

CHAPTER 150

GOVERNMENT - STATE

HOUSE BILL 95-1048

BY REPRESENTATIVES Anderson, Martin, Owen, Prinster, Romero, and Sullivant;
also SENATORS Rizzuto, Casey, Lacy, Mares, Dennis, Feeley, Hopper, Johnson, Matsunaka, Mutzebaugh, and L. Powers.

AN ACT

CONCERNING MODIFICATIONS TO THE DETERMINATION OF CERTAIN BENEFITS TO MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION.

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

SECTION 1. 24-51-101 (7), (8), (22), (28) (c), and (45), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended, and the said 24-51-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-51-101. Definitions. As used in this article, unless the context otherwise requires:

(7) "Benefit" means the monthly payment for service retirement, disability retirement, or survivor benefits. A refund ~~of the member contribution account to the member who made the contributions~~ PURSUANT TO THE PROVISIONS OF SECTION 24-51-405 or a single payment to a survivor is not a "benefit".

(8) "Benefit recipient" means a retiree, spouse, cobeneficiary, qualified child, or dependent parent receiving monthly service retirement, disability retirement, or survivor benefits. "Benefit recipient" does not include a person who has received a refund ~~of the member contribution account~~ PURSUANT TO THE PROVISIONS OF SECTION 24-51-405 or a single payment.

(22) "Former member" means an individual who received a refund ~~of a member contribution account~~ upon termination of employment pursuant to the provisions of section 24-51-405.

(28) "Interest" means:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(c) The rate determined by the board annually for interest credited to member contribution accounts pursuant to subsection (31) of this section. The interest rate set by the board shall equal the interest earned on three-month United States treasury bills at the end of the previous year; except that such interest rate shall not fall below the passbook savings rate prevailing in Colorado and shall not exceed the actuarial investment assumption rate in effect at that time. Interest shall be credited on member contribution accounts beginning with balances as of June 30, 1991, and on succeeding account balances after said date, through the date the account is refunded; the date a single payment is paid to the beneficiary, the date survivor benefits become payable, or the date of retirement, whichever occurs first. ON AND AFTER JULY 1, 1995, A RATE EQUAL TO EIGHTY PERCENT OF THE ACTUARIAL INVESTMENT ASSUMPTION RATE FOR INTEREST ON MEMBER CONTRIBUTIONS, CALCULATED PURSUANT TO THE PROVISIONS OF SECTION 24-51-407.~~

(28.5) "MATCHING EMPLOYER CONTRIBUTIONS" MEANS:

(a) THE PORTION OF EMPLOYER CONTRIBUTIONS USED TOGETHER WITH THE MEMBER CONTRIBUTION ACCOUNT TO DETERMINE THE AMOUNT OF A MEMBER'S MONEY PURCHASE RETIREMENT BENEFIT PURSUANT TO THE PROVISIONS OF SECTIONS 24-51-408 (1) AND 24-51-605.5 (2); AND

(b) THE PORTION OF EMPLOYER CONTRIBUTIONS PAID TOGETHER WITH THE REFUND OF THE MEMBER CONTRIBUTION ACCOUNT TO MEMBERS WHO HAVE TERMINATED MEMBERSHIP PURSUANT TO THE PROVISIONS OF SECTIONS 24-51-405 AND 24-51-408 (2).

(45) "Single payment" means the one-time payment of the moneys credited to the member contribution account of a deceased member or deceased inactive member, TOGETHER WITH MATCHING EMPLOYER CONTRIBUTIONS. A "single payment" is not a benefit.

SECTION 2. 24-51-405, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-51-405. Refund of the member contribution account. (1) Any member who terminates membership for any reason other than retirement or death may request a refund of all moneys credited to the member contribution account AND PAYMENT OF MATCHING EMPLOYER CONTRIBUTIONS if said member has not resumed membership. Upon request, a refund shall be made by the association within ninety days after the date of termination of employment covered by membership or the date the association received the refund request, whichever is later.

(2) A member contribution account shall not be refunded AND MATCHING EMPLOYER CONTRIBUTIONS SHALL NOT BE PAID to such member for any reason other than termination of membership.

(3) Repealed.

(4) All rights of membership and any future benefits associated with a member contribution account AND MATCHING EMPLOYER CONTRIBUTIONS are forfeited when a refund of the member contribution account is made.

(5) Employer contributions made to the association are nonrefundable to ~~a member~~ or an employer.

(6) Partial refunds ~~of moneys in a member contribution account~~ are prohibited.

(7) THE AMOUNT OF MATCHING EMPLOYER CONTRIBUTIONS SHALL BE DETERMINED PURSUANT TO THE PROVISIONS OF SECTION 24-51-408.

