

CHAPTER 314

GOVERNMENT - STATE

HOUSE BILL 08-1403

BY REPRESENTATIVE(S) Romanoff, Marshall, Frangas, Casso, Ferrandino, Gallegos, Garza-Hicks, Judd, Kerr A., Labuda, Levy, May M., Merrifield, Middleton, Peniston, Solano, Soper, Witwer, Benefield, Carroll T., Madden, Massey, McFadyen, and Todd;
also SENATOR(S) Sandoval and Groff, Bacon, Gordon, Kester, Kopp, Penry, Spence, Veiga, and Williams.

AN ACT**CONCERNING THE MERGER OF A SCHOOL DISTRICT RETIREMENT SYSTEM WITH ANOTHER PUBLIC EMPLOYEE RETIREMENT SYSTEM.**

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

SECTION 1. 22-64-220 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

22-64-220. Merger. (1) As used in this section and section 22-64-221, unless the context otherwise requires:

(b.5) "PARTIES" MEANS THE CONTINUING SYSTEM, MERGING SYSTEM, AND THE SCHOOL DISTRICT.

SECTION 2. 22-64-220 (4) and (5), Colorado Revised Statutes, are amended, and the said 22-64-220 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

22-64-220. Merger. (4) (a) The effective date of the merger, unless terminated as herein provided, shall be ~~January 1, 2007~~ JANUARY 1, 2009, OR A LATER DATE AS AGREED TO BY THE PARTIES, at which time all assets, liabilities, and obligations of the merging system shall become the assets, liabilities, and obligations of the continuing system without any further act or document of transfer by the governing bodies of the merging system, continuing system, and school district. ~~However, if the continuing system, merging system, and school district do not execute the written agreement specified in subsection (5) of this section on or before October 1, 2005, then the continuing system, merging system, or school district may, on or~~

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

~~before October 15, 2005, terminate the merger by providing written notice of termination of the merger to the other parties. Any amounts due the continuing system upon the merger in addition to succession to the assets, liabilities, and obligations of the merging system as provided shall be determined in accordance with the provisions of paragraphs (j) and (k) of this subsection (4) and paid by the school district in the manner provided. On or before October 1, 2006~~ BEFORE THE EFFECTIVE DATE OF THE MERGER, the merging system, school district, or continuing system shall have the right to terminate the merger by giving written notice of termination to the other parties ~~for one or more of the following reasons:~~ IF A MATERIAL ADVERSE CHANGE, AS DEFINED BY THE PARTIES IN THE MERGER AGREEMENT SPECIFIED IN SUBSECTION (5) OF THIS SECTION, OCCURS TO THE POTENTIAL DETRIMENT OF SUCH PARTY. A MATERIAL ADVERSE CHANGE SHALL BE A CHANGE THAT IS MATERIALLY ADVERSE TO A PARTY AND NOT CAUSED BY A WILLFUL OR INTENTIONAL ACT OF A PARTY UNLESS SUCH ACT IS WARRANTED OR NECESSARY PURSUANT TO THE DUTIES OF SUCH PARTY IN ADMINISTERING ITS SYSTEM. A CHANGE IN ECONOMIC, BUDGET, MARKET, POLITICAL, LEGAL, STATUTORY, OR FISCAL CONDITION THAT AFFECTS OTHER SCHOOL DISTRICTS IN THE STATE OF COLORADO SHALL NOT BE CONSIDERED A MATERIAL ADVERSE CHANGE. A DISAGREEMENT REGARDING WHETHER A MATERIALLY ADVERSE CHANGE HAS OCCURRED SHALL BE RESOLVED THROUGH LITIGATION.

~~(f) The retirement assets of the merging system and moneys available to the school district for transfer to the continuing system upon merger are insufficient to fund all liabilities as described in paragraph (k) of this subsection (4);~~

~~(H) Any assets of the merging system are prevented from becoming the assets of the continuing system on the effective date of the merger;~~

~~(III) A material change has occurred in the plan provisions or earnings assumptions of the merging system or the continuing system after the date of the most recent actuarial valuation;~~

~~(IV) Litigation has been commenced against any of the parties wherein claims or damages are asserted that are uninsured, other than customary retentions or deductibles, or the subject matter of the litigation relates to the merger provided for herein;~~

~~(V) The continuing system is unsuccessful in obtaining a ruling from the federal internal revenue service regarding the transfer of assets from the merging system to the continuing system under the merger agreement or if the continuing system seeks a determination letter that pertains to the merger and the federal internal revenue service will not issue a favorable letter;~~

~~(VI) The school district has not approved the issuance of pension certificates of participation, and the school district and the continuing system have not mutually agreed upon another funding source, to fund the amounts due to the continuing system upon final reconciliation, as described in paragraph (j) of this subsection (4);~~

(a.4) THE PARTIES SHALL ADDRESS IN THE MERGER AGREEMENT SPECIFIED IN SUBSECTION (5) OF THIS SECTION THE EFFECT OF ANY LITIGATION INITIATED SUBSEQUENT TO THE SIGNING OF THE MERGER AGREEMENT.

