

Police Officers' and Firefighters' Pension Reform Commission

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October 2012

Police Officers' and Firefighters' Pension Reform Commission Report to Legislative Council

Committee Charge

The Fire and Police Pension Association (FPPA) was established in 1980 and administers two funds: the Fire and Police Members' Benefit Investment Fund and the Fire and Police Members' Self-Directed Investment Fund. Assets in these funds are used for a number of pension plans including the Defined Benefit System, the Statewide Death and Disability Plan, and numerous separate "Old Hire" plans 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 of 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 related to these issues including, but not limited to, the following 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; and
- the volunteer firefighter pension system.

Commission Activities

The commission held one meeting during the 2012 interim. At this meeting, the FPPA informed the commission on the state's involvement in fire and police pension plans and recent activities of the FPPA Board of Directors. The FPPA and the commission also engaged in a discussion regarding the administrative efficiency of the pension plans. In addition, the FPPA discussed the recent investment performance of pension funds and recommendations by the board to improve the funding status of FPPA plans. The commission also took up a brief discussion of the state's payment schedule for old hire plans.

Recent investment performance. The FPPA informed the commission that net investment assets totaled \$3.378 billion at the close of 2011. These assets are held in the Fire and Police Members' Benefit Investment Fund (\$3.079 billion) and the Fire and Police Members' Self-Directed Investment Fund (\$0.299 billion). For this period, the gross rate of return on the Fire and Police Members' Benefit Investment Fund was 1.23 percent (0.73 percent, net of fees), compared with a 14.26 percent (13.68 percent, net of fees) return in the prior year. Asset allocation was

largely made up of global equity investments (46.9 percent) and fixed income investments (18.8 percent). The FPPA noted that asset allocation is a significant factor when evaluating investment performance. As one example of change in response to the current economic environment, the FPPA reduced real asset investments such as real estate from 7.0 percent of holdings in 2009 to the 4.0 percent range in 2011 to reduce investment risk.

In terms of 2012 investment performance, the FPPA gave the commission an update on fund performance for the first two quarters. Earnings for the bulk of FPPA investments were in excess of the 10 percent range for this period. The FPPA noted that the investment strategy for global equity investments, which represented nearly 50 percent of the portfolio, is largely a hedge against downside market risk. The Fire and Police Members' Benefit Investment Fund had a net return of 5.7 percent year-to-date through July 2012.

Actuarial study findings. At least every five years, the FPPA Board of Directors reviews its economic and demographic actuarial assumptions. The FPPA informed the commission that the approved recommended changes made by FPPA actuaries, Gabriel, Roeder, Smith and Company, were based on recent investment experience and future expectations. These changes projected a more conservative position for future costs. Changes included:

- a lowering in the normal investment return from 8.0 percent to 7.5 percent, considering a reduced inflation assumption given the current bond market;
- a reduction in the pension model inflation assumption from 3.5 percent to 3.0 percent; and
- a revision in the post-retirement mortality tables to reflect longer life spans.

Funding status changes. The FPPA informed the commission that the ratio of assets to liabilities, commonly referred to as the funded ratio, for the Statewide Defined Benefit Plan decreased from 102.9 percent as of January 1, 2011, to 96.4 percent as of January 1, 2012. The decrease in the ratio was attributed to changes triggered by the actuarial study findings and investment returns that were below the assumed 7.5 percent rate of return during 2011. During the same time period, the Statewide Death and Disability Plan funded ratio increased from 108.0 percent to 113.7 percent at the beginning of 2012. The increase in the ratio was largely due to a change in the level of claims. Also, the state-assisted old hire plan unfunded liability increased by \$113.7 million between 2011 and 2012 mainly due to increased liabilities.

Payments to the FPPA old-hire pension plan. The commission was given a brief history of the state's requirement to make payments to the FPPA old-hire pension plans. Until 1978, all fire and police pension plans in Colorado were administered and funded by local governments. Although the state provided some assistance, there was no statutory requirement that these plans be funded on an actuarially sound basis. By the mid-1970s, it became apparent that many of these local plans were underfunded.

