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0593 Police Officers' and Firefighters' Pension Reform Commission



**Report to the
Colorado General Assembly**

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

Prepared by

*The Colorado Legislative Council
Research Publication No. 593
December 2009*

Police Officers' and Firefighters' Pension Reform Commission

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December 2009

To Members of the Sixty-seventh 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 November 10, 2009, the Legislative Council reviewed the report of this commission. A motion to forward this report and the bills therein for consideration in the 2010 session was approved.

Respectfully submitted,

/s/ Brandon Shaffer
Chair

Table of Contents

	Page
Commission Charge	1
Commission Activities	1
Recent Investment Performance.....	1
Proposed Legislation.....	1
Elimination of the Ability of Local Money Purchase Plans to Affiliate with the FPPA. . . .	2
FPPA Retired Board Member Term Extension.	2
Return to Work by FPPA Member.....	2
Authority for an Election to Approve an Increase in the Member Contribution Rate. . . .	2
Colorado Volunteer Firefighter Pension Act.....	3
Summary of Recommendations	5
Bill A — Repeal of the Authority of the Board of Directors of the Fire and Police Pension Association to Affiliate with a Local Money Purchase Pension Plan.	5
Text of Bill A.....	9
Bill B — Extension of the Term of the Retired Member of the Board of Directors of the Fire and Police Pension Association	5
Text of Bill B.....	13
Bill C — Discretion of the Board of Directors of the Fire and Police Pension Association to Adopt Rules Regarding the Return to Work by a Member Participating in the Defined Benefit System of the Association Who Elects Retirement	5
Text of Bill C.....	17
Bill D — Member-Approved Increase in the Member Contribution Rate to the Statewide Defined Benefit Plan Administered by the Fire and Police Pension Association.....	5
Text of Bill D.....	21
Bill E — A Volunteer Firefighter Pension Plan.....	6
Text of Bill E.....	31
Resource Materials	7

This report is also available on line at:

<http://www.colorado.gov/lcs/PoliceandFirefightersPensionReform>

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 two meetings during the 2009 interim. At these meetings, the commission received a historical overview of the state's involvement in fire and police pension plans, the membership and types of plans available to members, and details about recent investment performance.

Recent investment performance. The commission heard that 2008 was the worst year for fund performance in the history of the Fire and Police Pension Association (FPPA); however, the FPPA Statewide Defined Benefit Plan remains fully funded on an actuarial basis at 101 percent as of January 1, 2009, a decline from the 119.4 percent funding level on January 1, 2008. The Fire and Police Members' Benefit Investment Fund had a negative return of 28.9 percent in 2008, but has recovered by approximately 10 percent since market lows in March of 2009. As of June 30, 2009, the Fire and Police Members' Benefit Investment Fund balance was approximately \$2.5 billion.

Proposed legislation. A representative of the FPPA provided an overview of four bills that were recommended to the commission by the FPPA Board of Directors for introduction in the 2010 legislative session. The commission also heard testimony relating to the Colorado Volunteer Firefighter Pension Act and proposed amendments to the act. A number of technical changes to Colorado law addressing volunteer firefighter plans were recommended to the commission.



Elimination of the ability of local money purchase plans to affiliate with the FPPA.

The FPPA Board of Directors recommended legislation to the commission that would eliminate the ability of local employers with money purchase plans to affiliate with the FPPA for investment services and plan administration. A representative of the FPPA said that elimination of this statutory language will "clean up" and simplify the FPPA statutes. There are no such money purchase plans affiliated with the FPPA at present. Local money purchase plans would continue to be able to merge into the FPPA Statewide Money Purchase Plan or to re-enter the FPPA defined benefit system. A money purchase plan is a defined *contribution* plan in which employer contributions are mandatory and based on a percentage of employee compensation. The FPPA Statewide Money Purchase Plan receives no state assistance.

FPPA retired board member term extension. Legislation was recommended to the commission that would extend the term of the retired firefighter or police officer serving as a member of the FPPA Board of Directors from a four-year term to a six-year term. The FPPA Board of Directors has nine members appointed by the Governor and confirmed by the Senate. One of the members must be a retired firefighter or a retired police officer. The board position alternates between a representative of retired firefighters and a representative of retired police officers upon the completion of each term. The FPPA Board of Directors believes that the extension of the term of this board member will benefit the organization by granting more time for such members to become familiar with administration of FPPA programs.

Return to work by FPPA member. The FPPA Board of Directors recommended legislation to the commission addressing the situation of persons who have qualified for an FPPA retirement benefit, retired, and later choose to re-enter the workforce as an employee of an FPPA-affiliated employer.

The recommended bill authorizes the board to adopt rules suspending the pension benefits of a member who participates in the defined benefit system, separates from service, elects to retire under the defined benefit system, and subsequently returns to work with an employer who also participates in the defined benefit system. The rules would address whether the member could earn additional service credit in the retirement plan and the future retirement benefit of the member.