~~(a.5) If, on or before December 13, 2006, the school district has not completed issuance of and received the proceeds from the pension certificates of participation in connection with the sale of lands, buildings, or lands and buildings as described in section 22-45-112 (3), in an amount sufficient to fund the amounts due to the continuing system upon final reconciliation, as described in paragraphs (j) and (k) of this subsection (4) as determined by the continuing system in accordance with the terms of the written agreement specified in subsection (5) of this section and the school district and the continuing system have not mutually agreed upon another funding source, then the continuing system may terminate the merger by providing written notice of the termination to the other parties on or before December 15, 2006.~~

(b) Upon the effective date of the merger, the employer, as defined in section 22-64-201, shall become an affiliated employer of the continuing system and shall be subject to the laws and other rules relating to affiliated employers in the continuing system. Upon merger, all employer and employee contributions of any participant in the merging system, AND SUCH CONTRIBUTIONS OF ANY EMPLOYEE OF THE EMPLOYER, AS DEFINED IN SECTION 22-64-201, HIRED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THE MERGER shall be governed by the statutes and rules of the continuing system.

(c) (I) The merger shall not result in a reduction of retirement benefits for any person who, as of the day preceding the effective date of the merger, is:

(A) A retiree or a beneficiary receiving a current benefit from the merging system, as such benefit existed on such preceding day;

(B) A member of the merging system who had applied for a disability retirement benefit on or before such preceding day and establishes eligibility for such benefit based on such application; or

(C) A person who, based on the death of a member of the merging system who died on or before such preceding day and who, upon death, fulfilled the requirements of the merging system permitting payment of survivor benefits to such member's survivors, was within the category of persons then eligible or who might become eligible for survivor benefits thereafter upon meeting the qualifications for such entitlement under the rules of the merging system.

(II) A person described in subparagraph (I) of this paragraph (c) shall, on and after the effective date of the merger, receive benefits from and administered by the continuing system. Such benefits shall be paid in accordance with the rules of the merging system as they existed on the day preceding the effective date of the merger, including, without limitation, any annual benefit adjustments. For administrative convenience, such annual benefit adjustments may be scheduled so that they will coincide with the dates on which benefit adjustments are effective under the rules of the continuing system. However, no annual benefit adjustment shall be ~~paid in 2007~~ PAID IN 2009 to retirees and beneficiaries of the merging system who received an adjustment in their retirement benefits effective on or before ~~December 31, 2006~~ DECEMBER 31, 2008, and in addition to the regular adjustment effective ~~January 1, 2006~~ JANUARY 1, 2008.

(d) ~~A retiree or a beneficiary of a retiree of the merging system receiving a benefit on the day before the effective date of the merger shall have the same eligibility for health insurance participation and premium subsidies as other retirees of the continuing system~~ THE PARTIES SHALL NEGOTIATE TERMS OF AN AGREEMENT REGARDING THE PROVISION OF HEALTH CARE COVERAGE TO RETIREES, BENEFICIARIES, AND MEMBERS OF THE MERGING SYSTEM. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE CONTINUING SYSTEM'S GOVERNING STATUTES, THE AGREEMENT SHALL NOT CAUSE OR REQUIRE THE CONTINUING SYSTEM TO PROVIDE HEALTH CARE PREMIUM SUBSIDIES IN EXCESS OF THE SUBSIDIES TO WHICH SUCH RETIREES, BENEFICIARIES, AND MEMBERS WERE ENTITLED WITH THE MERGING SYSTEM, INCLUDING THOSE SPECIFIED IN SECTION 24-51-1206 (4), C.R.S.