A 1977 study by the General Assembly concluded that these plans had an unfunded liability in excess of a \$500 million. In 1978 and 1979, the General Assembly adopted legislation to reform the pension system. The purpose of the reform was to ensure that local pension plans were actuarially sound and included state financial assistance conditioned on increases in both employer and employee contributions. The state currently provides assistance to eight old-hire plans under the management of the FPPA. Since 1980, the state has contributed more than \$500 million to 110 local police and fire agencies.

FPPA limitation on liability. The chief executive officer and legal counsel of the FPPA discussed issues relating to local governments with employees that claim benefits but have not paid FPPA premiums because the local government did not have their members enrolled in FPPA plans. Individual police officers and firefighters may believe they are entitled to benefits due to state statutes that require local government police and fire agencies to provide benefits through FPPA. However, a number of these local agencies elect not to enroll their employees in FPPA, and, in some cases, FPPA statutes become applicable to a local agency without the local agency being specifically aware of this occurrence (e.g., following a transition from all-volunteer to career firefighting personnel). The commission discussed the issue of liability for benefit claims from police officers or firefighters when their employer has not enrolled potential members in FPPA plans. FPPA executives noted that, while FPPA is not currently liable for such claims, enforcement action against local agencies that violate enrollment statutes is not a contemplated use of FPPA trust funds and no resources currently exist to take enforcement action.

As a result of this discussion, the commission recommends Bill A. Bill A clarifies that FPPA has no obligation related to fire and police employers that fail to enroll employees in FPPA plans.

Commission Recommendations

As a result of commission deliberations, the commission recommends one bill for consideration during the 2013 legislative session.

Bill A — FPPA Limitation On Liability. Bill A amends existing statutes related to FPPA's statewide defined benefit (pension) plan and the statewide death and disability plan. The bill provides that FPPA is not liable for or obligated to pay any benefit when a local government fails to enroll its employees as members of FPPA.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

BILL A

LLS NO. 13-0093.01 Nicole Myers x4326

SENATE BILL

SENATE SPONSORSHIP

Tochtrop, King, Morse

HOUSE SPONSORSHIP

Ramirez, Barker, Duran, Labuda, Peniston, Waller

Senate Committees

House Committees

A BILL FOR AN ACT

- 101 **CONCERNING LIMITATION ON THE LIABILITY OF THE FIRE AND POLICE**
102 **PENSION ASSOCIATION IF AN EMPLOYER FAILS TO PROPERLY**
103 **ENROLL AN EMPLOYEE IN A PLAN.**
-

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Police Officers' and Firefighters' Pension Reform Commission. Any municipality that offers police or fire protection services and any special district, fire authority, or county improvement district that offers fire protection services (employer) is currently required to provide

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

pension benefits through the fire and police pension association's (FPPA) statewide defined benefit plan to its full-time employees and some part-time employees whose duties are directly involved with the provision of police or fire protection (member). In addition, members are currently eligible for the benefits provided by the FPPA's statewide death and disability plan.

The bill states that if an employer that is otherwise required to enroll its members under the statewide defined benefit plan or the statewide death and disability plan fails to properly enroll a member, neither the fire and police pension association nor the defined benefit system trust fund or death and disability trust fund, as applicable, is obligated or liable for any purpose to any person or employer arising from such failure.

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

2 **SECTION 1.** In Colorado Revised Statutes, 31-31-401, **add** (6)
3 as follows:

4 **31-31-401. Applicability of plan.** (6) IF AN EMPLOYER THAT IS
5 OTHERWISE REQUIRED TO ENROLL ITS MEMBERS UNDER THE PLAN FAILS
6 TO PROPERLY ENROLL SUCH MEMBERS, NEITHER THE FIRE AND POLICE
7 PENSION ASSOCIATION NOR THE DEFINED BENEFIT SYSTEM TRUST FUND IS
8 OBLIGATED OR LIABLE FOR ANY PURPOSE TO ANY PERSON OR EMPLOYER
9 ARISING FROM SUCH FAILURE.

