

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 12-0066.01 Esther van Mourik x4215

HOUSE BILL 12-1018

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A BILL FOR AN ACT

101 CONCERNING MODIFICATIONS TO AVAILABLE AFFILIATION BY SOCIAL  
102 SECURITY EMPLOYERS WITH THE FIRE AND POLICE PENSION  
103 ASSOCIATION.

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.**

The bill modifies the social security supplemental plan by repealing provisions related to optional affiliation by any employer that covers members under the federal "Social Security Act", as amended, or any

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.*

SENATE  
2nd Reading Unam ended  
March 5, 2012

HOUSE  
3rd Reading Unam ended  
February 9, 2012

HOUSE  
2nd Reading Unam ended  
February 8, 2012

county that covers salaried employees whose duties are directly involved with the provision of law enforcement or fire protection, as certified by the county under the federal "Social Security Act", as amended (social security employer).

With one exception, any social security employer is limited to electing affiliation with the fire and police pension association (association) only as to coverage under the statewide defined benefit plan. A social security employer is allowed to elect coverage under the statewide death and disability plan if the social security employer files with the board of directors of the association a resolution to that effect by the governing body of that social security employer.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 31-31-704 as  
3 follows:

4 **31-31-704. Optional affiliation by social security employers.**

5 (1) PRIOR TO JANUARY 1, 2007, AND notwithstanding the exemption  
6 provided in section 31-31-401 (1) (a), any employer that covers members  
7 under the federal "Social Security Act", as amended, or any county that  
8 covers salaried employees whose duties are directly involved with the  
9 provision of law enforcement or fire protection, as certified by the county  
10 under the federal "Social Security Act", as amended, may ~~elect~~ HAVE  
11 ELECTED affiliation with the association, either as to coverage under the  
12 statewide death and disability plan or as to retirement under the statewide  
13 defined benefit plan, or as to both, by filing with the board a resolution of  
14 the governing body of such employer, but any such affiliation shall either  
15 exclude past service credit or include past service credit funded by  
16 contribution levels established by the board. ~~pursuant to subsection (6) of~~  
17 ~~this section. The employer may make the election to exclude past service~~  
18 ~~credit, but only if such election does not impair any vested rights of~~  
19 ~~members.~~

1           (1.5) For purposes of administering to counties affiliated pursuant  
2 to this section, any county electing to affiliate shall be included in the  
3 definition of "employer" and any covered employee of such county shall  
4 be included in the definition of "member".

5           (2) The board shall establish rules as to the procedure for  
6 affiliation pursuant to this section. An employer eligible for such  
7 affiliation may request of the board, prior to filing a resolution of  
8 affiliation, an estimate of the contribution rate necessary to comply with  
9 the contribution requirements established by this article. Election of  
10 coverage under the death and disability plan shall be irrevocable.

11           (3) If an employer that elects to affiliate as to retirement pursuant  
12 to this section provides any local defined benefit retirement pension plan  
13 in addition to social security, each member employed by such employer  
14 shall elect, not later than sixty days after affiliation, either to remain  
15 covered under the retirement provisions of such local defined benefit plan  
16 or to become covered under the retirement provisions of the statewide  
17 defined benefit plan established by part 4 of this article. If a member fails  
18 to make such an election for any reason, said member shall be deemed to  
19 have elected to remain covered under the retirement provisions of the  
20 local defined benefit plan. A member who elects to become covered  
21 under the retirement provisions of the statewide defined benefit plan  
22 established by part 4 of this article shall be deemed to have waived all  
23 rights to retirement benefits under the local defined benefit plan but shall  
24 receive full credit for all service credited under the local defined benefit  
25 plan, and a member electing to remain covered under the local defined  
26 benefit plan shall not be governed by the provisions of the statewide  
27 defined benefit plan relating to defined retirement benefits.

1           (3.5) ~~If an employer that elects to affiliate as to retirement~~  
2 ~~pursuant to this section provides any local defined contribution retirement~~  
3 ~~pension plan in addition to social security, sixty-five percent of the~~  
4 ~~employees eligible to participate in the supplemental statewide defined~~  
5 ~~benefit plan shall approve the affiliation prior to it becoming effective.~~

6           (4) ~~Notwithstanding the provisions of subsection (3) of this~~  
7 ~~section, if an employer that elects to affiliate as to retirement pursuant to~~  
8 ~~this section provides only social security coverage for retirement, each~~  
9 ~~member of such employer shall become covered under the retirement~~  
10 ~~provisions of the statewide defined benefit plan established by part 4 of~~  
11 ~~this article. All members hired by an employer that elects to affiliate as to~~  
12 ~~retirement pursuant to this section after the effective date of such~~  
13 ~~affiliation shall be covered under the retirement provisions of the~~  
14 ~~statewide defined benefit plan established by part 4 of this article. All~~  
15 ~~members of an employer that elects to affiliate as to disability pursuant to~~  
16 ~~this section shall be covered under the statewide death and disability plan~~  
17 ~~established by part 8 of this article.~~

18           (5) Benefits provided pursuant to the statewide defined benefit  
19 and statewide death and disability plans established by this article to  
20 members of employers that have affiliated pursuant to this section PRIOR  
21 TO JANUARY 1, 2007, shall be reduced by the pro rata amount of any  
22 social security benefit received by the member attributable to the  
23 member's quarters of social security coverage derived from employment  
24 as a member.