The bill also authorizes the board to adopt rules allowing FPPA members who have retired and subsequently returned to work for an employer who provides benefits under the FPPA defined benefit system to continue to receive their FPPA retirement benefit and to earn additional retirement benefits in an alternate money purchase plan. The bill requires that the board determine that such rules would not have an adverse actuarial impact on the defined benefit system.

Authority for an election to approve an increase in the member contribution rate. The FPPA Board of Directors recommended legislation to the commission that would allow an election of active members (not retirees) and FPPA employers to be held to approve an increase in the member contribution rate in the FPPA Statewide Defined Benefit Plan. The bill authorizes the board to initiate an election at its discretion. The contribution increase would have to be approved by a super majority (65 percent) of active plan members and a majority of plan-affiliated employers (employers with both fire and police members in the plan get two votes). Such an increase would have no impact on the employer contribution rate for the plan. The increase in the contribution rate would not be subject to negotiation for payment by the employer. The process for approval of the rate increase would conform with existing FPPA procedures for approval of plan amendments entailing approval by both the employer and employees. Although there is no immediate need for an increase in the FPPA plan contribution rates, the bill would grant employees of FPPA-affiliated



employers an alternative to benefit reductions in the future (for example, an increase in the retirement age) if such reductions were necessitated by funding shortfalls.

Colorado Volunteer Firefighter Pension Act. A number of proposed technical changes to Colorado law addressing volunteer firefighter plans were presented to the commission. Colorado law allows cities and fire districts with volunteer firefighters to establish volunteer firefighter pension plans. The volunteer pension plans may affiliate with the FPPA for investment purposes. There are currently 176 local volunteer firefighter pension plans affiliated with the FPPA.

The proposed technical changes resulted in the commission's recommendations to:

- allow additional retired fire department members, including those who have returned to active service, to serve on the board of trustees of volunteer firefighter pension funds. Current law allows retired firefighters to be elected to five-member fire district boards. Under current law, the five members of the fire district board also serve on seven-member volunteer firefighter pension boards of trustees. Current law requires the additional two members of a volunteer firefighter pension board of trustees to be active fire department members. The proposed amendment permits these two members to be retirees, or retirees who have returned to active duty. The commission heard testimony that the current requirement results in vacant seats on volunteer firefighter pension boards.
- strike a requirement that a copy of a biannual report from volunteer firefighter pension boards regarding the condition of the volunteer firefighter pension fund be provided to governing bodies of fire protection district boards of directors. The commission heard testimony that this statutory requirement is unnecessary because the members of the fire district board of directors serve on the pension board of trustees.
- eliminate an investment restriction on trustees of volunteer firefighter pension funds to bring the investment requirements into line with the investment requirements for paid firefighter pension funds. The commission heard testimony that volunteer firefighter pension funds that are not affiliated with the FPPA for investment purposes are self-directed, and that Colorado law allows the treasurer of a fire district or municipality to work with a qualified financial institution to handle the investments of these pension funds. Current law requires that these investments be made in conformance with requirements of prudent investor statutes, the same requirement for self-directed paid firefighter pension funds. It also imposes further requirements relating to holding fixed income investments in a portion of the portfolio. The commission heard that these additional statutory requirements are superfluous, impose vague requirements regarding pension fund investments, and should be repealed.
- change the definition of the term "compensation" in the act to delete the exemption for salary lost as a consequence of actual firefighting duties causing the absence of the volunteer firefighter from normal employment. The amendment was proposed to ensure the state's compliance with the federal Fair Labor Standards Act.



Summary of Recommendations

As a result of commission deliberations, the commission recommends five bills for consideration during the 2010 legislative session.

Bill A — Repeal of the Authority of the Board of Directors of the Fire and Police Pension Association to Affiliate with a Local Money Purchase Pension Plan

Bill A repeals the authority of the FPPA Board of Directors to enter into an agreement with an employer establishing a money purchase pension plan for purposes of having the board administer the plan and manage its investments. The bill also eliminates a cash fund and audit requirement related to the affiliated plan.

Bill B — Extension of the Term of the Retired Member of the Board of Directors of the Fire and Police Pension Association

Bill B extends the term from four years to six years of the retired firefighter or police officer serving as a member of the FPPA Board of Directors.

Bill C — Discretion of the Board of Directors of the Fire and Police Pension Association to Adopt Rules Regarding the Return to Work by a Member Participating in the Defined Benefit System of the Association Who Elects Retirement

Bill C allows the FPPA Board of Directors, in its discretion, to suspend the distribution of benefits to retired members participating in the defined benefit system who, after electing to retire, return to work with an employer who also participates in the defined benefit system. The board is also authorized to adopt rules that allow a member who has elected to retire to continue to receive retirement benefits and earn additional benefits upon findings prescribed in law.

Bill D — Member-Approved Increase in the Member Contribution Rate to the Statewide Defined Benefit Plan Administered by the Fire and Police Pension Association

Bill D permits the FPPA Board of Directors to increase the member contribution rate for the Statewide Defined Benefit Plan if the increase does not require an increase in the employer contribution rate or affect the plan's status under federal law, *and* if the increase is approved by 65 percent of active plan members and a majority of plan-affiliated employers. The bill also permits the board to eliminate the increase in the member contribution rate so long as the requirements for an increase are met. Finally, the bill makes conforming amendments to ensure that the increase in the member contribution rate does not change other requirements related to the plan.