SECTION 3. 24-51-406, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-406. Payments from the judicial division. Any member of the judicial division who was a member of that division on or before July 1, 1973, and who retires from the judicial division with more than sixteen years of service credit may elect prior to retirement to receive, within ninety days following the effective date of retirement, a ~~refund of~~ PAYMENT OF THE member contributions AND INTEREST TOGETHER WITH MATCHING EMPLOYER CONTRIBUTIONS, CALCULATED PURSUANT TO THE PROVISIONS OF SECTION 24-51-408 (1), THAT ARE associated with the service credit earned during the seventeenth through the twentieth years. This ~~refund~~ PAYMENT shall negate the service credit earned during those years.

SECTION 4. Part 4 of article 51 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-51-407. Interest. (1) MEMBER CONTRIBUTIONS SHALL EARN INTEREST BEGINNING WITH THE DATE OF THE FIRST CONTRIBUTION, AND, ON SUCCEEDING BALANCES, FROM THE DATE OF THE FIRST CONTRIBUTION THROUGH EITHER THE DATE THE MEMBER CONTRIBUTION ACCOUNT IS REFUNDED AND MATCHING EMPLOYER CONTRIBUTIONS ARE PAID, THE DATE A SINGLE PAYMENT IS PAID TO THE BENEFICIARY, THE DATE SURVIVOR BENEFITS BECOME PAYABLE, OR THE DATE OF RETIREMENT, WHICHEVER OCCURS FIRST.

(2) MEMBER CONTRIBUTIONS MADE PRIOR TO JULY 1, 1995, SHALL EARN INTEREST AT THE RATE OF SIX AND EIGHT-TENTHS PERCENT PER YEAR, COMPOUNDED ANNUALLY, IN LIEU OF THE FORMER RATE, IF A MEMBER CONTRIBUTION ACCOUNT EXISTS FOR THE PERSON ON JULY 1, 1995.

(3) AFTER JULY 1, 1995, MEMBER CONTRIBUTIONS SHALL EARN INTEREST AT THE RATE SPECIFIED IN SECTION 24-51-101 (28) (c), COMPOUNDED ANNUALLY, THAT IS IN EFFECT AT THE TIME INTEREST IS EARNED.

24-51-408. Matching employer contributions. (1) FOR MEMBERS WHO RECEIVE A BENEFIT OR WHO RECEIVE A REFUND PAYABLE AFTER MEETING THE AGE AND SERVICE REQUIREMENTS FOR A SERVICE OR REDUCED SERVICE RETIREMENT BENEFIT, OR FOR PAYMENTS MADE TO SURVIVORS OR BENEFICIARIES OF MEMBERS WHO DIE BEFORE RETIREMENT, MATCHING EMPLOYER CONTRIBUTIONS SHALL BE ONE-HALF OF AN AMOUNT EQUAL TO THE MEMBER CONTRIBUTION ACCOUNT LESS:

(a) ANY AMOUNTS PAID FOR THE PURCHASE OF SERVICE CREDIT;

(b) ANY PAYMENTS IN LIEU OF MEMBER CONTRIBUTIONS; AND

(c) ANY INTEREST ACCRUED ON THE AMOUNTS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (1).

(2) FOR MEMBERS WHO RECEIVE A REFUND PRIOR TO AGE SIXTY-FIVE AND PRIOR TO MEETING THE AGE AND SERVICE REQUIREMENTS FOR A SERVICE OR REDUCED SERVICE RETIREMENT BENEFIT, THE AMOUNT OF MATCHING EMPLOYER CONTRIBUTIONS PAID SHALL BE ONE-FOURTH OF AN AMOUNT EQUAL TO THE MEMBER CONTRIBUTION ACCOUNT LESS:

(a) ANY AMOUNTS PAID FOR THE PURCHASE OF SERVICE CREDIT;

(b) ANY PAYMENTS IN LIEU OF MEMBER CONTRIBUTIONS; AND

(c) ANY INTEREST ACCRUED ON THE AMOUNTS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2).

SECTION 5. 24-51-503 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-503. Purchase of service credit relating to a refunded member contribution account. (1) Except as otherwise provided in section 24-51-318, the service credit forfeited with ~~the~~ A refund of the member contribution account pursuant to the provisions of section 24-51-405 may be purchased upon the former member's resumption of membership and after completion of one year of earned service credit by such member.

SECTION 6. 24-51-506 (3), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-506. Payments for purchased service credit. (3) Installment payments and interest shall be credited to the member contribution account. After installment payments are completed, they may not be withdrawn except ~~upon the~~ WITH A refund of the member contribution account pursuant to the provisions of section 24-51-405.