25           (6) ~~The board shall set appropriate levels of employer and~~  
26 ~~employee contributions for employers that affiliate pursuant to this~~  
27 ~~section, substantially in the manner provided in sections 31-31-402 (3)~~

1 and 31-31-701 (5), and taking into consideration the reduction in benefits  
2 provided in subsection (5) of this section.

3 (7) ~~The provisions of section 31-31-701 (3) for transfer of old hire  
4 pension plan assets shall apply to an employer that affiliates as to  
5 retirement pursuant to this section to the extent that it has such assets. The  
6 provisions of section 31-31-701 (3) for payment of benefits of a former  
7 old hire plan shall apply to an employer that affiliates as to retirement  
8 pursuant to this section to the extent that it has an old hire retirement  
9 pension plan other than social security.~~

10 (8) ~~Nothing contained in this section shall affect the ability of  
11 employers to terminate social security coverage or the procedures for such  
12 termination.~~

13 (9) ~~The board may terminate the affiliation of an employer with  
14 the statewide defined benefit plan pursuant to this section and require the  
15 affiliated employer to participate in the social security supplemental plan  
16 established pursuant section 31-31-704.6. The board shall provide written  
17 notice of the change in affiliation to the employer and to members at least  
18 one hundred eighty days prior to the change in affiliation.~~

19 (10) ~~Upon the receipt of written notice of a change in affiliation  
20 required pursuant to subsection (9) of this section, and prior to the change  
21 in affiliation, an employer may elect not to participate in the social  
22 security supplemental plan established pursuant to section 31-31-704.6.  
23 An employer's election not to participate in the social security  
24 supplemental plan shall end the employer's affiliation with the statewide  
25 defined benefit plan upon the date of termination established by the  
26 board. Such an election shall not affect the employer's affiliation with the  
27 statewide death and disability plan.~~

1           **SECTION 2.** In Colorado Revised Statutes, 31-31-704.5, **add** (7)  
2 as follows:

3           **31-31-704.5. Entry into social security supplemental plan.**  
4 (7) NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE ABILITY OF  
5 AN EMPLOYER TO TERMINATE SOCIAL SECURITY COVERAGE OR AFFECT THE  
6 PROCEDURES FOR SUCH TERMINATION.

7           **SECTION 3.** In Colorado Revised Statutes, **add** 31-31-704.7 as  
8 follows:

9           **31-31-704.7. Participation in statewide death and disability**  
10 **plan.** ANY EMPLOYER PARTICIPATING IN THE SOCIAL SECURITY  
11 SUPPLEMENTAL PLAN CREATED PURSUANT TO SECTION 31-31-704.6 MAY  
12 ALSO ELECT COVERAGE UNDER THE STATEWIDE DEATH AND DISABILITY  
13 PLAN BY FILING WITH THE BOARD A RESOLUTION TO THAT EFFECT FROM  
14 THE GOVERNING BODY OF SUCH EMPLOYER.

15           **SECTION 4.** In Colorado Revised Statutes, 31-31-803, **amend**  
16 (1) (a) (I) (A), (2) (a) (I), (2.1) (a) (I), and (2.2) (a) (I) as follows:

17           **31-31-803. Retirement for disability.** (1) (a) (I) Any member  
18 hired before, on, or after April 7, 1978, who becomes totally disabled, as  
19 defined in section 31-31-801 (4), shall be retired from active service for  
20 disability and shall be eligible to receive the disability benefit provided  
21 by this subsection (1) or section 31-31-806.5 if the member:

22           (A) Is not eligible for the normal retirement pension from a plan  
23 that is part of the defined benefit system pursuant to section 31-31-204 or  
24 a local defined benefit retirement pension ~~selected pursuant to section~~  
25 ~~31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

26           (2) (a) A member who becomes occupationally disabled, as  
27 defined in section 31-31-801 (3), and is awarded a disability retirement

1 prior to October 1, 2002, shall be retired from active service for such time  
2 as the occupational disability continues and shall be eligible to receive the  
3 disability benefit provided by this subsection (2) or section 31-31-806.5  
4 if the member:

5 (I) Is not eligible for the normal retirement pension from a plan  
6 that is part of the defined benefit system pursuant to section 31-31-204 or  
7 a local defined benefit retirement pension ~~selected pursuant to section~~  
8 ~~31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

