

Police Officers' and Firefighters' Pension Reform Commission

2009 Report to Legislative Council

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Committee Charge

Pursuant to Section 31-31-1001, C.R.S., the Police Officers' and Firefighters' Pension Reform Commission is charged to study and develop legislation relating to the funding of police and fire pensions and to the benefit structure of such plans. The commission is comprised of five members of the Senate, and ten members of the House of Representatives.

Committee 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.

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. The actuarial funded ratio declined from 119.4 percent 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.

An FPPA representative provided an overview of four bills that were considered by the FPPA Board of Directors and recommended to the commission 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.

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.

Committee Recommendations

As a result of commission discussion and deliberation, the commission recommends five bills for consideration in 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 a retirement, 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 a retirement 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 — Colorado Volunteer Firefighter Pension Act. 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."