Bill E — A Volunteer Firefighter Pension Plan

Bill E makes several technical changes to Colorado law addressing volunteer firefighter plans. The bill:

- permits additional retired fire department members, including those who have returned to active service, to serve on the board of trustees of a volunteer firefighter pension fund;
- eliminates an investment restriction on trustees of volunteer firefighter pension funds;
- eliminates a requirement that the board of trustees of a volunteer firefighter pension fund deliver a copy of a report on the condition of the fund to the board of directors of its fire protection district; and
- eliminates the exclusion of the reimbursement for lost wages from the definition of "compensation," as the term is used in the definition of "volunteer firefighter."



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 website at:

<http://www.colorado.gov/lcs/PoliceandFirefightersPensionReform>

Meeting Date and Topics Discussed

August 7, 2009

- ◆ FPPA funded status
- ◆ FPPA investment performance
- ◆ FPPA plan benefit structure
- ◆ FPPA membership information
- ◆ FPPA board proposed legislation
- ◆ FPPA history
- ◆ FPPA investment philosophy

September 14, 2009

- ◆ Commission consideration of proposed legislation
- ◆ History of funding of fire and police pensions in Colorado
- ◆ Colorado Volunteer Firefighter Pension Fund Act



Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL A

LLS NO. 10-0116.01 Ed DeCecco

INTERIM COMMITTEE BILL

Police Officers' and Firefighters' Pension Reform Commission

A BILL FOR AN ACT

101 **CONCERNING THE REPEAL OF THE AUTHORITY OF THE BOARD OF**
102 **DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION TO**
103 **AFFILIATE WITH A LOCAL MONEY PURCHASE PENSION PLAN.**

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.
Repeals the authority of the board of directors of the fire and police pension association to enter into an agreement with an employer establishing a money purchase pension plan for the purpose of having the board administer the plan and manage the investment of the moneys of the plan. Eliminates a cash fund and audit requirement related to the

affiliated plan.

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

2 **SECTION 1. Repeal.** 31-31-702, Colorado Revised Statutes, is
3 repealed as follows:

4 **31-31-702. Affiliation by local money purchase plans.** The
5 board is authorized to enter into agreements with employers establishing
6 money purchase pension plans pursuant to this article or article 30.5 of
7 this title for the purpose of having the board administer such plans and
8 manage the funds of such plans for investment pursuant to section
9 31-31-703.

10 **SECTION 2. Repeal.** 31-31-703, Colorado Revised Statutes, is
11 repealed as follows:

12 **31-31-703. Money purchase plan benefit trust fund - creation**
13 **- management.** (1) There is hereby created the fire and police members'
14 money purchase plan benefit trust fund that shall consist of the assets of
15 money purchase plans administered and managed by the board pursuant
16 to section 31-31-702. The board shall keep an accurate account of each
17 such individual fund. In addition, the board shall keep an accurate
18 account of each member's separate account in any such individual fund.

19 (2) The board shall submit an annual audit of the fund to the
20 general assembly and to each employer that has affiliated its money
21 purchase plan fund pursuant to section 31-31-702. Each employer shall
22 make the audit and study available for review by its members.

23 **SECTION 3.** 31-30.5-803 (1), Colorado Revised Statutes, is
24 amended to read:

25 **31-30.5-803. Investment authority.** (1) Except as provided in
26 subsection (2) of this section, moneys of exempt alternative plans that are

1 not affiliated with the fire and police pension association under section
2 ~~31-31-702~~ or 31-31-706 may be managed and invested by the trustees of
3 such plans pursuant to the standard and other provisions for trustees set
4 forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title
5 15, C.R.S. Such investments shall be audited at least biennially.

6 **SECTION 4.** 31-31-203, Colorado Revised Statutes, is amended
7 to read:

8 **31-31-203. Fund not subject to levy.** Except for assignments for
9 child support debt pursuant to section 14-14-104, C.R.S., child support
10 arrearages as requested as part of an enforcement action under article 5
11 of title 14, C.R.S., or child support arrearages that are the subject of
12 enforcement services provided under section 26-13-106, C.R.S., for
13 income assignments for child support purposes pursuant to section
14 14-14-111.5, C.R.S., for writs of garnishment that are the result of a
15 judgment taken for arrearages for child support or for child support debt,
16 for payments made in compliance with a properly executed court order
17 approving a written agreement entered into pursuant to section 14-10-113
18 (6), C.R.S., and for restitution that is required to be paid for the theft,
19 embezzlement, misappropriation, or wrongful conversion of public
20 property or in the event of a judgment for a willful and intentional
21 violation of fiduciary duties pursuant to this article where the offender or
22 a related party received direct financial gain, no portion of the funds
23 created pursuant to sections 31-31-204 (4), 31-31-502, 31-31-701 (6),
24 ~~31-31-703~~, 31-31-706 (1), 31-31-813 (1), and 31-31-901 (3), before or
25 after their order for distribution by the board to the persons entitled
26 thereto, shall be held, seized, taken, subjected to, detained, or levied on
27 by virtue of any attachment, execution, injunction, writ, interlocutory or
28 other order or decree, or process or proceeding whatsoever issued out of

1 or by any court of this state for the payment or satisfaction, in whole or
2 in part, of any debt, damage, claim, demand, or judgment against the fire
3 and police pension association or employers that belong to such
4 association or the beneficiary of such funds. The funds shall be held and
5 distributed for the purpose of this article and for no other purpose
6 whatsoever.

