Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

DRAFT
9.9.09

BILL 4

LLS NO. 10-0120.01 Ed DeCecco

INTERIM COMMITTEE BILL

Police Officers' and Firefighters' Pension Reform Commission

SHORT TITLE: "FPPA Defined Benefit Member Contribution"

DEADLINES: File by: 9/14/2009

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;

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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.

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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
22 employer in lieu of contributions by ~~employees Employees~~ MEMBERS.

1 MEMBERS may not elect to choose to receive such contributions directly
2 instead of having them paid by the employer to the pension plan.
3 ~~Employee~~ MEMBER contributions so picked up shall be treated for all
4 purposes of this article, other than federal tax, in the same manner as
5 ~~employee~~ MEMBER contributions made before the date picked up.
6 Payment shall be made by one voucher for the aggregate amount
7 deducted and shall be made no later than ten days following the date of
8 payment of salary to the member. All such payments shall be credited to
9 the defined benefit system trust fund.
10 (3) The general assembly declares that the rates of ~~employee~~
11 MEMBER and employer contributions shall be adequate to fund benefit
12 liabilities accrued under the statewide defined benefit plan established by
13 this part 4, and to this end, the board shall submit an annual actuarial
14 valuation report to the state auditor, the legislative audit committee, and
15 the joint budget committee of the general assembly, together with any
16 recommendations concerning such liabilities as accrued. Amortization of
17 such liability over a forty-year period shall be deemed adequate to
18 maintain actuarial stability. If the actual financial experience of the new
19 hire benefits account in the defined benefit system trust fund is found to
20 be more or less favorable than the assumed experience during the
21 two-year period from January 1, 1980, and each biennium thereafter,
22 adjustments may be made by the board in the ~~employee~~ MEMBER and
23 employer contributions as may be deemed feasible and advisable so long
24 as THE employer ~~contributions are~~ CONTRIBUTION RATE IS at least equal
25 to ~~employee contributions~~ THE MEMBER CONTRIBUTION RATE. IF THE
26 MEMBER CONTRIBUTION RATE HAS BEEN INCREASED PURSUANT TO
27 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

1 age of retirement to be eligible for any normal retirement benefit shall be
2 age sixty except for persons receiving a benefit at the time of the court's
3 decision.
4 (2) (a) If in any year the board determines pursuant to this part 4
5 that the cost of the benefits described in paragraph (b) of subsection (1)
6 of this section, excluding the benefit described in section 31-31-405, may
7 not be fully funded on an actuarially sound basis without necessitating an
8 increase in the eight percent employer and eight percent member
9 contribution made pursuant to section 31-31-402 OR SUCH HIGHER
10 MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION
11 31-31-408 (1.5) (a), the board shall not increase such employer or member
12 contributions unless:
13 (c) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO
14 REQUIRE THE REDUCTION OF BENEFITS BELOW THE LEVEL SUSTAINABLE BY
15 THE HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO
16 SECTION 31-31-408 (1.5) (a).
17 **SECTION 3.** 31-31-404 (2) (b), Colorado Revised Statutes, is
18 amended to read:
19 **31-31-404. Return or transfer of contributions - vested**
20 **retirement.** (2) (b) The board shall determine after each annual actuarial
21 valuation if the cost of all benefits established by this part 4 for members
22 covered under section 31-31-403 and the cost of vested benefits
23 beginning at age fifty-five for members then eligible may be fully funded
24 on an actuarially sound basis without necessitating an increase in the eight
25 percent employer and eight percent member contributions made pursuant
26 to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
27 ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). If the board

1 cannot so determine, it shall order that the vested benefits commence such
2 number of months as are actuarially supportable, from one to one hundred
3 twenty, after age fifty-five for eligible members in accordance with the
4 board's determination. The determination of the board shall be conclusive
5 in the absence of fraud. A vested benefit commenced before age
6 fifty-five pursuant to this paragraph (b) shall not be subject to annual
7 review. If a court determines that this paragraph (b) is invalid, the age to
8 be eligible for a vested benefit shall be age sixty-five except for persons
9 receiving a benefit at the time of the court's decision.

