

CHAPTER 104

GOVERNMENT - LOCAL

SENATE BILL 05-010

BY SENATOR(S) Anderson, Takis, Taylor, Tupa, Entz, Kester, and Williams;
also REPRESENTATIVE(S) Coleman, Vigil, and Berens.

AN ACT

CONCERNING THE ADMINISTRATION OF RETIREMENT PLANS CREATED BY LOCAL GOVERNMENTS.

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

SECTION 1. 24-54-101 (1), (2), (3), (5), and (6), Colorado Revised Statutes, are amended, and the said 24-54-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-54-101. Authorization to establish and maintain retirement plan or system - definitions. (1) Any county, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION by itself or in conjunction with any other county, ~~or any municipality, by itself or in conjunction with any other municipality~~ OR POLITICAL SUBDIVISION is hereby authorized to establish and maintain a general plan or system of retirement benefits for its elected or appointed officers and its employees, or any class thereof, subject to appropriations being available therefor. ~~Any municipality or group of municipalities may, in lieu of establishing such a plan of retirement benefits, join in such a plan established and maintained pursuant to the provisions of this article by the county or counties in which the municipality or municipalities are located.~~

(2) ~~Any district organized or existing pursuant to part 2 of article 20 of title 30, part 5 or 6 of article 25 of title 31, or title 32, except article 8, C.R.S., referred to in this article as a "district", and not otherwise having a pension fund may, by itself or in conjunction with any other district organized pursuant to said part 2 of article 20 of title 30, part 5 or 6 of article 25 of title 31, or title 32, except article 8, C.R.S., or in conjunction with any county covered by this article, authorize, establish, and maintain a general plan or system of retirement benefits for its employees, or any class thereof, subject to appropriations available therefor.~~

(2.7) FOR PURPOSES OF THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(a) "COUNTY" MEANS A COUNTY OR A CITY AND COUNTY, INCLUDING ANY ENTITY FORMED BY SUCH COUNTY OR CITY AND COUNTY.

(b) "MUNICIPALITY" MEANS A CITY OR A TOWN AND ANY ENTITY FORMED BY SUCH CITY OR TOWN.

(c) "POLITICAL SUBDIVISION" MEANS ANY DISTRICT, SPECIAL DISTRICT, IMPROVEMENT DISTRICT, AUTHORITY, COUNCIL OF GOVERNMENTS, GOVERNMENTAL ENTITY FORMED BY AN INTERGOVERNMENTAL AGREEMENT, OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW.

(3) ~~Any such plan shall not apply to or include firefighters or policemen. Retirement plans or benefits for firefighters or policemen shall be~~ MUNICIPALITY, SPECIAL DISTRICT, FIRE AUTHORITY, OR COUNTY IMPROVEMENT DISTRICT OFFERING FIRE PROTECTION SERVICES THAT IS NOT REQUIRED TO AFFILIATE WITH THE POLICE OFFICERS' AND FIREFIGHTERS' PENSION PLANS established ~~and maintained~~ pursuant to the provisions of title 31, C.R.S., MAY AFFILIATE WITH A RETIREMENT PLAN OR SYSTEM ESTABLISHED PURSUANT TO THIS ARTICLE.

(5) Any county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity not participating in the social security system pursuant to the provisions of article 53 of this title shall also have the authority to establish a RETIREMENT plan OR SYSTEM extending benefits to its employees in lieu of those benefits provided by the social security act, as defined in section 24-53-101.

(6) The board of any retirement plan OR SYSTEM established in accordance with ~~subsections (1), (2), and (2.5)~~ of this section may allow its employees to participate as members of such plan OR SYSTEM.

(7) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ANY ENTITY THAT IS NOT A COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION AS DEFINED IN THIS SECTION BUT THAT WAS INCLUDED IN A RETIREMENT PLAN OR SYSTEM ESTABLISHED PURSUANT TO THIS ARTICLE BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (7) SHALL BE ALLOWED TO REMAIN IN THE PLAN OR SYSTEM.

SECTION 2. 24-54-103, Colorado Revised Statutes, is amended to read:

24-54-103. Prior service benefits. Employees of a county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity that adopts a retirement plan or system may receive prior service benefits not to exceed five years to be funded entirely by the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity; but prior service benefits in excess of five years may be allowed if funded entirely by the employee.