SECTION 7. 24-51-602 (2), Colorado Revised Statutes, 1988 Repl. Vol., is amended, and the said 24-51-602, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-51-602. Service retirement eligibility. (2) Members with less than five years of service credit shall be eligible for service retirement BENEFITS PURSUANT TO THE PROVISIONS OF SECTION 24-51-605.5 upon reaching sixty-five years of age if contributions were made for sixty months.

(2.5) MEMBERS WITH LESS THAN FIVE YEARS OF SERVICE CREDIT WHO HAVE NOT MADE CONTRIBUTIONS FOR SIXTY MONTHS SHALL BE ELIGIBLE FOR MONEY PURCHASE RETIREMENT BENEFITS CALCULATED PURSUANT TO SECTION 24-51-605.5 (2), UPON REACHING SIXTY-FIVE YEARS OF AGE.

SECTION 8. Part 6 of article 51 of title 24, Colorado Revised Statutes, 1988

Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-51-605.5. Benefit calculation for money purchase retirement benefit.

(1) MEMBERS AND VESTED INACTIVE MEMBERS WHO HAVE MET THE AGE AND SERVICE CREDIT REQUIREMENTS FOR ELIGIBILITY FOR A SERVICE RETIREMENT BENEFIT OR A REDUCED SERVICE RETIREMENT BENEFIT SHALL, UPON WRITTEN APPLICATION AND APPROVAL OF THE BOARD, RECEIVE THE GREATER OF:

(a) THE RETIREMENT BENEFIT CALCULATED PURSUANT TO SECTION 24-51-603 OR 24-51-605 FOR WHICH THE MEMBER IS ELIGIBLE; OR

(b) THE MONEY PURCHASE RETIREMENT BENEFIT.

(2) THE MONEY PURCHASE RETIREMENT BENEFIT REFERRED TO IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL BE ACTUARIALLY DETERMINED AND SHALL BE BASED UPON THE VALUE ON THE EFFECTIVE DATE OF RETIREMENT OF THE MEMBER CONTRIBUTION ACCOUNT AND MATCHING EMPLOYER CONTRIBUTIONS. THE BENEFIT SHALL BE CONSIDERED A SERVICE RETIREMENT BENEFIT FOR ALL PURPOSES OF THIS ARTICLE.

SECTION 9. 24-51-606 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-606. Vested inactive member rights. (1) Any member who has earned at least five years of service credit and who terminates membership and does not elect to receive a refund PURSUANT TO THE PROVISIONS OF SECTION 24-51-405 ~~of the member contribution account~~ shall be eligible for a benefit to become effective upon reaching the age specified in table B in section 24-51-602 for a service retirement or in table C in section 24-51-604 for a reduced service retirement.

SECTION 10. 24-51-606.5, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-51-606.5. Indexation of benefits for vested inactive members. A vested inactive member who has at least twenty-five years of service credit prior to terminating membership shall be eligible, upon retirement, for a benefit, AS CALCULATED PURSUANT TO THE PROVISIONS OF SECTION 24-51-603 OR 24-51-605, which has been increased by the annual increase specified in sections 24-51-1001 to 24-51-1003, from the date of termination of membership or July 1, 1993, whichever is later, to the effective date of retirement.

SECTION 11. 24-51-910, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-910. Option 3 benefits. The option 3 benefits provided for in this part 9 shall be the same as those benefits specified in section 24-51-801 (1) (c) and calculated pursuant to the provisions of section 24-51-603 OR 24-51-605.5 (2), WHICHEVER PROVIDES THE GREATER BENEFIT, as if the deceased member had retired on the day of death; but in no case shall the option 3 benefits be less than twenty-five percent of the deceased member's highest average salary if the deceased member had

at least ten years of service credit.

SECTION 12. 24-51-911 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-911. Commencement of survivor benefits or single payment. (1) When a single payment is payable pursuant to the provisions of this part 9, said payment shall be made when the full amount of moneys credited to the ~~member's~~ MEMBER contribution account OF THE MEMBER, THE FULL AMOUNT OF MATCHING EMPLOYER CONTRIBUTIONS, and the person to receive the benefit have been determined.

SECTION 13. 24-51-912 (3) (c), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-51-912. Termination of survivor benefits. (3) When children's survivor benefits paid pursuant to section 24-51-905 (1) (a) are no longer payable, the surviving spouse may elect to receive:

(c) A single payment of any moneys remaining ~~in~~ FROM THE TOTAL OF THE AMOUNT CREDITED TO the member contribution account of the member AND MATCHING EMPLOYER CONTRIBUTIONS.