7 **SECTION 5. Repeal.** 31-31-301 (4) (a) (IV), Colorado Revised
8 Statutes, is repealed as follows:

9 **31-31-301. Investment funds - creation.** (4) (a) There is hereby
10 created the fire and police members' self-directed investment fund, which
11 shall consist of the portion of the assets that are designated for
12 self-direction by the member of the following plans:

13 (IV) ~~The affiliated fire and police members' money purchase plans~~
14 ~~established in part 7 of this article;~~

15 **SECTION 6. Act subject to petition - effective date.** This act
16 shall take effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly that is
18 allowed for submitting a referendum petition pursuant to article V,
19 section 1 (3) of the state constitution, (August 11, 2010, if adjournment
20 sine die is on May 12, 2010); except that, if a referendum petition is filed
21 against this act or an item, section, or part of this act within such period,
22 then the act, item, section, or part, if approved by the people, shall take
23 effect on the date of the official declaration of the vote thereon by
24 proclamation of the governor.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL B

LLS NO. 10-0117.01 Troy Bratton

INTERIM COMMITTEE BILL

Police Officers' and Firefighters' Pension Reform Commission

A BILL FOR AN ACT

101 **CONCERNING THE EXTENSION OF THE TERM OF THE RETIRED MEMBER**
102 **OF THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION**
103 **ASSOCIATION.**

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.

Extends the term of the retired firefighter or police officer serving as a member of the board of directors of the fire and police pension association from 4 years to 6 years.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

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

2 **SECTION 1.** 31-31-201 (2) (a) (IV) and (2) (b), Colorado
3 Revised Statutes, are amended to read:

4 **31-31-201. Association - creation - board - organization - tax**
5 **exemption.** (2) (a) The governing body of the association shall be a
6 board of directors consisting of nine members appointed by the governor
7 and confirmed by the senate as follows:

8 (IV) One member who shall be a retired firefighter who, upon
9 completion of the member's term, shall be replaced by a retired police
10 officer. Thereafter, the appointments of retired officers shall alternate
11 between a retired firefighter and a retired police officer for each
12 successive ~~four-year term~~ SIX-YEAR TERM.

13 (b) Members shall be appointed for terms of four years; EXCEPT
14 THAT A MEMBER APPOINTED PURSUANT TO SUBPARAGRAPH (IV) OF
15 PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL SERVE FOR A TERM OF SIX
16 YEARS.

17 **SECTION 2. Act subject to petition - effective date -**
18 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
19 following the expiration of the ninety-day period after final adjournment
20 of the general assembly that is allowed for submitting a referendum
21 petition pursuant to article V, section 1 (3) of the state constitution,
22 (August 5, 2009, if adjournment sine die is on May 6, 2009); except that,
23 if a referendum petition is filed against this act or an item, section, or part
24 of this act within such period, then the act, item, section, or part, if
25 approved by the people, shall take effect on the date of the official
26 declaration of the vote thereon by proclamation of the governor.

1 (2) The provisions of this act shall apply to terms commencing on
2 or after January 1, 2010.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL C

LLS NO. 10-0119.01 Troy Bratton

INTERIM COMMITTEE BILL

Police Officers' and Firefighters' Pension Reform Commission

A BILL FOR AN ACT

101 **CONCERNING THE DISCRETION OF THE BOARD OF DIRECTORS OF THE**
102 **FIRE AND POLICE PENSION ASSOCIATION TO ADOPT RULES**
103 **REGARDING THE RETURN TO WORK BY A MEMBER**
104 **PARTICIPATING IN THE DEFINED BENEFIT SYSTEM OF THE**
105 **ASSOCIATION WHO ELECTS RETIREMENT.**

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.
Allows the board of directors of the fire and police pension association to adopt rules, in the board's discretion, suspending the distribution of

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

benefits to any retired member participating in the defined benefit system who, after electing a retirement, has returned to work with an employer who also participates in the defined benefit system.

Allows the board of directors to adopt rules upon findings by the board that allow a member who has elected a retirement to continue to receive retirement benefits and earn additional benefits.

