subject to the
8 following provisions:

9 (A) The life expectancy of a member, the member's spouse, or the
10 member's beneficiary shall not be recalculated after the initial
11 determination for purposes of determining benefits.

12 (B) If a member dies before the distribution of the member's
13 benefits has begun, distributions to beneficiaries shall begin no later than
14 December 31 of the calendar year immediately following the calendar
15 year in which the member died.

16 (C) The amount of an annuity paid to a member's beneficiary may
17 not exceed the maximum determined under the incidental death benefit
18 requirement of the internal revenue code.

19 (VI) Benefits paid under the defined benefit system established by
20 this part 2 may not exceed the limitations specified by section 415 of the
21 internal revenue code.

22 (VII) The compensation taken into account under this part 2 may
23 not exceed the applicable amount under section 401 (a) (17) of the
24 internal revenue code.

25 (VIII) Any distributee who is entitled to an eligible rollover
26 distribution, as defined in section 402 (c) (4) of the internal revenue code,
27 from the statewide pension plan on and after January 1, 1993, may elect
28 to have the portion of such distribution that would otherwise be included

1 in the gross income of the distributee for federal income tax purposes
2 transferred directly to an eligible retirement plan, as defined in section
3 402(c)(8)(B) of the internal revenue code, designated by the distributee.

4 ~~(IX) Upon attaining the eligibility requirements for a benefit, a~~
5 ~~member shall be fully vested in the benefits such member has accrued.~~

6 (c) THE BOARD MAY ADOPT ANY PROVISION FOR A PLAN
7 ESTABLISHED BY PART 2, 4, 7, OR 11 OF THIS ARTICLE THAT IS NECESSARY
8 TO COMPLY WITH THE INTERNAL REVENUE CODE.

9 SECTION 5. 43-1-1209 (1) (d), Colorado Revised Statutes, is
10 amended to read:

11 **43-1-1209. Notice of investment opportunities.** (1) The
12 department or the private entity responsible for funding a public-private
13 initiative under this part 12 may forward the agreement and a description
14 of the investment opportunity for such initiative to any of the following
15 for consideration under their respective statutory authority:

16 (d) The boards of trustees of the firefighters' and police officers'
17 old hire pension funds, as defined in ~~section 31-30.5-102 (1)~~ SECTION
18 31-30.5-102 (1.5), C.R.S.;

19 SECTION 6. 43-3-220 (1) (d), Colorado Revised Statutes, is
20 amended to read:

21 **43-3-220. Notice of investment opportunity.** (1) The
22 department or the private entity responsible for issuing bonds under this
23 part 2 may forward a copy of the bonds and a description of the
24 investment opportunity for such bonds to any of the following for
25 consideration under their respective statutory authority:

26 (d) The boards of trustees of the firefighters' and police officers'
27 old hire pension funds, as defined in ~~section 31-30.5-102 (1)~~ SECTION

1 31-30.5-102 (1.5), C.R.S.;

2 **SECTION 7. Effective date.** This act shall take effect at 12:01
3 a.m. on the day following the expiration of the ninety-day period after
4 final adjournment of the general assembly that is allowed for submitting
5 a referendum petition pursuant to article V, section 1 (3) of the state
6 constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009);
7 except that, if a referendum petition is filed against this act or an item,
8 section, or part of this act within such period, then the act, item, section,
9 or part, if approved by the people, shall take effect on the date of the
10 official declaration of the vote thereon by proclamation of the governor.

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL B

LLS NO. 09-0102.01 Ed DeCecco

SENATE BILL

SENATE SPONSORSHIP

Tochtrop, Morse

HOUSE SPONSORSHIP

Riesberg, Benefield, Labuda, Peniston, Rice

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING FIREFIGHTER AND POLICE OFFICER DISABILITY AND
102 SURVIVOR BENEFITS.

Bill Summary

(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.
Makes the following changes related to police officers' and firefighters' disability and survivor benefit plans:

- Removes the requirement that an unmarried child between the ages of 19 and 23 be in school in order to be classified as a dependent child.
- Repeals an obsolete provision related to the ability of a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.

DRAFT

Dashes through the words indicate deletions from existing statute.

19

member of a benefit plan to elect different disability benefit options.

- Repeals the authority of the board of directors of the fire and police pension association (board) to establish a supplemental disability benefit program.
- Repeals an earned income offset for occupational disability benefits.
- Offsets disability or survivor benefits by the amount of payments from a statewide defined benefit pension plan.
- Modifies an employer's obligation to make contributions to a retirement plan while a member is receiving temporary occupational disability payments.
- Permits the board to give a disability benefit to a member injured on-duty who has a permanent occupational disability or a temporary occupational disability.
- With the exception of a surviving spouse of a member who was occupationally disabled, permits a surviving spouse to continue receiving survivor benefits upon remarriage.