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

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

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

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

1 (I) DOES NOT REQUIRE AN INCREASE IN THE EMPLOYER
2 CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-402;
3 (II) DOES NOT ADVERSELY AFFECT THE PLAN'S STATUS AS A
4 QUALIFIED PLAN PURSUANT TO THE FEDERAL "INTERNAL REVENUE CODE
5 OF 1986", AS AMENDED;
6 (III) IS APPROVED BY SIXTY-FIVE PERCENT OF THE ACTIVE
7 MEMBERS OF THE PLAN; AND
8 (IV) IS APPROVED BY MORE THAN FIFTY PERCENT OF THE
9 EMPLOYERS HAVING ACTIVE MEMBERS COVERED BY THE PLAN, EACH
10 EMPLOYER TO BE ASSIGNED ONE VOTE; EXCEPT THAT EMPLOYERS HAVING
11 BOTH ACTIVE POLICE AND FIRE MEMBERS IN THE PLAN SHALL BE ASSIGNED
12 TWO VOTES.
13 (b) THE INCREASE IN THE MEMBER CONTRIBUTION RATE
14 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5)
15 SHALL BE PAID FROM A MEMBER'S SALARY AND OTHERWISE BE TREATED
16 IN THE SAME MANNER SPECIFIED IN SECTION 31-31-402 (1) FOR OTHER
17 MEMBER CONTRIBUTIONS FOR PURPOSES OF THE FEDERAL "INTERNAL
18 REVENUE CODE OF 1986", AS AMENDED. THE INCREASE IN THE MEMBER
19 CONTRIBUTION RATE SHALL NOT BE SUBJECT TO NEGOTIATION FOR
20 PAYMENT BY THE EMPLOYER.
21 (c) THE BOARD MAY ELIMINATE AN INCREASE IN THE MEMBER
22 CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS
23 SUBSECTION (1.5) SO LONG AS THE REQUIREMENTS FOR AN INCREASE SET
24 FORTH IN SAID PARAGRAPH (a) ARE MET.
25 (3) The board shall adopt rules setting forth the procedures for the
26 member ~~election~~ ELECTIONS required by paragraph (d) of subsection (1)
27 AND SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1.5) of this

1 section. Each employer having members in the statewide defined benefit
2 plan shall comply with the procedures established by the board and shall
3 certify the results of any member election to the board as prescribed by
4 the board's rules.
5 (4) A written copy of the language of any modifications to the
6 statewide defined benefit plan OR AN INCREASE IN THE MEMBER
7 CONTRIBUTION RATE adopted by the board pursuant to this section shall
8 be kept and maintained by the board at its offices and be made available
9 for copying and inspection by any interested party.
10 (5) If at any time the cost of any modification adopted by the
11 board pursuant to SUBSECTION (1) OF this section would require an
12 increase in the eight percent employer and eight percent member
13 contributions made pursuant to section 31-31-402 OR SUCH HIGHER
14 MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a)
15 OF SUBSECTION (1.5) OF THIS SECTION, the board shall revoke the
16 modification as it applies to active members of the plan. The board may
17 reinstitute the modification at a later date, in its discretion, if reinstituting
18 the modification would not require an increase in the eight percent
19 employer and eight percent member contributions made pursuant to
20 section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE
21 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS
22 SECTION.
23 **SECTION 5. Act subject to petition - effective date.** This act
24 shall take effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly that is
26 allowed for submitting a referendum petition pursuant to article V,
27 section 1 (3) of the state constitution, (August 11, 2010, if adjournment

1 sine die is on May 12, 2010); except that, if a referendum petition is filed
2 against this act or an item, section, or part of this act within such period,
3 then the act, item, section, or part, if approved by the people, shall take
4 effect on the date of the official declaration of the vote thereon by
5 proclamation of the governor.