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

2 **SECTION 1.** Part 4 of article 31 of title 31, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **31-31-411. Return to work by participating member after**
6 **retirement - rules.** (1) THE BOARD MAY, IN ITS DISCRETION, ADOPT
7 RULES SUSPENDING THE BENEFITS OF A MEMBER WHO PARTICIPATES IN THE
8 DEFINED BENEFIT SYSTEM, SEPARATES FROM SERVICE, ELECTS A
9 RETIREMENT, AND SUBSEQUENTLY RETURNS TO WORK WITH AN EMPLOYER
10 WHO PARTICIPATES IN THE DEFINED BENEFIT SYSTEM. SUCH RULES SHALL
11 INDICATE WHETHER THE MEMBER SHALL EARN ADDITIONAL SERVICE
12 CREDIT AS DETERMINED BY THE PLAN IN WHICH THE SUBSEQUENT
13 EMPLOYER PARTICIPATES AND WHETHER THE BENEFIT DISTRIBUTION
14 SHALL RESUME AT SUCH TIME AS THE MEMBER SUBSEQUENTLY SEPARATES
15 FROM SERVICE.

16 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE
17 BOARD MAY ADOPT RULES THAT ALLOW A MEMBER WHO HAS REACHED
18 NORMAL RETIREMENT AGE AND WHO HAS SEPARATED FROM SERVICE,
19 ELECTED A RETIREMENT UNDER THE DEFINED BENEFIT SYSTEM, AND
20 SUBSEQUENTLY RETURNED TO WORK WITH AN EMPLOYER WHO PROVIDES
21 BENEFITS UNDER THE DEFINED BENEFIT SYSTEM TO:

22 (a) CONTINUE RECEIVING DISTRIBUTION OF THE MEMBER'S

1 RETIREMENT BENEFITS; AND

2 (b) EARN ADDITIONAL RETIREMENT BENEFITS IN AN ALTERNATE
3 MONEY PURCHASE PLAN.

4 (3) PRIOR TO THE ADOPTION OF ANY RULES PROMULGATED
5 PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE BOARD SHALL MAKE
6 A FINDING THAT SUCH RULES ARE IN COMPLIANCE WITH SECTION
7 31-31-204 (3), AND THAT THERE WILL BE NO ADVERSE ACTUARIAL IMPACT
8 TO THE DEFINED BENEFIT SYSTEM AS A RESULT OF THE IMPLEMENTATION
9 OF SUCH RULES.

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

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL D

LLS NO. 10-0120.01 Ed DeCecco

INTERIM COMMITTEE BILL

Police Officers' and Firefighters' Pension Reform Commission

A BILL FOR AN ACT

101 **CONCERNING A MEMBER-APPROVED INCREASE IN THE MEMBER**
102 **CONTRIBUTION RATE TO THE STATEWIDE DEFINED BENEFIT PLAN**
103 **ADMINISTERED BY THE FIRE AND POLICE PENSION ASSOCIATION.**

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.
Permits the board of directors of the fire and police pension association (board) to increase the member contribution rate for the statewide defined benefit plan (plan) if the increase:

- Does not require an increase in the employer contribution

rate or adversely affect the plan's status under federal law;
and

- Is approved by a supermajority of active plan members and a majority of the employers.

Permits the board to eliminate the increase in the member contribution rate so long as the requirements for an increase are met. Makes conforming amendments to ensure that the increase in the member contribution rate does not change other requirements related to the plan.

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

2 **SECTION 1.** 31-31-402 (1) and (3), Colorado Revised Statutes,
3 are amended to read:

4 **31-31-402. Employer and member contributions.** (1) On and
5 after January 1, 1980, until the board is able to determine a contribution
6 rate from the first annual actuarial valuation, every member covered
7 under the statewide defined benefit plan established by this part 4 shall
8 pay into the defined benefit system trust fund eight percent of salary paid
9 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT
10 TO SECTION 31-31-408 (1.5) (a). The payment shall be made by the
11 employer by deduction from the salary paid such member. Each
12 employer shall pick up the ~~employee~~ MEMBER contributions required for
13 all salaries paid after July 1, 1985, and the contributions so picked up
14 shall be treated as employer contributions pursuant to section 414 (h) (2)
15 of the federal "Internal Revenue Code of 1986", as amended, in
16 determining tax treatment under such code. The employer shall pay these
17 ~~employee~~ MEMBER contributions directly to the retirement association,
18 instead of paying such amounts to ~~employees~~ MEMBERS, and such
19 contributions shall be paid from the same funds that are used in paying
20 salaries to the ~~employees~~ MEMBERS. Such contributions, although
21 designated as ~~employee~~ MEMBER contributions, shall be paid by the

1 employer in lieu of contributions by ~~employees~~ ~~Employees~~ MEMBERS.
2 MEMBERS may not elect to choose to receive such contributions directly
3 instead of having them paid by the employer to the pension plan.
4 ~~Employee~~ MEMBER contributions so picked up shall be treated for all
5 purposes of this article, other than federal tax, in the same manner as
6 ~~employee~~ MEMBER contributions made before the date picked up.
7 Payment shall be made by one voucher for the aggregate amount
8 deducted and shall be made no later than ten days following the date of
9 payment of salary to the member. All such payments shall be credited to
10 the defined benefit system trust fund.