SECTION 3. 24-54-104, Colorado Revised Statutes, is amended to read:

24-54-104. Funds for plan or system - additional contribution. (1) Except as otherwise provided in this section, any plan or system adopted pursuant to the provisions of this article shall require participants to contribute a percentage of their

salaries toward the cost thereof, such rate of contribution to be not less than that made by the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity, and the employee contributions pursuant to any such plan shall be not more than eight percent of ~~said~~ THE employee's basic salary or wage. Participation in the public employees' retirement association shall be as provided by article 51 of this title.

(2) At such time as the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity and the employee each contributes eight percent of the basic salary or wage of the employee, the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity may elect to make an additional contribution out of federal revenue-sharing funds not otherwise appropriated of not more than two percent of said basic salary or wage, but such additional contribution shall be contingent upon an additional contribution by the employee of an equal amount.

(3) When a plan OR SYSTEM in lieu of social security benefits is established pursuant to the provisions of section 24-54-101 (5), such plan may require additional contributions from the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity and its employees, and said contributions shall be set at a rate not to exceed the total contribution required by the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity and its employees pursuant to the "Federal Insurance Contributions Act", as defined in section 24-53-101.

(4) Any plan or system adopted pursuant to this article may, pursuant to the provisions of section 414 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, provide that the county, municipality, ~~district~~ POLITICAL SUBDIVISION, or other participating entity may elect to pick up the contributions of employee or elected official participants required in this section.

SECTION 4. 24-54-105 (2), Colorado Revised Statutes, is amended to read:

24-54-105. Insurer authorized to do business in state - county, municipal, or political subdivision charge. (2) The consideration paid by any county, municipality, or ~~district~~ POLITICAL SUBDIVISION pursuant to any group annuity contract shall be a proper charge against the county, municipality, or ~~district~~ POLITICAL SUBDIVISION participating in any such contract.

SECTION 5. 24-54-106 (1), Colorado Revised Statutes, is amended to read:

24-54-106. Association shall be formed - withdrawal. (1) Any county, or group of counties, any municipality or group of municipalities, any ~~district~~ POLITICAL SUBDIVISION or group of ~~districts~~ POLITICAL SUBDIVISIONS, or any other participating entity or group of participating entities adopting a retirement plan or system pursuant to the provisions of this article shall form and maintain an association for the purchase, establishment, or procurement of a group annuity retirement plan or a noninsured trust retirement plan. Any such association so formed shall be an instrumentality of the members thereof. The cost and expenses incident to the formation and maintenance of such an association and the consideration paid by any county, any municipality, any ~~district~~ POLITICAL SUBDIVISION, or any other participating entity as an employer pursuant to any such plan are proper charges

against the county, the municipality, the ~~district~~ POLITICAL SUBDIVISION, or any other participating entity comprising the association.

SECTION 6. 24-54-107 (3), Colorado Revised Statutes, is amended, and the said 24-54-107 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-54-107. Boards of retirement. (3) The management of the ~~district~~ POLITICAL SUBDIVISION retirement PLAN OR system shall be vested in a ~~district~~ POLITICAL SUBDIVISION board of retirement consisting of five members, one of whom shall be the ~~district~~ treasurer of the ~~district~~ POLITICAL SUBDIVISION in the PLAN OR system or from the ~~district~~ POLITICAL SUBDIVISION with the largest population if two or more ~~districts~~ POLITICAL SUBDIVISIONS are involved, two of whom shall be nonelected ~~district~~ employees OF THE POLITICAL SUBDIVISION elected by said employees within thirty days after the retirement PLAN OR system becomes operative, and two of whom shall be registered electors of the ~~district~~ POLITICAL SUBDIVISION not connected with ~~district~~ government OF THE POLITICAL SUBDIVISION and chosen by the board of directors. The board of retirement shall by its own rules establish staggered four-year terms for its board members, and their successors shall be selected as set forth in this subsection (3).