9 (2.1) (a) A member who becomes permanently occupationally  
10 disabled, as defined in section 31-31-801 (3.2), shall be retired from  
11 active service for such time as the permanent occupational disability  
12 continues and shall be eligible to receive the disability benefit provided  
13 by this subsection (2.1) or section 31-31-806.5 if the member:

14 (I) Is not eligible for the normal retirement pension from a plan  
15 that is part of the defined benefit system pursuant to section 31-31-204 or  
16 a local defined benefit retirement pension ~~selected pursuant to section~~  
17 ~~31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

18 (2.2) (a) A member who becomes temporarily occupationally  
19 disabled, as defined in section 31-31-801 (3.4), shall be retired from  
20 active service for such time as the temporary occupational disability  
21 continues for a period up to five years from the date of original  
22 disablement and shall be eligible to receive the disability benefit provided  
23 by this subsection (2.2) or section 31-31-806.5 if the member:

24 (I) Is not eligible for the normal retirement pension from a plan  
25 that is part of the defined benefit system pursuant to section 31-31-204 or  
26 a local defined benefit retirement pension ~~selected pursuant to section~~  
27 ~~31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

1           **SECTION 5.** In Colorado Revised Statutes, 31-31-807, **amend**  
2 (1) (a) (II) (A) as follows:

3           **31-31-807. Death of member - survivor benefits.** (1) (a) If a  
4 member dies while in active service or while on temporary occupational  
5 disability under section 31-31-803 (2.2) and leaves a surviving spouse or  
6 dependent children, or both, one of the survivor benefits described in  
7 paragraph (b) of this subsection (1) shall be paid if the member:

8           (II) (A) Is not eligible for the normal retirement pension from a  
9 plan that is part of the defined benefit system pursuant to section  
10 31-31-204; or a local defined benefit retirement pension selected pursuant  
11 to section 31-31-704 (3); or

12           **SECTION 6.** In Colorado Revised Statutes, 31-31-807.5, **amend**  
13 (1) (a) (II) (A) and (1.5) (a) (II) as follows:

14           **31-31-807.5. Death of member - line-of-duty - survivor**  
15 **benefits.** (1) (a) If a member dies while in active service as the direct and  
16 proximate result of a personal injury sustained while performing official  
17 duties or as a result of an occupational disease arising out of and in the  
18 course of the member's employment, and if such member qualifies for  
19 line-of-duty status under section 101 (h) of the federal "Internal Revenue  
20 Code of 1986", as amended, and leaves a surviving spouse or dependent  
21 children, or both, one of the survivor benefits described in either  
22 paragraph (b) or (c) of this subsection (1) shall be paid if the member:

23           (II) (A) Is not eligible for the normal retirement pension from a  
24 plan that is part of the defined benefit system pursuant to section  
25 31-31-204; or a local defined benefit retirement pension selected pursuant  
26 to section 31-31-704 (3); or

27           (1.5) (a) On or after October 1, 2001, if a member dies while in



1 active service as the direct and proximate result of a personal injury  
2 sustained while performing official duties or as a result of an occupational  
3 disease arising out of and in the course of the member's employment, and  
4 if such member qualifies for line-of-duty status under section 101 (h) of  
5 the federal "Internal Revenue Code of 1986", as amended, and leaves a  
6 surviving spouse or dependent children, or both, one of the survivor  
7 benefits described in paragraph (b) of this subsection (1.5) shall be paid  
8 if the member:

9 (II) Is eligible for the normal retirement pension from a plan that  
10 is part of the defined benefit system pursuant to section 31-31-204; or a  
11 ~~local defined benefit retirement pension selected pursuant to section~~  
12 ~~31-31-704 (3); or~~

13 **SECTION 7.** In Colorado Revised Statutes, 31-31-808, **amend**  
14 (2) as follows:

15 **31-31-808. Reduction of survivor benefits.** (2) The benefits  
16 payable under sections 31-31-807 and 31-31-807.5 to the surviving  
17 spouse and dependent children of any member who are also receiving  
18 payments from the member's separate retirement account pursuant to  
19 section 31-31-406 ~~or a local defined benefit retirement pension selected~~  
20 ~~pursuant to section 31-31-704~~, shall be reduced by an amount that is the  
21 actuarial equivalent of the benefits such surviving spouse and dependent  
22 children receive from the separate retirement account, whether the  
23 benefits received from the account are paid on a periodic basis or in a  
24 lump sum.

25 **SECTION 8. Act subject to petition - effective date.** This act  
26 takes effect at 12:01 a.m. on the day following the expiration of the  
27 ninety-day period after final adjournment of the general assembly (August

1 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a  
2 referendum petition is filed pursuant to section 1 (3) of article V of the  
3 state constitution against this act or an item, section, or part of this act  
4 within such period, then the act, item, section, or part will not take effect  
5 unless approved by the people at the general election to be held in  
6 November 2012 and, in such case, will take effect on the date of the  
7 official declaration of the vote thereon by the governor.