Makes conforming amendments.

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

2 **SECTION 1.** 31-31-801 (2), Colorado Revised Statutes, is
3 amended to read:

4 **31-31-801. Definitions.** As used in this part 8, unless the context
5 otherwise requires:

6 (2) "Dependent child" means an unmarried child under the age of
7 ~~nineteen or, if such child is enrolled as a full-time student at a secondary~~
8 ~~school or an accredited institution of higher education, under the age of~~
9 twenty-three and includes, if the board so determines, any child,
10 regardless of age or marital status, who is so mentally or physically
11 incapacitated that the child cannot provide for the child's own care. The
12 term also includes a child who is conceived but unborn at the date of the
13 member's death or the date of disability, whichever applies. Any
14 applicable increase in benefits will occur upon birth.

15 **SECTION 2.** 31-31-803 (1) (a) (II), (1) (b) (III), (1) (d), (2) (b)

1 (III), (7) (b), and (8) (a) (III), Colorado Revised Statutes, are amended to
2 read:

3 **31-31-803. Retirement for disability.** (1) (a) (II) The normal
4 annual disability benefit for total disability for a member who is retired
5 pursuant to subparagraph (I) of this paragraph (a) shall be seventy percent
6 of the annual base salary paid to the member immediately preceding
7 retirement for disability. ~~The benefit shall be increased by ten percent or~~
8 ~~twenty percent of the annual base salary depending on the level of benefit~~
9 ~~elected by a member participating in the supplemental disability benefit~~
10 ~~program described in section 31-31-803.5.~~

11 (b) Notwithstanding subsection (5) of this section, a member
12 eligible for the normal annual disability benefit for total disability may
13 elect to receive one of the following disability benefit options in lieu of
14 the normal annual disability benefit provided under paragraph (a) of this
15 subsection (1):

16 (III) Option 3. A reduced annual disability benefit payable to the
17 member and, upon the member's death, all of such reduced annual
18 disability benefit to be paid to the member's surviving spouse and
19 dependent children, if any, until the death of the surviving spouse, the
20 death of any adult dependent child found to be incapacitated by the board,
21 or until the youngest child, regardless of enrollment in school or marital
22 status, reaches twenty-three years of age, whichever is later.

23 (d) ~~Notwithstanding subsection (5) of this section, a member~~
24 ~~receiving a disability benefit under this subsection (1) as of January 1,~~
25 ~~2000, may elect a different disability benefit option under paragraph (b)~~
26 ~~of this subsection (1) once within ninety days of receiving written notice~~
27 ~~from the board of the opportunity to elect a different disability benefit~~

1 ~~option. The board may promulgate rules to implement and administer this~~
2 ~~paragraph (d).~~

3 (2) (b) The annual disability benefit for occupational disability for
4 a member who is retired pursuant to paragraph (a) of this subsection (2)
5 shall be thirty percent of the annual base salary paid to the member
6 immediately preceding retirement for disability. The benefit shall be
7 increased by:

8 ~~(III) Ten percent or twenty percent of the annual base salary~~
9 ~~depending on the level of benefit elected by a member participating in the~~
10 ~~supplemental disability program described in section 31-31-803.5.~~

11 (7) (b) The benefits payable under this section or section
12 31-31-806.5 to any member who is awarded a total disability or who is
13 permanently occupationally disabled and who is also eligible to receive
14 a defined benefit from a STATEWIDE OR local pension plan shall be
15 reduced by the amount of the defined benefit.

16 (8) (a) A member eligible for a permanent occupational disability
17 benefit under subsection (2.1) of this section or a permanent occupational
18 disability benefit under section 31-31-806.5 may elect to receive one of
19 the following disability benefit options in lieu of such disability benefit:

20 (III) Option 3. A reduced annual disability benefit payable to the
21 member and, upon the member's death, all of such reduced annual
22 disability benefit to be paid to the member's surviving spouse and
23 dependent children, if any, until the death of the surviving spouse, the
24 death of any adult dependent child found to be incapacitated by the board,
25 or until the youngest child, regardless of ~~enrollment in school~~ or marital
26 status, reaches twenty-three years of age, whichever is later.

