

## CHAPTER 33

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**GOVERNMENT - MUNICIPAL**

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**HOUSE BILL 06-1068**

BY REPRESENTATIVE(S) Lindstrom, Berens, Cerbo, McCluskey, McGihon, Ragsdale, Riesberg, Vigil, Butcher, Coleman, Gallegos, Hodge, McFadyen, Merrifield, and Todd;  
also SENATOR(S) Grossman, Entz, Taylor, and Tochtrop.

**AN ACT**

**CONCERNING THE CREATION OF A SOCIAL SECURITY SUPPLEMENTAL PLAN BY THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION THAT WILL ALLOW EMPLOYERS THAT COVER EMPLOYEES UNDER THE FEDERAL "SOCIAL SECURITY ACT" TO PROVIDE A DEFINED BENEFIT RETIREMENT PLAN TO EMPLOYEES.**

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

**SECTION 1.** 31-31-405 (1), Colorado Revised Statutes, is amended to read:

**31-31-405. Separate retirement account - creation - allocation.** (1) For accounting purposes only, the stabilization reserve account created by section 31-31-301 (3) (a) (II) shall consist of individual separate retirement accounts established in the name of each member covered by the statewide defined benefit plan established by this part 4, except such members as are covered on a supplemental basis pursuant to section 31-31-704. MEMBERS COVERED ON A SUPPLEMENTAL BASIS PURSUANT TO SECTION 31-31-704.5 SHALL BE ELIGIBLE FOR INDIVIDUAL SEPARATE RETIREMENT ACCOUNTS.

**SECTION 2.** 31-31-704 (2), Colorado Revised Statutes, is amended, and the said 31-31-704 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**31-31-704. Optional affiliation by social security employers.** (2) The board shall establish rules as to the procedure for affiliation pursuant to this section. An employer eligible for such affiliation may request of the board, prior to filing a resolution of affiliation, an estimate of the contribution rate necessary to comply with the contribution requirements established by this article. ELECTION OF COVERAGE UNDER THE DEATH AND DISABILITY PLAN SHALL BE IRREVOCABLE.

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

(9) THE BOARD MAY TERMINATE THE AFFILIATION OF AN EMPLOYER WITH THE STATEWIDE DEFINED BENEFIT PLAN PURSUANT TO THIS SECTION AND REQUIRE THE AFFILIATED EMPLOYER TO PARTICIPATE IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN ESTABLISHED PURSUANT SECTION 31-31-704.6. THE BOARD SHALL PROVIDE WRITTEN NOTICE OF THE CHANGE IN AFFILIATION TO THE EMPLOYER AND TO MEMBERS AT LEAST ONE HUNDRED EIGHTY DAYS PRIOR TO THE CHANGE IN AFFILIATION.

(10) UPON THE RECEIPT OF WRITTEN NOTICE OF A CHANGE IN AFFILIATION REQUIRED PURSUANT TO SUBSECTION (9) OF THIS SECTION, AND PRIOR TO THE CHANGE IN AFFILIATION, AN EMPLOYER MAY ELECT NOT TO PARTICIPATE IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN ESTABLISHED PURSUANT TO SECTION 31-31-704.6. AN EMPLOYER'S ELECTION NOT TO PARTICIPATE IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL END THE EMPLOYER'S AFFILIATION WITH THE STATEWIDE DEFINED BENEFIT PLAN UPON THE DATE OF TERMINATION ESTABLISHED BY THE BOARD. SUCH AN ELECTION SHALL NOT AFFECT THE EMPLOYER'S AFFILIATION WITH THE STATEWIDE DEATH AND DISABILITY PLAN.

**SECTION 3.** Part 7 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**31-31-704.5. Entry into the social security supplemental plan.**

(1)(a) NOTWITHSTANDING THE EXEMPTION PROVIDED IN SECTION 31-31-401 (1)(a), ANY EMPLOYER THAT COVERS MEMBERS UNDER THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, OR ANY COUNTY THAT COVERS SALARIED EMPLOYEES UNDER THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, WHOSE DUTIES ARE DIRECTLY INVOLVED WITH THE PROVISION OF LAW ENFORCEMENT OR FIRE PROTECTION AS CERTIFIED BY THE COUNTY MAY ELECT COVERAGE UNDER THE SOCIAL SECURITY SUPPLEMENTAL PLAN ESTABLISHED PURSUANT TO SECTION 31-31-704.6 BY FILING A RESOLUTION OF AFFILIATION WITH THE BOARD PURSUANT TO SUBSECTION (2) OF THIS SECTION. ELECTION OF COVERAGE UNDER THE PLAN SHALL BE IRREVOCABLE.