SECTION 14. The introductory portion to 24-51-913 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-51-913. Payment upon termination of survivor benefits. (1) Upon termination of survivor benefits as specified in section 24-51-912 prior to the association's having paid survivor benefits equal to THE TOTAL OF the amount of moneys credited to the member contribution account of the member AND MATCHING EMPLOYER CONTRIBUTIONS, any remaining moneys shall be paid in the following order:

SECTION 15. 24-51-101 (28) (b), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-51-101. Definitions. As used in this article, unless the context otherwise requires:

(28) "Interest" means:

(b) ~~One and one-half times~~ The APPLICABLE actuarial investment assumption rate compounded annually for any interest charged to an employer pursuant to the provisions of this article; and

SECTION 16. 24-51-205, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-51-205. General authority of the board. (3.5) THE BOARD IS AUTHORIZED TO SETTLE OR COMPROMISE ANY DISPUTE ON BEHALF OF THE ASSOCIATION. THE BOARD MAY CONSIDER RELEVANT FACTORS REGARDING ANY DISPUTE, INCLUDING BUT NOT LIMITED TO THE COST OF LITIGATION, THE LIKELIHOOD OF SUCCESS ON THE

MERITS, THE COST OF DELAY IN RESOLVING THE DISPUTE, AND THE ACTUARIAL IMPACT ON THE FUND, IN DETERMINING WHETHER TO SETTLE OR COMPROMISE THE DISPUTE.

SECTION 17. 24-51-207 (2), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-51-207. Standard of conduct. (2) (a) As fiduciaries, such trustees shall carry out their functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The trustees shall act in accordance with the provisions of this article and with the care, skill, prudence, and diligence in light of the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the association so as to minimize the risk of large losses, unless in light of such circumstances it is clearly prudent not to do so.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), THE MERE SETTLEMENT OR COMPROMISE OF ANY DISPUTE BY THE BOARD PURSUANT TO THE AUTHORITY GRANTED UNDER SECTION 24-51-205 (3.5) IS NOT PER SE A VIOLATION OF THE FIDUCIARY DUTIES OF ANY TRUSTEE.

SECTION 18. 24-51-401 (1.7), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-51-401 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-51-401. Employer and member contributions. (1.7) Effective July 1, 1993, the employer shall forward to the association by the tenth calendar day of each month a monthly contribution report and the full amount of employer and member contributions. EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS SECTION, such contributions shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the total gross salary paid to members for the preceding month:

**TABLE A
CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
State	All Members	110.6%	8.0%
	Except State Troopers	13.2%	1.5%
School	All Members	11.6%	8.0%
Municipal	All Members	10.0%	8.0%
Judicial	All Members	15.0%	8.0%

(7) IF A FINAL JUDICIAL DETERMINATION PROVIDES THAT AN EMPLOYER IS OBLIGATED TO PAY DAMAGES TO THE ASSOCIATION FOR UNPAID CONTRIBUTIONS AND THE DAMAGES AWARDED ARE GREATER THAN THE AMOUNTS PROVIDED PURSUANT TO SECTION 24-51-402, THEN THE ASSOCIATION SHALL REDUCE THE EMPLOYER CONTRIBUTION RATE FOR THE EMPLOYER TO A LEVEL THAT WILL OFFSET THE ADDITIONAL DAMAGES PAID. IF POSSIBLE, THE ASSOCIATION SHALL SET A RATE OF EMPLOYER CONTRIBUTIONS THAT IS SUFFICIENT TO OFFSET THE ADDITIONAL DAMAGES OVER A TWELVE-MONTH PERIOD. IF THE EMPLOYER DOES NOT OWE SUFFICIENT EMPLOYER CONTRIBUTIONS TO OFFSET THE ADDITIONAL DAMAGES OVER A TWELVE-MONTH PERIOD, THEN THE ASSOCIATION SHALL ELIMINATE THE EMPLOYER CONTRIBUTIONS FOR THE EMPLOYER UNTIL THE EXCESS DAMAGES ARE FULLY OFFSET.

SECTION 19. 24-51-402, Colorado Revised Statutes, 1988 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

24-51-402. Unpaid contributions for any member - legislative declaration.

(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE LITIGATION OF DISPUTES REGARDING THE PAYMENT OF CONTRIBUTIONS BY EMPLOYERS TO THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION REPRESENTS AN INAPPROPRIATE ALLOCATION OF PUBLIC MONEYS. COURTS ALREADY SUFFER FROM OVERCROWDED DOCKETS, AND THE USE OF JUDICIAL RESOURCES TO RESOLVE SUCH DISPUTES MEANS THAT TAXPAYERS FOOT THE BILL FOR PLAINTIFFS, DEFENDANTS, AND JUDGES ALIKE. ONCE ALL APPROPRIATE BENEFITS HAVE BEEN ACCORDED TO MEMBERS OR INACTIVE MEMBERS OF THE ASSOCIATION, ANY DISPUTE THEN REMAINING IS SOLELY BETWEEN GOVERNMENTAL ENTITIES. THE GENERAL ASSEMBLY FINDS THAT THE LITIGATION OF THESE DISPUTES IS AN INAPPROPRIATE USE OF THE LIMITED RESOURCES OF THE ASSOCIATION, PUBLIC EMPLOYERS, AND THE COURTS BECAUSE IT IS POSSIBLE TO ESTABLISH REASONABLE AND FAIR RULES FOR THE RESOLUTION OF SUCH DISPUTES WITHOUT ANY NEED FOR JUDICIAL INVOLVEMENT. THE GENERAL ASSEMBLY THEREFORE INTENDS TO RESOLVE ANY CURRENT DISPUTES AND TO CLEARLY DELINEATE THE RESPONSIBILITIES OF GOVERNMENTAL ENTITIES SO THAT FUTURE DISPUTES DO NOT REQUIRE ANY LITIGATION OR UNNECESSARY EXPENDITURE OF STATE MONEYS.