27 **SECTION 3. Repeal.** 31-31-803.5, Colorado Revised Statutes,
28 is repealed as follows:

1 **31-31-803.5. Supplemental disability benefit program.** ~~(1) The~~
2 ~~board may establish a supplemental disability benefit program that~~
3 ~~provides additional disability benefits to members who participate in such~~
4 ~~program and who are retired for disability pursuant to section 31-31-803~~
5 ~~or section 31-31-806.5. Any supplemental disability benefit program~~
6 ~~established pursuant to this subsection (1) shall meet the following~~
7 ~~requirements:~~

8 ~~(a) The supplemental disability benefit program shall permit a~~
9 ~~member to elect to participate in such program prior to the member's~~
10 ~~commencement of employment with an employer or during open~~
11 ~~enrollment periods established by the board and to discontinue such~~
12 ~~participation at any time upon notice to the association. An open~~
13 ~~enrollment period shall not be permitted any more frequently than every~~
14 ~~two years. Reenrollment in such program shall be permitted only during~~
15 ~~an open enrollment period.~~

16 ~~(b) The supplemental disability benefit program shall permit a~~
17 ~~participating member to elect between two levels of supplemental~~
18 ~~benefits providing an additional ten percent or twenty percent of the~~
19 ~~member's annual base salary;~~

20 ~~(c) The cost of funding the supplemental disability benefit~~
21 ~~program shall be by contributions made by participating members at a rate~~
22 ~~to be determined as a percentage of the member's base salary pursuant to~~
23 ~~the annual actuarial valuation required by section 31-31-811 (2) (b) (II).~~
24 ~~The contribution rate shall be adjusted every two years in order to reflect~~
25 ~~changes in the cost of such program determined by the annual actuarial~~
26 ~~valuation.~~

27 ~~(d) The full cost of funding the supplemental disability benefit~~

1 program for a member shall be payable by the participating member.
2 Payments shall be made in the same manner as payments required
3 pursuant to section 31-31-811 (4).

4 (c) The benefits provided pursuant to the supplemental disability
5 benefit program shall be eligible for annual cost-of-living adjustments
6 permitted by section 31-31-407. The cost of funding such adjustments
7 shall be included in determining the contribution required by paragraph
8 (c) of this subsection (1).

9 (f) A member must be enrolled in the supplemental disability
10 benefit program at the time the member applies for disability benefits in
11 order to receive benefits payable under such program;

12 (g) A member enrolled in the supplemental disability benefit
13 program will not be eligible for benefits payable under such program if
14 the member's disability is the proximate consequence or result of a
15 medical condition that existed at the time the member enrolled in such
16 program.

17 (2) If a member who is retired for disability and eligible for
18 benefits under the supplemental disability benefit program elects an
19 optional form of payment pursuant to section 31-31-803 (5) (a), the
20 benefits payable under the program shall be included in determining such
21 optional payment amount.

22 (3) The reductions to disability benefits described in section
23 31-31-804 shall not apply to benefits payable under the supplemental
24 disability benefit program.

25 (4) The board shall promulgate such rules as may be necessary to
26 implement the provisions of this section.

27 SECTION 4. 31-31-804 (1), Colorado Revised Statutes, is
28 amended to read:

1 **31-31-804. Reduction of disability benefits - definitions.**
2 ~~(1)(a) If a member has any earned income other than that provided by an
3 occupational disability benefit award under section 31-31-803 or
4 31-31-806.5 and, if applicable, a workers' compensation award that
5 provides a total income greater than an amount equal to the member's
6 indexed base salary, an occupational disability benefit shall be reduced by
7 twenty-five percent of the additional earned income. The reduction shall
8 be made for income earned up to and including the calendar year in which
9 the member attains age fifty-five. In calculating total income for
10 purposes of this paragraph (a), the amount includable with respect to
11 money purchase plan benefits that a member is eligible to receive shall be
12 the same amount as calculated pursuant to subsection (2) of this section.
13 A member's indexed salary for the first year shall equal the member's base
14 salary at the date of disability multiplied by the consumer price index
15 fraction. For each subsequent year, a member's indexed salary shall equal
16 the indexed salary for the previous year multiplied by the consumer price
17 index fraction. The consumer price index fraction shall be as follows:
18 The numerator shall be the average of the consumer price index for the
19 twelve months in the calendar year immediately preceding the effective
20 date of the indexed base salary, and the denominator shall be the average
21 of the consumer price index for the twelve months in the calendar year
22 prior to the twelve months used in the numerator. For members receiving
23 benefits subject to reductions under this section prior to January 1, 2008,
24 the last previous salary based on rank used to make the calculation under
25 this paragraph (a) shall be used in the first year as the member's base
26 salary. In no event shall the indexed base salary be reduced below the
27 previous year's indexed base salary. As used in this paragraph (a),~~

1 ~~"consumer price index" means the national consumer price index for~~
2 ~~urban wage earners and clerical workers prepared by the United States~~
3 ~~department of labor.~~

4 (b) ~~Notwithstanding any provision of paragraph (a) of this~~
5 ~~subsection (1);~~ Any disability benefit provided pursuant to section
6 31-31-803 shall be reduced by the pro rata amount of any social security
7 benefit received by the member attributable to the member's quarters of
8 social security coverage derived from employment as a member.