(b) A COUNTY ELECTING TO AFFILIATE WITH THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL MAKE SUCH ELECTION THROUGH THE COUNTY'S GOVERNING BOARD. FOR PURPOSES OF ADMINISTERING TO COUNTIES AFFILIATED PURSUANT TO THIS SECTION, ANY COUNTY ELECTING TO AFFILIATE SHALL BE INCLUDED IN THE DEFINITION OF "EMPLOYER", AS DEFINED IN SECTION 31-31-102 (3), AND ANY COVERED EMPLOYEE OF SUCH COUNTY SHALL BE INCLUDED IN THE DEFINITION OF "MEMBER", AS DEFINED IN SECTION 31-31-102 (4).

(2) THE EMPLOYER'S RESOLUTION APPLYING FOR COVERAGE UNDER THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL FIRST BE ADOPTED BY THE GOVERNING BODY OF THE EMPLOYER AND SHALL STATE THE EMPLOYER'S INTENT TO COVER ITS MEMBERS UNDER THE PLAN.

(3) ANY APPLICATION FOR COVERAGE UNDER THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL BE APPROVED BY AT LEAST SIXTY-FIVE PERCENT OF ALL ACTIVE MEMBERS EMPLOYED BY THE EMPLOYER AT THE TIME OF THE APPLICATION.

(4) THE BOARD SHALL PROMULGATE RULES RELATING TO STANDARDS FOR

DISCLOSURE OF ALL RAMIFICATIONS AND PROCEDURES FOR OBTAINING MEMBER APPROVAL PURSUANT TO SUBSECTION (3) OF THIS SECTION. THE BOARD SHALL ALSO PROMULGATE RULES RELATING TO STANDARDS FOR GRANTING AN EMPLOYER'S APPLICATION FOR PARTICIPATION IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN AND FOR THE SUBMISSION OF INFORMATION TO THE BOARD BY THE EMPLOYER. THE RULES SHALL CONTAIN A PROVISION SPECIFYING THAT AN EMPLOYER THAT OPTS TO PARTICIPATE IN THE PLAN SHALL NOT BE PERMITTED TO OPT OUT OF THE PLAN AT ANY LATER DATE.

(5) AN APPLICATION FOR COVERAGE UNDER THE SOCIAL SECURITY SUPPLEMENTAL PLAN FILED BY AN EMPLOYER SHALL INCLUDE THE EMPLOYER'S CERTIFICATION TO THE BOARD:

(a) THAT ALL ACTIVE FIRE AND LAW ENFORCEMENT EMPLOYEES AS CERTIFIED BY THE EMPLOYER WILL BECOME PARTICIPANTS IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN AND THE ELECTION TO PARTICIPATE IN THE PLAN IS IRREVOCABLE; AND

(b) THAT THE EMPLOYER AGREES TO PARTICIPATE IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN AND TO BE BOUND BY THE TERMS OF THE PLAN AND THE DECISIONS AND ACTIONS OF THE BOARD WITH RESPECT TO THE PLAN.

(6) AN EMPLOYER THAT PARTICIPATES IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN ESTABLISHED PURSUANT TO SECTION 31-31-704.6, SHALL NOT BE PROHIBITED FROM PARTICIPATING IN OTHER GOVERNMENTAL PENSION OR BENEFIT PLANS TO THE EXTENT ALLOWED UNDER THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

**31-31-704.6. Social security supplemental plan - creation - management.**

(1) THE BOARD IS AUTHORIZED TO DEVELOP, MAINTAIN, AND AMEND A SOCIAL SECURITY SUPPLEMENTAL PLAN DOCUMENT, AS A COMPONENT OF THE DEFINED BENEFIT SYSTEM, THAT OFFERS A DEFINED BENEFIT AND THAT IS INTENDED TO COMPLY WITH THE QUALIFICATION REQUIREMENTS SPECIFIED IN SECTION 401 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT ARE APPLICABLE TO GOVERNMENTAL PLANS. THE PLAN SHALL COVER THE MEMBERS OF THOSE EMPLOYERS THAT HAVE ELECTED COVERAGE UNDER THE PLAN PURSUANT TO SECTION 31-31-704.5.