(b) FAIRNESS REQUIRES THAT THE GENERAL ASSEMBLY PRESCRIBE UNIFORM RESULTS IN EVERY CIRCUMSTANCE, A GOAL THAT IS NOT OBTAINABLE WHEN VARYING RESULTS ARISE FROM LITIGATION OF CONTRIBUTIONS DISPUTES IN THE COURTS.

(c) UNDER THE PROVISIONS OF THIS SECTION, MEMBERS AND INACTIVE MEMBERS WILL RECEIVE THE FULL BENEFITS PROMISED BY LAW AND, THEREFORE, THERE IS NO QUESTION REGARDING THE EQUAL TREATMENT OF ANY INDIVIDUAL.

(d) IN ORDER TO MINIMIZE THE RISK OF FUTURE LITIGATION BETWEEN THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION AND OTHER GOVERNMENTAL ENTITIES, IT IS APPROPRIATE TO CLARIFY UNDER SECTIONS 24-51-205 (3.5) AND 24-51-207 (2) THAT THE BOARD OF TRUSTEES OF THE ASSOCIATION MAY REASONABLY SETTLE OR COMPROMISE DISPUTES WITHOUT VIOLATING ANY PRINCIPLE OF FIDUCIARY RESPONSIBILITY.

(e) SHOULD ANY JUDICIAL DETERMINATION REGARDING AN EMPLOYER'S LIABILITY FOR CONTRIBUTIONS BE CONTRARY TO THE RESULTS PROVIDED UNDER THIS SECTION, THE ASSOCIATION WILL BE REQUIRED UNDER SECTION 24-51-401 (7) TO ACCEPT A REDUCED EMPLOYER CONTRIBUTION LEVEL TO OFFSET ALL EXCESS DAMAGES ABOVE THE LEVEL OF CONTRIBUTIONS THE GENERAL ASSEMBLY HAS ESTABLISHED. THE GENERAL ASSEMBLY FURTHER FINDS THAT THE ESTABLISHMENT OF A PROPER RATE OF CONTRIBUTIONS IS CLEARLY A LEGISLATIVE FUNCTION AND THAT IT IS APPROPRIATE FOR THE GENERAL ASSEMBLY TO MODIFY THE LEVEL OF EMPLOYER CONTRIBUTIONS WHEN NECESSARY TO OFFSET THE RESULTS OF JUDICIAL AWARDS THAT ARE CONTRARY TO THE AMOUNTS ESTABLISHED BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY DECLARES THAT IT IS ITS EXPRESS INTENT TO OVERRULE ANY JUDICIAL DECISION ENTERED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, THAT IS CONTRARY TO THE PROVISIONS OF THIS SECTION.

(2) THE PROVISIONS OF THIS SECTION AND SECTIONS 13-80-103.5 (1) (d) AND 13-80-108 (13), C.R.S., APPLY TO THE FOLLOWING:

(a) ANY CAUSE OF ACTION ACCRUING ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED;

(b) ANY UNRESOLVED CAUSE OF ACTION ACCRUING PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED; AND

(c) (I) ANY CAUSE OF ACTION RESOLVED ON OR AFTER JULY 1, 1994, BUT PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED. THE FOLLOWING SHALL GOVERN THE APPLICATION OF THIS SECTION TO THE CAUSES OF ACTION SPECIFIED IN THIS PARAGRAPH (c):

(A) THIS SECTION SHALL AFFECT ONLY THE TOTAL AMOUNT OF THE PAYMENTS IN ANY CAUSE OF ACTION SPECIFIED BY THIS PARAGRAPH (c). SUCH TOTAL AMOUNT OF PAYMENTS SHALL NOT EXCEED THE AMOUNT SPECIFIED UNDER SUBSECTION (3) (a) OR (3) (b) (I) OF THIS SECTION, WHICHEVER IS APPLICABLE. THE ASSOCIATION SHALL REFUND, OR SHALL NOT COLLECT, ANY DIFFERENCE BETWEEN THE AMOUNT PAID, AGREED TO BE PAID, OR AWARDED IN ANY SUCH CAUSE OF ACTION AND THE AMOUNT SPECIFIED UNDER SUBSECTION (3) (a) OR (3) (b) (I) OF THIS SECTION. SUBSECTION (3) (b) (II) OF THIS SECTION SHALL NOT AFFECT THE ALLOCATION OF PAYMENTS PURSUANT TO AN AGREEMENT, SETTLEMENT AGREEMENT, OR JUDGMENT RESOLVING A CAUSE OF ACTION SPECIFIED BY THIS PARAGRAPH (c).