9 (c) Any member receiving an occupational disability benefit
10 pursuant to section 31-31-803 or 31-31-806.5 AND A SOCIAL SECURITY
11 BENEFIT ATTRIBUTABLE TO THE MEMBER'S QUARTERS OF SOCIAL SECURITY
12 COVERAGE DERIVED FROM EMPLOYMENT AS A MEMBER shall file an annual
13 report concerning any ~~additional~~ SOCIAL SECURITY income. ~~earned up to~~
14 ~~and including the calendar year in which the member attains age~~
15 ~~fifty-five.~~ If such member knowingly fails to file such report or files a
16 fraudulent report, the disability benefit shall be discontinued.

17 **SECTION 5.** 31-31-805 (2.5), Colorado Revised Statutes, is
18 amended to read:

19 **31-31-805. Change in disability status - reexamination.**
20 (2.5) When a member on temporary occupational disability satisfies the
21 age and service requirements for a normal retirement, including the time
22 the member was on temporary occupational disability, a transfer shall be
23 made from the statewide death and disability plan to the member's normal
24 retirement plan in the amount of sixteen percent of the monthly base
25 salary that the member was being paid at the time of disability retirement,
26 multiplied by the number of months the member received temporary
27 occupational disability benefits. A member of a STATEWIDE OR local
28 retirement plan ~~which~~ THAT has a MANDATORY contribution rate in excess

1 of sixteen percent shall have the difference between the amount
2 transferred and the amount that would have been contributed at the excess
3 rate made up by an additional contribution from the employer. The
4 member shall then be granted a normal retirement under the member's
5 normal retirement plan and the temporary occupational disability benefits
6 under the statewide death and disability plan shall terminate.

7 **SECTION 6.** 31-31-806.5 (2), Colorado Revised Statutes, is
8 amended to read:

9 **31-31-806.5. Disability benefits - on-duty.** (2) If the board
10 determines that a member who is otherwise eligible to apply for disability
11 retirement benefits under section 31-31-803 is required to terminate the
12 member's regular employment due to an occupational disability, as
13 ~~defined in section 31-31-801 (3)~~ A TEMPORARY OCCUPATIONAL
14 DISABILITY, OR A PERMANENT OCCUPATIONAL DISABILITY that,
15 REGARDLESS OF THE TYPE OF OCCUPATIONAL DISABILITY, is the result of
16 an injury received while performing official duties or an occupational
17 disease arising out of and in the course of the member's employment, the
18 member is eligible for a disability benefit in an amount provided for in
19 section 31-31-803.

20 **SECTION 7.** 31-31-808 (3), Colorado Revised Statutes, is
21 amended to read:

22 **31-31-808. Reduction of survivor benefits.** (3) The benefits
23 payable under sections 31-31-807 and 31-31-807.5 to the surviving
24 spouse and dependent children of any member who are also receiving
25 payments from a STATEWIDE OR local Colorado fire or police defined
26 benefit pension plan shall be reduced by the amount of the defined benefit
27 payments to be received.

1 **SECTION 8.** 31-31-809, Colorado Revised Statutes, is amended
2 to read:

3 **31-31-809. Termination of benefits.** Except as otherwise
4 provided in section 31-31-807 (2), any benefit provided in accordance
5 with this part 8 to a surviving spouse ~~or dependent child~~ shall terminate
6 upon the death ~~or remarriage~~ of the surviving spouse. ~~and upon the death~~
7 ~~of any dependent child or the termination of dependency of any~~
8 ~~dependent child.~~ ANY BENEFIT PROVIDED IN ACCORDANCE WITH SECTION
9 31-31-803 (2) TO A SURVIVING SPOUSE OF A MEMBER WHO WAS
10 OCCUPATIONALLY DISABLED SHALL TERMINATE UPON THE REMARRIAGE
11 OF THE SURVIVING SPOUSE. EXCEPT AS OTHERWISE PROVIDED IN SECTION
12 31-31-807 (2), ANY BENEFIT PROVIDED IN ACCORDANCE WITH THIS PART
13 8 TO A DEPENDENT CHILD SHALL TERMINATE UPON THE DEATH OF THE
14 DEPENDENT CHILD OR THE TERMINATION OF DEPENDENCY OF THE
15 DEPENDENT CHILD.

16 **SECTION 9. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.