11 (3) The general assembly declares that the rates of ~~employee~~
12 MEMBER and employer contributions shall be adequate to fund benefit
13 liabilities accrued under the statewide defined benefit plan established by
14 this part 4, and to this end, the board shall submit an annual actuarial
15 valuation report to the state auditor, the legislative audit committee, and
16 the joint budget committee of the general assembly, together with any
17 recommendations concerning such liabilities as accrued. Amortization of
18 such liability over a forty-year period shall be deemed adequate to
19 maintain actuarial stability. If the actual financial experience of the new
20 hire benefits account in the defined benefit system trust fund is found to
21 be more or less favorable than the assumed experience during the
22 two-year period from January 1, 1980, and each biennium thereafter,
23 adjustments may be made by the board in the ~~employee~~ MEMBER and
24 employer contributions as may be deemed feasible and advisable so long
25 as THE employer ~~contributions are~~ CONTRIBUTION RATE IS at least equal
26 to ~~employee contributions~~ THE MEMBER CONTRIBUTION RATE. IF THE
27 MEMBER CONTRIBUTION RATE HAS BEEN INCREASED PURSUANT TO
28 SECTION 31-31-408 (1.5) (a), THE REQUIREMENT THAT THE EMPLOYER

1 CONTRIBUTION RATE BE AT LEAST EQUAL TO THE MEMBER CONTRIBUTION
2 RATE SHALL NOT APPLY, BUT IN SUCH CIRCUMSTANCE, ANY INCREASE TO
3 THE EMPLOYER CONTRIBUTION RATE SHALL BE AT LEAST EQUAL TO THE
4 INCREASE IN THE MEMBER CONTRIBUTION RATE AND ANY DECREASE IN
5 THE MEMBER CONTRIBUTION RATE SHALL BE AT LEAST EQUAL TO THE
6 DECREASE IN THE EMPLOYER CONTRIBUTION RATE.

7 **SECTION 2.** 31-31-403 (1) (b) and the introductory portion to
8 31-31-403 (2) (a), Colorado Revised Statutes, are amended, and the said
9 31-31-403 (2) is further amended BY THE ADDITION OF A NEW
10 PARAGRAPH, to read:

11 **31-31-403. Normal retirement - statewide defined benefit plan.**

12 (1) (b) The board shall determine after each annual actuarial valuation if
13 the cost of all benefits established by this part 4 for members covered
14 under this section and the cost of a normal retirement pension beginning
15 at age fifty-five for members then eligible may be fully funded on an
16 actuarially sound basis without necessitating an increase in the eight
17 percent employer and eight percent member contributions made pursuant
18 to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
19 ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). If the board
20 cannot so determine, it shall order that the normal retirement pension
21 commence such number of months as are actuarially supportable, from
22 one to sixty, after age fifty-five for members who have completed at least
23 twenty-five years of active service and are otherwise eligible in
24 accordance with the board's determination. The determination of the
25 board shall be conclusive in the absence of fraud. A pension commenced
26 after age fifty-five pursuant to this paragraph (b) shall not be subject to
27 annual review. If a court determines that this paragraph (b) is invalid, the
28 age of retirement to be eligible for any normal retirement benefit shall be

1 age sixty except for persons receiving a benefit at the time of the court's
2 decision.

3 (2) (a) If in any year the board determines pursuant to this part 4
4 that the cost of the benefits described in paragraph (b) of subsection (1)
5 of this section, excluding the benefit described in section 31-31-405, may
6 not be fully funded on an actuarially sound basis without necessitating an
7 increase in the eight percent employer and eight percent member
8 contribution made pursuant to section 31-31-402 OR SUCH HIGHER
9 MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION
10 31-31-408 (1.5)(a), the board shall not increase such employer or member
11 contributions unless:

12 (c) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO
13 REQUIRE THE REDUCTION OF BENEFITS BELOW THE LEVEL SUSTAINABLE BY
14 THE HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO
15 SECTION 31-31-408 (1.5) (a).

16 **SECTION 3.** 31-31-404 (2) (b), Colorado Revised Statutes, is
17 amended to read:

18 **31-31-404. Return or transfer of contributions - vested**
19 **retirement.** (2) (b) The board shall determine after each annual actuarial
20 valuation if the cost of all benefits established by this part 4 for members
21 covered under section 31-31-403 and the cost of vested benefits
22 beginning at age fifty-five for members then eligible may be fully funded
23 on an actuarially sound basis without necessitating an increase in the eight
24 percent employer and eight percent member contributions made pursuant
25 to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
26 ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). If the board
27 cannot so determine, it shall order that the vested benefits commence such
28 number of months as are actuarially supportable, from one to one hundred

1 twenty, after age fifty-five for eligible members in accordance with the
2 board's determination. The determination of the board shall be conclusive
3 in the absence of fraud. A vested benefit commenced before age
4 fifty-five pursuant to this paragraph (b) shall not be subject to annual
5 review. If a court determines that this paragraph (b) is invalid, the age to
6 be eligible for a vested benefit shall be age sixty-five except for persons
7 receiving a benefit at the time of the court's decision.