(5) ON AND AFTER JULY 1, 2006, THE MANAGEMENT OF A RETIREMENT PLAN OR SYSTEM COMPRISED OF ONE OR MORE COUNTIES, ONE OR MORE MUNICIPALITIES, AND ONE OR MORE POLITICAL SUBDIVISIONS SHALL BE VESTED IN A JOINT BOARD OF RETIREMENT CONSISTING OF SEVEN MEMBERS. THE JOINT BOARD SHALL BY ITS OWN RULES ESTABLISH STAGGERED FOUR-YEAR TERMS FOR ITS BOARD MEMBERS AND PROCEDURES FOR THE ELECTION OF FUTURE BOARD MEMBERS. SUCCESSORS OF THE JOINT BOARD SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (5). THE JOINT BOARD SHALL BE COMPRISED OF THE FOLLOWING MEMBERS:

(a) ONE MEMBER SHALL BE THE COUNTY TREASURER OF THE COUNTY IN THE RETIREMENT PLAN OR SYSTEM WITH THE LARGEST POPULATION.

(b) TWO MEMBERS SHALL BE NONELECTED EMPLOYEES OF A COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION IN THE RETIREMENT PLAN OR SYSTEM ELECTED BY THE PARTICIPATING EMPLOYEES OF THE PLAN OR SYSTEM. OF THE TWO MEMBERS OF THE JOINT BOARD ELECTED PURSUANT TO THIS PARAGRAPH (b), ONE SHALL BE AN EMPLOYEE OF A COUNTY PARTICIPATING IN THE PLAN OR SYSTEM AND ONE SHALL BE AN EMPLOYEE OF A MUNICIPALITY OR POLITICAL SUBDIVISION PARTICIPATING IN THE PLAN OR SYSTEM.

(c) TWO MEMBERS SHALL BE REPRESENTATIVES OF A MUNICIPAL OR POLITICAL SUBDIVISION EMPLOYER IN THE RETIREMENT PLAN OR SYSTEM AND SHALL BE ELECTED BY THE MUNICIPAL AND POLITICAL SUBDIVISION EMPLOYERS PARTICIPATING IN THE RETIREMENT PLAN OR SYSTEM.

(d) (I) TWO MEMBERS SHALL BE REGISTERED ELECTORS OF THE COUNTY IN THE RETIREMENT PLAN OR SYSTEM WHO ARE ELECTED BY THE BOARD OF COUNTY COMMISSIONERS. ONE OF THE REGISTERED ELECTORS OF THE COUNTY SHALL BE FROM THE FINANCIAL OR BUSINESS COMMUNITY WITH EXPERIENCE IN INVESTMENTS, AND ONE SHALL BE FROM THE FINANCIAL OR BUSINESS COMMUNITY WITH EXPERIENCE IN

PERSONNEL OR CORPORATE ADMINISTRATION. THE MEMBERS SHALL BE ELECTED BY THE BOARDS OF COUNTY COMMISSIONERS OF ALL OF THE COUNTIES THAT PARTICIPATE IN THE PLAN OR SYSTEM.

(II) EACH OF THE TWO REGISTERED ELECTORS FROM THE FINANCIAL OR BUSINESS COMMUNITY WHO ARE FIRST ELECTED TO THE BOARD FOR THE TERM COMMENCING ON JULY 1, 2006, SHALL SERVE FOR A TWO-YEAR TERM, NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBSECTION (5). THE TWO REGISTERED ELECTORS FROM THE FINANCIAL OR BUSINESS COMMUNITY WHO ARE ELECTED TO THE BOARD THEREAFTER SHALL SERVE FOUR-YEAR TERMS.

(6) THE MANAGEMENT OF A RETIREMENT PLAN OR SYSTEM COMPRISED OF ANY COUNTY AND MUNICIPALITY, ANY COUNTY AND POLITICAL SUBDIVISION, OR ANY MUNICIPALITY AND POLITICAL SUBDIVISION SHALL BE VESTED IN A JOINT BOARD OF RETIREMENT CONSISTING OF SEVEN MEMBERS; EXCEPT THAT THIS SUBSECTION (6) SHALL NOT APPLY TO ANY RETIREMENT PLAN OR SYSTEM THAT IS DESCRIBED IN SECTION 24-54-101 (2.5) AND THAT IS MANAGED PURSUANT TO SUBSECTION (4) OF THIS SECTION. THE JOINT BOARD SHALL BY ITS OWN RULES ESTABLISH STAGGERED FOUR-YEAR TERMS FOR ITS BOARD MEMBERS AND PROCEDURES FOR THE ELECTION OF FUTURE BOARD MEMBERS. SUCCESSORS OF THE JOINT BOARD SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (6). THE JOINT BOARD SHALL BE COMPRISED OF THE FOLLOWING MEMBERS:

(a) ONE MEMBER SHALL BE THE TREASURER OF THE COUNTY IN THE RETIREMENT PLAN OR SYSTEM WITH THE LARGEST POPULATION IF THERE IS A COUNTY IN THE PLAN OR SYSTEM OR THE TREASURER OF THE MUNICIPALITY IN THE RETIREMENT PLAN OR SYSTEM WITH THE LARGEST POPULATION IF THERE IS NOT A COUNTY IN THE PLAN OR SYSTEM.