(B) THIS SECTION SHALL NOT REQUIRE ANY MEMBER OR INACTIVE MEMBER TO

MAKE ANY PAYMENT OF UNPAID CONTRIBUTIONS WITH RESPECT TO ANY CAUSE OF ACTION SPECIFIED BY THIS PARAGRAPH (c) IF SUCH MEMBER OR INACTIVE MEMBER IS NOT REQUIRED TO MAKE SUCH PAYMENT UNDER THE AGREEMENT, SETTLEMENT AGREEMENT, OR JUDGMENT RESOLVING THE CAUSE OF ACTION.

(C) THIS SECTION SHALL NOT AFFECT ANY BENEFITS PROVIDED TO INDIVIDUALS AS THE RESULT OF THE PAYMENT OF UNPAID CONTRIBUTIONS WITH RESPECT TO ANY CAUSE OF ACTION SPECIFIED BY THIS PARAGRAPH (c).

(II) FOR THE PURPOSES OF THIS PARAGRAPH (c), A CAUSE OF ACTION IS RESOLVED IF THERE IS AN AGREEMENT TO MAKE PAYMENT UNDER THE CAUSE OF ACTION, WHETHER OR NOT THE FULL PAYMENT HAS BEEN MADE, IF THERE IS A SETTLEMENT AGREEMENT IN A LAWSUIT BETWEEN THE PARTIES, WHETHER OR NOT THE FULL PAYMENT UNDER THE SETTLEMENT AGREEMENT HAS BEEN MADE, OR IF THERE IS A FINAL JUDGMENT ENTERED, WHETHER OR NOT THE JUDGMENT HAS BEEN FULLY PAID OR COLLECTED.

(3) IF AN EMPLOYER FAILS TO PROVIDE MEMBERSHIP IN THE ASSOCIATION TO AN INDIVIDUAL SO ENTITLED PURSUANT TO THE PROVISIONS OF THIS ARTICLE OR FAILS TO PROVIDE THE REQUIRED LEVEL OF EMPLOYER CONTRIBUTIONS FOR AN INDIVIDUAL PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE FOLLOWING PAYMENT SHALL BE MADE TO THE ASSOCIATION:

(a) IF THE INDIVIDUAL IS NOT A MEMBER OR INACTIVE MEMBER AT THE TIME THE ASSOCIATION FIRST NOTIFIES THE EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS, THE EMPLOYER SHALL PAY THE UNPAID EMPLOYER CONTRIBUTIONS ON BEHALF OF THE INDIVIDUAL FOR THE PERIOD CONTRIBUTIONS SHOULD HAVE BEEN MADE AT THE CONTRIBUTION RATE APPLICABLE DURING SUCH PERIOD, PLUS INTEREST ON SUCH EMPLOYER CONTRIBUTIONS AT THE APPLICABLE ACTUARIAL INVESTMENT ASSUMPTION RATE, AS SUCH INTEREST RATE IS FROM TIME TO TIME ADJUSTED, UNTIL SUCH CONTRIBUTIONS ARE PAID. IF AN EMPLOYER PAYS CONTRIBUTIONS PURSUANT TO THIS PARAGRAPH (a) ON BEHALF OF AN INDIVIDUAL WHO WAS NOT A MEMBER OR INACTIVE MEMBER WHEN THE ASSOCIATION FIRST NOTIFIES THE EMPLOYER AND SUCH INDIVIDUAL SUBSEQUENTLY BECOMES A MEMBER, THE MEMBER MAY PURCHASE SERVICE CREDIT FOR THE APPROPRIATE TIME PERIOD PURSUANT TO THE REQUIREMENTS OF SECTION 24-51-503.