8 **SECTION 4.** 31-31-408 (1) (b), (3), (4), and (5), Colorado
9 Revised Statutes, are amended, and the said 31-31-408 is further amended
10 BY THE ADDITION OF A NEW SUBSECTION, to read:

11 **31-31-408. Modification of state plan by the board.**
12 (1) Notwithstanding any other provision of this part 4, the board may
13 modify the pension benefits and the age and service requirements for
14 pension benefits set forth in this part 4 with respect to the members of the
15 statewide defined benefit plan if:

16 (b) The modification does not require an increase in the employer
17 and member contribution rates established as of January 1, 1980, pursuant
18 to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
19 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS
20 SECTION;

21 (1.5) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART
22 4, THE BOARD MAY INCREASE THE MEMBER CONTRIBUTION RATE ABOVE
23 THE RATE ESTABLISHED PURSUANT TO SECTION 31-31-402 WITH RESPECT
24 TO THE MEMBERS OF THE STATEWIDE DEFINED BENEFIT PLAN IF THE
25 INCREASE:

26 (I) DOES NOT REQUIRE AN INCREASE IN THE EMPLOYER
27 CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-402;

28 (II) DOES NOT ADVERSELY AFFECT THE PLAN'S STATUS AS A

1 QUALIFIED PLAN PURSUANT TO THE FEDERAL "INTERNAL REVENUE CODE
2 OF 1986", AS AMENDED;

3 (III) IS APPROVED BY SIXTY-FIVE PERCENT OF THE ACTIVE
4 MEMBERS OF THE PLAN; AND

5 (IV) IS APPROVED BY MORE THAN FIFTY PERCENT OF THE
6 EMPLOYERS HAVING ACTIVE MEMBERS COVERED BY THE PLAN, EACH
7 EMPLOYER TO BE ASSIGNED ONE VOTE; EXCEPT THAT EMPLOYERS HAVING
8 BOTH ACTIVE POLICE AND FIRE MEMBERS IN THE PLAN SHALL BE ASSIGNED
9 TWO VOTES.

10 (b) THE INCREASE IN THE MEMBER CONTRIBUTION RATE
11 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5)
12 SHALL BE PAID FROM A MEMBER'S SALARY AND OTHERWISE BE TREATED
13 IN THE SAME MANNER SPECIFIED IN SECTION 31-31-402 (1) FOR OTHER
14 MEMBER CONTRIBUTIONS FOR PURPOSES OF THE FEDERAL "INTERNAL
15 REVENUE CODE OF 1986", AS AMENDED. THE INCREASE IN THE MEMBER
16 CONTRIBUTION RATE SHALL NOT BE SUBJECT TO NEGOTIATION FOR
17 PAYMENT BY THE EMPLOYER.

18 (c) THE BOARD MAY ELIMINATE AN INCREASE IN THE MEMBER
19 CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS
20 SUBSECTION (1.5) SO LONG AS THE REQUIREMENTS FOR AN INCREASE SET
21 FORTH IN SAID PARAGRAPH (a) ARE MET.

22 (3) The board shall adopt rules setting forth the procedures for the
23 member ~~election~~ ELECTIONS required by paragraph (d) of subsection (1)
24 AND SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1.5) of this
25 section. Each employer having members in the statewide defined benefit
26 plan shall comply with the procedures established by the board and shall
27 certify the results of any member election to the board as prescribed by
28 the board's rules.

1 (4) A written copy of the language of any modifications to the
2 statewide defined benefit plan OR AN INCREASE IN THE MEMBER
3 CONTRIBUTION RATE adopted by the board pursuant to this section shall
4 be kept and maintained by the board at its offices and be made available
5 for copying and inspection by any interested party.

6 (5) If at any time the cost of any modification adopted by the
7 board pursuant to SUBSECTION (1) OF this section would require an
8 increase in the eight percent employer and eight percent member
9 contributions made pursuant to section 31-31-402 OR SUCH HIGHER
10 MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a)
11 OF SUBSECTION (1.5) OF THIS SECTION, the board shall revoke the
12 modification as it applies to active members of the plan. The board may
13 reinstitute the modification at a later date, in its discretion, if reinstating
14 the modification would not require an increase in the eight percent
15 employer and eight percent member contributions made pursuant to
16 section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
17 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS
18 SECTION.

19 **SECTION 5. Act subject to petition - effective date.** This act
20 shall take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly that is
22 allowed for submitting a referendum petition pursuant to article V,
23 section 1 (3) of the state constitution, (August 11, 2010, if adjournment
24 sine die is on May 12, 2010); except that, if a referendum petition is filed
25 against this act or an item, section, or part of this act within such period,
26 then the act, item, section, or part, if approved by the people, shall take

1 effect on the date of the official declaration of the vote thereon by
2 proclamation of the governor.