(b) TWO MEMBERS SHALL BE NONELECTED EMPLOYEES OF A COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION IN THE RETIREMENT PLAN OR SYSTEM ELECTED BY EMPLOYEES PARTICIPATING IN THE PLAN OR SYSTEM. OF THE TWO MEMBERS OF THE JOINT BOARD ELECTED PURSUANT TO THIS PARAGRAPH (b), ONE MEMBER SHALL BE AN EMPLOYEE OF A COUNTY AND ONE MEMBER SHALL BE AN EMPLOYEE OF A MUNICIPALITY IF THE PLAN IS COMPRISED OF A COUNTY AND MUNICIPALITY, ONE MEMBER SHALL BE AN EMPLOYEE OF A COUNTY AND ONE MEMBER SHALL BE AN EMPLOYEE OF A POLITICAL SUBDIVISION IF THE PLAN IS COMPRISED OF A COUNTY AND POLITICAL SUBDIVISION, OR ONE MEMBER SHALL BE AN EMPLOYEE OF A MUNICIPALITY AND ONE MEMBER SHALL BE AN EMPLOYEE OF A POLITICAL SUBDIVISION IF THE PLAN IS COMPRISED OF A MUNICIPALITY AND POLITICAL SUBDIVISION.

(c) TWO MEMBERS SHALL BE REPRESENTATIVES OF A MUNICIPAL OR POLITICAL SUBDIVISION EMPLOYER IN THE RETIREMENT PLAN OR SYSTEM AND SHALL BE ELECTED BY THE MUNICIPAL AND POLITICAL SUBDIVISION EMPLOYERS PARTICIPATING IN THE RETIREMENT PLAN OR SYSTEM.

(d) TWO MEMBERS SHALL BE REGISTERED ELECTORS OF A COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION IN THE RETIREMENT PLAN OR SYSTEM WHO ARE ELECTED BY ALL OF THE GOVERNING BODIES OF THE COUNTIES, MUNICIPALITIES, OR POLITICAL SUBDIVISIONS THAT PARTICIPATE IN THE PLAN OR SYSTEM. ONE OF THE REGISTERED

ELECTORS SHALL BE FROM THE FINANCIAL OR BUSINESS COMMUNITY WITH EXPERIENCE IN INVESTMENTS, AND ONE SHALL BE FROM THE FINANCIAL OR BUSINESS COMMUNITY WITH EXPERIENCE IN PERSONNEL OR CORPORATE ADMINISTRATION.

SECTION 7. 24-54-108 (4), Colorado Revised Statutes, is amended to read:

24-54-108. Control and management of plan or system. (4) The treasurer of the most populous county, municipality, or ~~district~~ POLITICAL SUBDIVISION shall be ex officio the treasurer of any association formed pursuant to the provisions of section 24-54-106 and establishing a noninsured trustee retirement plan OR SYSTEM. If any municipality or ~~district~~ POLITICAL SUBDIVISION alone adopts such a plan OR SYSTEM, the treasurer thereof shall serve as the treasurer of such plan OR SYSTEM. No fee therefor shall be charged by the treasurer pursuant to the provisions of section 30-1-102, C.R.S., or any other provision of law.

SECTION 8. 24-54-109 (3), Colorado Revised Statutes, is amended to read:

24-54-109. County, municipal, or political subdivision retirement fund - tax. (3) Any ~~district~~ POLITICAL SUBDIVISION adopting a retirement plan OR SYSTEM as authorized by this article shall establish a ~~district~~ POLITICAL SUBDIVISION employees' retirement fund, which fund is hereby authorized. The board of directors may levy a retirement fund tax, in addition to any other tax authorized by law, on all of the taxable property within ~~said district~~ THE POLITICAL SUBDIVISION, the proceeds of which shall be deposited to the credit of said fund for appropriation to pay the costs and expenses of and the employer contributions pursuant to said retirement plan OR SYSTEM. Such tax, when added to other taxes levied by the ~~district~~ POLITICAL SUBDIVISION, shall not exceed any limitation on taxation established by law.