(2)(a) CONTRIBUTIONS AND EARNINGS OF THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL BE HELD IN TRUST AS PART OF THE DEFINED BENEFIT SYSTEM TRUST FUND.

(b) THE SOCIAL SECURITY SUPPLEMENTAL PLAN DOCUMENT CREATED BY THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL GOVERN THE ACCRUAL OF SERVICE CREDIT, VESTING, THE BENEFITS TO BE OFFERED BASED ON AGE AND SERVICE, THE ESTABLISHMENT AND PAYMENT OF CONTRIBUTIONS, THE ALLOCATION OF CONTRIBUTIONS TOWARDS FUNDING THE DEFINED BENEFIT, AMENDMENT OF THE PLAN, AND SUCH OTHER MATTERS AS MAY BE NECESSARY TO THE BOARD'S ADMINISTRATION AND MANAGEMENT OF THE PLAN.

(3) UPON THE EFFECTIVE DATE OF COVERAGE UNDER THE SOCIAL SECURITY

SUPPLEMENTAL PLAN, EACH MEMBER COVERED BY THE PLAN SHALL PAY FOUR PERCENT OF HIS OR HER SALARY PAID INTO THE FUND. THE PAYMENT SHALL BE MADE BY THE EMPLOYER BY DEDUCTION FROM THE SALARY PAID TO THE MEMBER. FOR EACH MEMBER, THE EMPLOYER SHALL PAY FOUR PERCENT OF THE SALARY PAID TO THE MEMBER INTO THE DEFINED BENEFIT PLAN TRUST FUND. PAYMENTS ARE DUE NO LATER THAN TEN DAYS FOLLOWING THE DATE OF PAYMENT OF SALARY TO THE MEMBER, UNLESS THE SALARY IS PAID MORE THAN ONCE MONTHLY, IN WHICH EVENT THE PAYMENTS ARE DUE NO LATER THAN THE TENTH DAY OF THE MONTH FOLLOWING THE MONTH THE SALARY IS PAID TO THE MEMBER. AN INTEREST CHARGE OF ONE-HALF OF ONE PERCENT PER MONTH SHALL BE LEVIED AGAINST ANY UNPAID AMOUNT AND ADDED TO THE EMPLOYER PAYMENTS REQUIRED PURSUANT TO THIS SECTION.

(4) EACH EMPLOYER SHALL PAY THE EMPLOYEE CONTRIBUTIONS REQUIRED FOR ALL SALARIES, AND THE CONTRIBUTIONS SO PAID SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS PURSUANT TO SECTION 414 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN DETERMINING TAX TREATMENT UNDER THE CODE. THE EMPLOYER SHALL PAY THE EMPLOYEE CONTRIBUTIONS DIRECTLY TO THE RETIREMENT ASSOCIATION, INSTEAD OF PAYING THE AMOUNTS TO EMPLOYEES, AND THE CONTRIBUTIONS SHALL BE PAID FROM THE SAME FUNDS THAT ARE USED IN PAYING SALARIES TO THE EMPLOYEES. THE CONTRIBUTIONS, ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, SHALL BE PAID BY THE EMPLOYER IN LIEU OF CONTRIBUTIONS BY EMPLOYEES. EMPLOYEES MAY NOT ELECT TO CHOOSE TO RECEIVE THE CONTRIBUTIONS DIRECTLY INSTEAD OF HAVING THEM PAID BY THE EMPLOYER TO THE PENSION PLAN. EMPLOYEE CONTRIBUTIONS SO PAID SHALL BE TREATED FOR ALL PURPOSES OF THIS ARTICLE, OTHER THAN FEDERAL TAX, IN THE SAME MANNER AS EMPLOYEE CONTRIBUTIONS MADE BEFORE THE DATE PAID. PAYMENT SHALL BE MADE BY ONE VOUCHER FOR THE AGGREGATE AMOUNT DEDUCTED AND SHALL BE MADE NO LATER THAN THE TENTH DAY AFTER THE END OF EACH PAY PERIOD.

(5) BENEFITS PAYABLE UNDER THE SOCIAL SECURITY SUPPLEMENTAL PLAN SHALL BE EQUIVALENT TO ONE HALF OF THE BENEFITS PAID UNDER THE STATEWIDE DEFINED BENEFIT PLAN.

**SECTION 4. 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: March 27, 2006