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

BILL E

LLS NO. 10-0157.01 Ed DeCecco

SENATE BILL

SENATE SPONSORSHIP

Morse, Lundberg, Tochtrop, Williams

HOUSE SPONSORSHIP

Labuda, Benefield, Gardner B., King S., Liston, Peniston, Schafer S., Waller

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING A VOLUNTEER FIREFIGHTER PENSION PLAN.**

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 to the "Volunteer Firefighter Pension Act":

- Eliminates the exclusion of the reimbursement for lost wages from the definition of "compensation", as the term is used in the definition of "volunteer firefighter";
- Permits retired fire department members, including those who have returned to active service, to serve on the board of trustees of a volunteer firefighter pension fund (fund);

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.

31

- Eliminates an investment restriction on a trustee of a fund; and
 - Eliminates the requirement that the board of trustees of a fund deliver a copy of a report on the condition of the fund to the board of directors of its fire protection district.
-

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

2 **SECTION 1.** 31-30-1102 (9), Colorado Revised Statutes, is
3 amended to read:

4 **31-30-1102. Definitions.** As used in this part 11, unless the
5 context otherwise requires:

6 (9) (a) "Volunteer firefighter" means a firefighter who renders
7 service to a fire department in a municipality, county, or district, who
8 does not receive compensation as a firefighter, and who is not classified
9 as an employee for purposes of the federal "Fair Labor Standards Act of
10 1938", as amended, based on payments, fees, or benefits that the
11 firefighter receives. "Volunteer firefighter" may include other
12 designations or titles given to firefighters provided that the firefighter
13 meets all of the requirements for being a volunteer firefighter in this part
14 11.

15 (b) For the purposes of this subsection (9), "compensation" does
16 not include:

17 (I) Actual expenses incurred by and reimbursed to a volunteer
18 firefighter;

19 (II) ~~Salary lost as a consequence of actual firefighting duties~~
20 ~~causing the absence of the volunteer firefighter from normal employment;~~

21 (III) Participation in or receipt of benefits from the fund;

22 (IV) Participation in or receipt of benefits upon termination of
23 volunteer services to any district or municipality provided as part of an

1 internal revenue code qualified volunteer service award plan established
2 for the benefit of volunteer firefighters;

3 (V) Payments from federal moneys, either through the district or
4 municipality or to the volunteer firefighter directly, for participation in a
5 temporary emergency incident;

6 (VI) Nominal fees or benefits paid on a per-call basis or as part of
7 an annual merit or recognition award program or other incentive award
8 program.

9 **SECTION 2.** 31-30-1105 (1) (c), Colorado Revised Statutes, is
10 amended to read:

11 **31-30-1105. Board - fire protection district.** (1) In a fire
12 protection district, the board must consist of the following members:

13 (c) ~~Two fire department members elected by the fire department~~
14 ~~members~~ TWO INDIVIDUALS ELECTED FROM ONE OR MORE OF THE
15 FOLLOWING GROUPS TO THE EXTENT SUCH GROUPS EXIST AT THE TIME OF
16 ELECTION: FIRE DEPARTMENT MEMBERS, RETIRED FIRE DEPARTMENT
17 MEMBERS, OR RETIRED FIRE DEPARTMENT MEMBERS RETURNED TO ACTIVE
18 SERVICE PURSUANT TO SECTION 31-30-1132. ALL MEMBERS IN EACH
19 GROUP EXISTING AT THE TIME OF ELECTION SHALL BE GIVEN THE
20 OPPORTUNITY TO VOTE FOR THE TWO INDIVIDUALS. THE TWO INDIVIDUALS
21 SHALL SERVE for two-year terms; except that, at the initial election, one
22 ~~member~~ INDIVIDUAL shall be elected for two years and one ~~member~~
23 INDIVIDUAL for one year. In all subsequent elections, these ~~members~~
24 INDIVIDUALS shall be elected for two years.

25 **SECTION 3.** 31-30-1113 (2), Colorado Revised Statutes, is
26 amended to read:

27 **31-30-1113. Fund investments.** (2) Upon the board's direction,
28 the treasurer of a municipality or district may invest part of the fund

1 available for investment, with or without one or more other volunteer
2 firefighter pension funds, in a noninsured trust pension plan with a bank
3 or trust company authorized to exercise trust powers in this state as a
4 trustee. The trustee's investment of fund moneys is governed by article
5 1.1 of title 15, C.R.S. ~~but the trustee shall at all times hold fixed-income~~
6 ~~obligations having a book value or cost of not less than sixty percent of~~
7 ~~the total contributions made to the trust less the amounts paid out.~~

8 **SECTION 4.** 31-30-1119, Colorado Revised Statutes, is amended
9 to read:

10 **31-30-1119. Board report - municipality.** The board shall make
11 a report to the governing body of the municipality ~~or the board of~~
12 ~~directors of its district, whichever is applicable,~~ on the condition of the
13 fund. The board shall submit the report to the governing body ~~or board~~
14 ~~of directors~~ before the last meeting in February and the last meeting in
15 August of each year.

16 **SECTION 5. Act subject to petition - effective date.** This act
17 shall take effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part shall not take effect
23 unless approved by the people at the general election to be held in
24 November 2010 and shall take effect on the date of the official
25 declaration of the vote thereon by the governor.