(b) (I) IF THE INDIVIDUAL IS A MEMBER OR INACTIVE MEMBER AT THE TIME THE ASSOCIATION FIRST NOTIFIES THE EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS, THE PAYMENT EQUALS THE LESSER OF THE FOLLOWING AMOUNTS:

(A) FOR A MEMBER, THE COST TO PURCHASE THE APPROPRIATE AMOUNT OF SERVICE CREDIT AT THE RATE ESTABLISHED PURSUANT TO SECTION 24-51-505; AND, FOR AN INACTIVE MEMBER, THE COST TO PURCHASE THE APPROPRIATE AMOUNT OF SERVICE CREDIT AT THE RATE ESTABLISHED PURSUANT TO SECTION 24-51-505, BASED UPON THE SALARY AT THE DATE OF LAST EMPLOYMENT, PLUS INTEREST AT THE APPLICABLE ACTUARIAL INVESTMENT ASSUMPTION RATE, AS SUCH INTEREST RATE IS FROM TIME TO TIME ADJUSTED, FROM THE DATE OF LAST EMPLOYMENT UNTIL THE DATE CONTRIBUTIONS ARE PAID; OR

(B) THE UNPAID EMPLOYER AND MEMBER CONTRIBUTIONS FOR THE PERIOD

CONTRIBUTIONS SHOULD HAVE BEEN MADE, PLUS INTEREST ON SUCH EMPLOYER AND MEMBER CONTRIBUTIONS AT THE APPLICABLE ACTUARIAL INVESTMENT ASSUMPTION RATE, AS SUCH INTEREST RATE IS FROM TIME TO TIME ADJUSTED, UNTIL SUCH CONTRIBUTIONS ARE PAID.

(II) THE AMOUNTS PAID TO THE ASSOCIATION SHALL BE ALLOCATED AND COLLECTED IN THE FOLLOWING ORDER UNTIL THE FULL AMOUNT THAT IS OWED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IS REACHED:

(A) THE EMPLOYER SHALL FIRST PAY THE UNPAID EMPLOYER CONTRIBUTIONS ON BEHALF OF THE MEMBER OR INACTIVE MEMBER FOR THE PERIOD CONTRIBUTIONS SHOULD HAVE BEEN MADE, PLUS INTEREST ON SUCH EMPLOYER CONTRIBUTIONS AT THE APPLICABLE ACTUARIAL INVESTMENT ASSUMPTION RATE, AS SUCH INTEREST RATE IS FROM TIME TO TIME ADJUSTED, UNTIL SUCH CONTRIBUTIONS ARE PAID;

(B) THE MEMBER OR INACTIVE MEMBER SHALL NEXT PAY THE UNPAID EMPLOYEE CONTRIBUTIONS FOR THE PERIOD CONTRIBUTIONS SHOULD HAVE BEEN MADE, WITHOUT INTEREST; AND

(C) THE EMPLOYER SHALL NEXT PAY INTEREST ON THE UNPAID EMPLOYEE CONTRIBUTIONS FOR THE PERIOD CONTRIBUTIONS SHOULD HAVE BEEN MADE AT THE APPLICABLE ACTUARIAL INVESTMENT ASSUMPTION RATE, AS SUCH INTEREST RATE IS FROM TIME TO TIME ADJUSTED, UNTIL SUCH CONTRIBUTIONS ARE PAID; EXCEPT THAT THE EMPLOYER IS ONLY REQUIRED TO PAY INTEREST ON THE AMOUNT OF EMPLOYEE CONTRIBUTIONS OWED BY THE MEMBER OR INACTIVE MEMBER UNDER SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II) THAT THE MEMBER OR INACTIVE MEMBER ACTUALLY PAYS.

(III) IF THE FULL AMOUNT OWED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (b) IS NOT PAID BECAUSE THE MEMBER OR INACTIVE MEMBER PAYS LESS THAN THE FULL AMOUNT OF EMPLOYEE CONTRIBUTIONS, THEN:

(A) IF THE MEMBER OR INACTIVE MEMBER WAS NOT PROVIDED MEMBERSHIP DURING THE APPLICABLE TIME PERIOD, THE ASSOCIATION SHALL PROVIDE PARTIAL SERVICE CREDIT TO THE MEMBER OR INACTIVE MEMBER IN THE SAME PROPORTION TO THE TOTAL AMOUNT OF SERVICE CREDIT THAT WOULD HAVE BEEN EARNED IF CONTRIBUTIONS HAD BEEN MADE AS THE AMOUNT ACTUALLY PAID TO THE ASSOCIATION BEARS TO THE AMOUNT THAT WAS OWED TO THE ASSOCIATION; AND

(B) IF THE MEMBER OR INACTIVE MEMBER WAS PROVIDED MEMBERSHIP DURING THE APPLICABLE TIME PERIOD, THE ASSOCIATION SHALL PROVIDE A PARTIAL INCREASE IN THE HIGHEST AVERAGE SALARY OF THE MEMBER OR INACTIVE MEMBER IN THE SAME PROPORTION TO THE INCREASE IN HIGHEST AVERAGE SALARY THAT WOULD HAVE BEEN EARNED IF CONTRIBUTIONS HAD BEEN PAID AS THE AMOUNT ACTUALLY PAID TO THE ASSOCIATION BEARS TO THE AMOUNT THAT WAS OWED TO THE ASSOCIATION.