10 **SECTION 2.** In Colorado Revised Statutes, 31-31-802, **add** (3)
11 as follows:

12 **31-31-802. Coverage.** (3) IF AN EMPLOYER THAT IS OTHERWISE
13 REQUIRED TO ENROLL ITS MEMBERS UNDER THE PLAN FAILS TO PROPERLY
14 ENROLL SUCH MEMBERS, NEITHER THE FIRE AND POLICE PENSION
15 ASSOCIATION NOR THE DEATH AND DISABILITY TRUST FUND IS OBLIGATED
16 OR LIABLE FOR ANY PURPOSE TO ANY PERSON OR EMPLOYER ARISING
17 FROM SUCH FAILURE.

18 **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly
3 (August 7, 2013, if adjournment sine die is on May 8, 2013); except that,
4 if a referendum petition is filed pursuant to section 1 (3) of article V of
5 the state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2014 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.

1 of 1 DOCUMENT

COLORADO REVISED STATUTES

*** This document reflects changes passed at the Second Regular Session and First Extraordinary Session of the Sixty-Eighth General Assembly of the State of Colorado (2012) ***

TITLE 31. GOVERNMENT - MUNICIPAL
POWERS AND FUNCTIONS OF CITIES AND TOWNS
ARTICLE 31. FIRE - POLICE - NEW HIRE PENSION PLANS
PART 10. POLICE OFFICERS' AND FIREFIGHTERS' PENSION REFORM COMMISSION

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 31-31-1001 (2012)

31-31-1001. Police officers' and firefighters' pension reform commission - creation - duties

(1) (a) There is hereby created the police officers' and firefighters' pension reform commission to be comprised of five senators appointed by the president of the senate and ten representatives appointed by the speaker of the house of representatives. The party representation shall be in proportion generally to the relative number of members of the two major political parties in each chamber. The chair shall be designated by the speaker of the house of representatives in odd-numbered years and by the president of the senate in even-numbered years. The vice-chair shall be appointed by the speaker of the house of representatives in even-numbered years and by the president of the senate in odd-numbered years. Members of the commission shall receive the same per diem allowance authorized for other members of the general assembly serving on interim study committees and actual expenses for participation in meetings of the commission. Staff services for the commission shall be furnished by the state auditor's office, the legislative council, and the office of legislative legal services. The state auditor, with the approval of the commission, may contract for services deemed necessary for the implementation of this part 10.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(2) The commission shall study and develop proposed legislation relating to funding of police officers' and firefighters' pensions in this state and benefit designs of such pension plans. The commission study shall include a review of, and the proposed legislation may include, among other subjects, the following:

- (a) Normal retirement age and compulsory retirement;
- (b) Payment of benefits prior to normal retirement age;

- (c) Service requirements for eligibility;
 - (d) Rate of accrual of benefits;
 - (e) Disability benefits;
 - (f) Survivors' benefits;
 - (g) Vesting of benefits;
 - (h) Employee contributions;
 - (i) Postretirement increases;
 - (j) Creation of an administrative board;
 - (k) Creation of a consolidated statewide system;
 - (l) Distribution of state funds;
 - (m) Coordination of benefits with other programs;
 - (n) The volunteer firefighter pension system;
 - (o) The provisions of this article and article 30.5 of this title.
- (3) Repealed.

HISTORY: Source: L. 96: Entire article added with relocations, p. 939, § 1, effective May 23.L. 2000: (1) amended, p. 116, § 3, effective March 15.L. 2007: (1) amended, p. 190, § 27, effective March 22.L. 2010: (3) added, (SB 10-213), ch. 375, p. 1763, § 10, effective June 7.