SECTION 9. 24-54-114, Colorado Revised Statutes, is amended to read:

24-54-114. Audit. EVERY THREE YEARS, the state auditor ~~shall~~ MAY conduct a ~~financial~~ OR CAUSE TO BE CONDUCTED AN audit of any retirement plan or system of retirement benefits established and maintained by any county in conjunction with any other county pursuant to the provisions of this article. ~~Such~~ THE audit shall review the financial transactions and accounts of the plan or system, investigate the qualified status of the plan or system with the internal revenue service, and determine whether the plan or system otherwise complies with the provisions of this article. The results of the audit shall be reported to the legislative audit committee created in section 2-3-101, C.R.S., the speaker of the house of representatives, the president of the senate, and the boards of county commissioners of each county that participates in the plan or system that is the subject of the audit. The audit shall not replace the annual audit prescribed in section 29-1-603, C.R.S.

SECTION 10. Article 54 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-54-107.5. Boards of retirement - requirements - plans or systems comprised of one or more counties, one or more municipalities, and one or more political subdivisions. (1) A PERSON WHO HAS BEEN ADJUDICATED OF VIOLATING ANY PROVISION OF THIS ARTICLE OR WHO HAS BEEN CONVICTED OF A FELONY OR ANY CRIME INVOLVING THE MISAPPROPRIATION OF FUNDS SHALL NOT BE

ELECTED OR CONTINUE TO SERVE AS A MEMBER OF A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5).

(2) MEMBERS OF A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) SHALL BE ENTITLED TO ONE HUNDRED DOLLARS COMPENSATION FOR EACH MEETING ATTENDED AND MAY BE REIMBURSED BY THE RETIREMENT PLAN OR SYSTEM FOR ANY ACTUAL AND NECESSARY EXPENSES INCURRED IN THE CONDUCT OF THEIR OFFICIAL DUTIES ON THE JOINT BOARD.

(3) A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) SHALL OBTAIN INSURANCE OR SELF-INSURE AGAINST LIABILITY THAT ARISES OUT OF, OR IN CONNECTION WITH, THE PERFORMANCE OF DUTIES BY ANY JOINT BOARD MEMBER OR EMPLOYEE OF THE RETIREMENT PLAN OR SYSTEM.

(4) A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) SHALL SET THE TIME AND PLACE OF MEETINGS, CONDUCT THE MEETINGS IN ACCORDANCE WITH THE PROVISIONS OF PART 4 OF ARTICLE 6 OF THIS TITLE, AND MAINTAIN A RECORD OF ITS PROCEEDINGS.

(5) A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) MAY HOLD DISCUSSIONS IN EXECUTIVE SESSION PURSUANT TO SECTION 24-6-402 (4), WHICH SHALL BE CLOSED TO THE PUBLIC.

(6) A VOTE OF A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) SHALL OCCUR ONLY WHEN A QUORUM IS PRESENT.

(7) A MEMBER OF A JOINT BOARD OF RETIREMENT CREATED PURSUANT TO SECTION 24-54-107 (5) SHALL NOT ENGAGE IN ANY ACTIVITY THAT MIGHT RESULT IN A CONFLICT OF INTEREST WITH THE MEMBER'S FUNCTIONS AS A FIDUCIARY FOR THE RETIREMENT PLAN OR SYSTEM.

24-54-115. Confidentiality. ALL INFORMATION CONTAINED IN RECORDS OF MEMBERS OF A RETIREMENT PLAN OR SYSTEM OF RETIREMENT BENEFITS ESTABLISHED AND MAINTAINED PURSUANT TO THE PROVISIONS OF THIS ARTICLE, FORMER MEMBERS, INACTIVE MEMBERS, OR BENEFIT RECIPIENTS AND THEIR DEPENDENTS SHALL BE KEPT CONFIDENTIAL BY A RETIREMENT PLAN OR SYSTEM ESTABLISHED PURSUANT TO THIS ARTICLE.

SECTION 11. 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: April 22, 2005