(4) WITHIN NINETY DAYS AFTER THE TIME THE ASSOCIATION FIRST NOTIFIES AN EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS, THE ASSOCIATION SHALL ATTEMPT TO NOTIFY ALL MEMBERS AND INACTIVE MEMBERS REGARDING THEIR RIGHTS TO PAY UNPAID EMPLOYEE CONTRIBUTIONS PURSUANT TO SUBSECTION (3) (b)

(II) (B) OF THIS SECTION. ANY MEMBER OR INACTIVE MEMBER WHO ELECTS TO PAY ALL OR ANY PORTION OF UNPAID EMPLOYEE CONTRIBUTIONS SHALL NOTIFY THE ASSOCIATION OF SUCH ELECTION WITHIN ONE YEAR AFTER THE DATE THE EMPLOYER PAYS THE UNPAID EMPLOYER CONTRIBUTIONS PURSUANT TO SUBSECTION (3) (b) (II) (A) OF THIS SECTION. IF A MEMBER OR INACTIVE MEMBER FAILS TO NOTIFY THE ASSOCIATION OF THE MEMBER'S OR INACTIVE MEMBER'S INTENT TO PAY AS ALLOWED UNDER THIS SUBSECTION (4), THE ASSOCIATION MAY ELECT TO TREAT THE MEMBER OR INACTIVE MEMBER AS HAVING FORFEITED THE RIGHT TO MAKE SUCH CONTRIBUTIONS. ANY MEMBER OR INACTIVE MEMBER WHO ELECTS TO PAY ALL OR ANY PORTION OF UNPAID EMPLOYEE CONTRIBUTIONS MAY PAY EMPLOYEE CONTRIBUTIONS IN INSTALLMENT PAYMENTS OVER A PERIOD NOT TO EXCEED SIXTY MONTHS OR OVER A PERIOD EQUAL TO THE AMOUNT OF SERVICE CREDIT THAT WOULD HAVE BEEN EARNED IF CONTRIBUTIONS HAD BEEN MADE, WHICHEVER PERIOD IS SHORTER.

(5) IF AN INDIVIDUAL FOR WHOM CONTRIBUTIONS ARE BEING CLAIMED IS NOT A MEMBER OF THE ASSOCIATION AT THE TIME THE ASSOCIATION FIRST NOTIFIES AN EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS, AN ACTION TO COLLECT UNPAID CONTRIBUTIONS IS SUBJECT TO THE LIMITATIONS PROVIDED IN SECTION 13-80-103.5 (1) (d), C.R.S. IF AN INDIVIDUAL FOR WHOM CONTRIBUTIONS ARE BEING CLAIMED IS A MEMBER OR INACTIVE MEMBER AT THE TIME THE ASSOCIATION FIRST NOTIFIES AN EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS, AN ACTION TO COLLECT UNPAID CONTRIBUTIONS IS NOT SUBJECT TO ANY LIMITATION UNDER ARTICLE 80 OF TITLE 13, C.R.S.

SECTION 20. 13-80-103.5 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

13-80-103.5. General limitation of actions - six years. (1) The following actions shall be commenced within six years after the cause of action accrues, and not thereafter:

(d) ALL ACTIONS BY THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION TO COLLECT UNPAID CONTRIBUTIONS FROM EMPLOYERS FOR PERSONS WHO ARE NOT MEMBERS OR INACTIVE MEMBERS AT THE TIME THE ASSOCIATION FIRST NOTIFIES AN EMPLOYER OF ITS CLAIM FOR UNPAID CONTRIBUTIONS. THIS PARAGRAPH (d) SHALL APPLY TO CAUSES OF ACTION AS PROVIDED IN SECTION 24-51-402 (2), C.R.S.

SECTION 21. 13-80-108, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-80-108. When a cause of action accrues. (13) A CAUSE OF ACTION BY THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION AGAINST AN EMPLOYER FOR UNPAID CONTRIBUTIONS SHALL ACCRUE ON THE DATE THE NONPAYMENT OF CONTRIBUTIONS IS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED BY THE EXERCISE OF REASONABLE DILIGENCE. THIS SUBSECTION (13) SHALL APPLY TO CAUSES OF ACTION AS PROVIDED IN SECTION 24-51-402 (2), C.R.S.

SECTION 22. Effective date - applicability. (1) Sections 1 through 14 of this act shall take effect July 1, 1995, and shall apply to retirement benefits which become effective, and refunds which are paid, on or after said date.

(2) The remainder of this act shall take effect upon passage.

SECTION 23. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 1995