

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 21, 2012

TO: Karen Stauffer and Carol Baum

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #73, concerning PERA reform

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2011-2012 #71 and 2011-2012 #72. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2011-2012 #71 and 2011-2012 #72, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only the purposes and any new comments and questions are included in this memorandum.

#### Purposes

The major purposes of the proposed amendment appear to be:

1. To include amounts deducted from pay for a cafeteria plan and transportation costs in the

definition of salary for purposes of the statutory provisions governing the public employees' retirement association (PERA).

2. To create exceptions to the existing statutory provision specifying that PERA shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state by giving the office of state planning and budgeting (OSP) administrative oversight over PERA, which oversight will be funded by the general assembly, and by requiring PERA to make an annual presentation of its budget to the joint budget committee of the general assembly.
3. To abolish the current PERA board of trustees (board) on January 1, 2013, and to terminate the terms of its members serving immediately prior to that date.
4. To create a new PERA board, effective January 1, 2013, and to specify that the board shall be comprised of the state auditor and the state treasurer, three people with certain qualifications to be appointed by the governor, two members or retirees of the PERA defined benefit plan elected by the members of that plan, and two members or retirees from the PERA defined contribution plan elected by members of that plan.
5. To specify certain details concerning the appointment and election of members to the PERA board and their terms of office, the limitation on the number of terms a board member may serve, how vacancies are filled, and the compensation and training requirements for members of the board.
6. To require the PERA board to submit an initial report to the general assembly with a preliminary assessment of PERA's financial status, including the defined benefit plan, and preliminary recommendations for improving PERA's financial stability.
7. To require the PERA board to contract with a private auditor to conduct an independent financial performance audit every two years of all transactions and accounts of PERA, and to be staggered with the audit conducted by the state auditor.
8. To require the PERA board of trustees to determine the appropriate investment objectives for the defined benefit plan and, after reviewing recommendations from two financial institutions, adopt investment policies for each of the funds entrusted to the board.
9. To reduce the maximum amortization period that is deemed actuarially sound for the defined benefit plan trust funds from forty to thirty years and to specify that an actuarial necessity shall exist when the defined benefit plan is not actuarially sound.
10. In the event of an actuarial necessity, to authorize the general assembly to modify the member and employer contributions and the benefits allowed to members of the defined benefit plan, so long as the benefits of members who are eligible for a service retirement benefit or a reduced service retirement are not modified.
11. To prohibit the attorney general from delegating his or her responsibilities as legal advisor

to the PERA board to any legal advisor or in-house counsel hired by PERA and to require PERA to hire legal advisors to serve as in-house counsel for PERA's staff.

12. To increase the age and service requirements for service retirement benefits to sixty years old and thirty years of service for a PERA member who is not a state trooper, who is less than 40 years old on or before January 1, 2013, and whose retirement benefits have not vested on or before that date.
13. To require the general assembly to conduct an actuarial study before increasing benefits for any member in the defined benefit plan to ensure such increase would not cause the value of PERA's assets to be less than 90% of PERA's actuarial accrued liabilities.
14. To abolish the current defined contribution plan and create a new defined contribution plan on January 1, 2013, which shall include employees hired on or after January 1, 2013, employees who were members of the former defined contribution plan, and members who were part of the defined benefit plan but who are eligible to become members of the defined contribution plan and elect to do so.
15. To require each member of the new defined contribution plan to contribute an amount equal to 2% less than the employer contribution rates specified for the defined benefit plan.
16. Beginning January 1, 2013, to increase contributions by employees in the defined benefit plan by one-half of one percent of the employee's salary annually until the amount of the employee contribution is equal to the amount of the employer contribution.
17. To authorize members in the defined contribution plan to make additional contributions to the member's individual account, and to specify the methods of transmitting and crediting contributions to a member's individual account for those enrolled in the defined contribution plan.
18. To require an employer of a member of the defined contribution plan to contribute the following percentages of the member's salary to the member's individual account: 8% for members in the state, school, and local government divisions, 10% for members who are state troopers, and 11% for members in the judicial division.
19. To require the difference between the employer contribution rates specified in statute for the defined benefit plan and the contribution rate paid by the employer into the defined contribution plan pursuant to the proposed initiative to be used to pay off unfunded liabilities in PERA's defined benefit plan.
20. To require any savings resulting for the administration of the defined contribution plan to be used to pay the unfunded liability of the defined benefit plan.
21. To reduce the employer contribution rate to the new defined contribution plan to a rate two percent less than the division membership employer rate for the defined benefit plan and cap employer contributions at that rate when the new pension plan has eliminated unfunded

liabilities and is fully funded so as to meet the federal guidelines for state pension plans of funding one hundred percent of liabilities over a thirty-year period.

22. To specify procedures concerning the limitation on annual contributions, rollover contributions, vesting, and member control of investments.
23. To require the PERA board to select at least five investment alternatives for members, to allow members to change investments regularly, to provide members with information describing investment alternatives, and to designate, subject to certain conditions, the companies from which investment products shall be purchased.
24. To specify that PERA and the employer are not responsible or liable for financial losses experienced by members of the defined contribution plan.
25. To require the PERA board to determine distribution options by which a member of the defined contribution plan may elect to receive the distribution of his or her individual account.
26. To specify that members of the defined contribution plan may participate in PERA's optional life insurance, long-term care insurance, voluntary investment program, and health care program.
27. To require the PERA board to provide members with quarterly reports regarding the members' accounts and administrative fees charged to members.
28. To authorize members of PERA's defined benefit plan to make an irrevocable election to participate in the defined contribution plan in lieu of the defined benefit plan, subject to certain eligibility requirements.
29. To provide for the transfer to the defined contribution plan of a member's individual account and the matching employer contributions to which the member would be entitled at the time of the transfer and to specify the requirements for the transfer.
30. To require all information, publications, documents, and other communications and materials produced, received, housed, or used by PERA and PERA employees to be transparent and open to public inspection pursuant to article 72 of title 24, C.R.S.
31. To require all PERA board meetings and meetings between members of the PERA board to be open under the Colorado Sunshine Law.

### **Technical Comments**

The technical comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #71 and 2011-2012 #72 are applicable to proposed initiative 2011-2012 #73 and, as such, will not be repeated.

### **Substantive Comments and Questions**

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #71 and 2011-2012 #72 are applicable to proposed initiative 2011-2012 #73 and, as such, will not be repeated.