(e) A person who is not retired and is an active member of the merging system on the day before the effective date of the merger shall not have his or her entitlement to retirement benefits INVOLUNTARILY reduced from the level provided by the merging system. ~~The person shall have the right to elect to receive benefits at the time of retirement calculated either under the statutes and rules governing the merging system as they existed on the day before the effective date of the merger or the laws and rules governing the continuing system, as they may be amended, but not both. The accounts of inactive participants of the merging system at the time of the merger who are entitled to deferred benefits upon attainment of the required retirement age under the provisions of the merging system shall be maintained by the continuing system as separate accounts, and all rights and benefits associated therewith shall be governed by the provisions of the merging system in effect before the merger. Upon retirement, such persons shall be considered retirees of the continuing system and thereby eligible to receive the same retirement benefit increases, health insurance participation, and premium subsidies as other retirees of the continuing system~~ THE PARTIES SHALL ATTEMPT TO NEGOTIATE PROVISIONS IN THE MERGER AGREEMENT SPECIFIED IN SUBSECTION (5) OF THIS SECTION TO PROVIDE PORTABILITY ON A GOING-FORWARD BASIS FOR THE MEMBERS OF THE MERGING SYSTEM AND THE CONTINUING SYSTEM. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE CONTINUING SYSTEM'S GOVERNING STATUTES, THE NEGOTIATED PROVISIONS OF THE MERGER AGREEMENT REGARDING PORTABILITY SHALL GOVERN TO THE EXTENT SUCH PROVISIONS DO NOT INVOLUNTARILY REDUCE ENTITLEMENT TO RETIREMENT BENEFITS OF EITHER SYSTEM'S MEMBERS.

(f) The retirement benefits and any other benefits of those persons NOT PREVIOUSLY RETIRED AND hired or rehired by the employer, as defined in section 22-64-201 (10), on or after the effective date of the merger shall be governed exclusively by the statutes and rules of the continuing system as they exist or are amended. The benefits of such persons shall not be governed by any provisions of paragraphs (c), (d), (e), and (h) of this subsection (4).

(g) The boards of trustees of the merging and continuing systems and the board of education of the school district shall develop and implement a schedule for the merger that shall be sufficient to allow an orderly and responsible transition and implementation of the terms of the merger.

(h) A person who is a retiree of the merging system before the effective date of the merger shall not be subject to a benefit reduction due to postretirement employment with an affiliated employer of the continuing system existing before the

effective date of the merger as long as the retiree continues to be employed by that same employer. A person who is a retiree of the continuing system before the effective date of the merger shall not be subject to a benefit reduction due to postretirement employment with an employer as defined in section 22-64-201 (10) and existing before the effective date of the merger as long as the retiree continues to be employed by the same employer. A retiree so situated shall be entitled to a second and entirely separate retirement coverage segment under the laws and rules governing the continuing system OR THE MERGING SYSTEM.

(i) ~~An Actuarial valuation~~ VALUATIONS regarding the merger BASED ON GENERALLY ACCEPTED ACTUARIAL PRINCIPLES shall establish ~~an estimated cost of the merger, including assets, liabilities, other obligations, and administrative costs, as of December 31, 2004, and December 31, 2005. In determining the cost of the merger, the assets of the merging system shall be valued at their market values on the relevant valuation dates, and the liabilities, obligations, and administrative costs shall be actuarially determined based upon generally accepted actuarial principles~~ THE AMOUNT OF ASSETS THE MERGING SYSTEM MUST CONTRIBUTE TO THE CONTINUING SYSTEM ON THE EFFECTIVE DATE OF THE MERGER IN ORDER TO AVOID AND PREVENT A SUBSIDY BY OR BETWEEN THE MERGING SYSTEM AND THE CONTINUING SYSTEM OR THE SCHOOL DISTRICT AND THE CONTINUING SYSTEM AND TO EQUALIZE THE FUNDING STATUS OF THE MERGING SYSTEM AND THE CONTINUING SYSTEM. SUCH AMOUNT SHALL BE REFERRED TO IN THIS SECTION AS THE SINGLE UP-FRONT PAYMENT. THE ASSETS OF THE MERGING SYSTEM AND THE CONTINUING SYSTEM SHALL BE VALUED AS DEFINED IN THE MERGER AGREEMENT ON THE RELEVANT VALUATION DATES. THE ACTUARIAL METHODOLOGY APPLIED IN SUCH VALUATIONS SHALL BE DEVELOPED BY THE ACTUARY OF THE CONTINUING SYSTEM AND AGREED TO BY THE PARTIES AND THEN PERFORMED BY THE ACTUARY OF THE CONTINUING SYSTEM. TO THE EXTENT THE PARTIES ARE UNABLE TO AGREE BEFORE SIGNING THE AGREEMENT ON AN ACTUARIAL METHODOLOGY, THE PARTIES MAY SUBMIT THEIR DISPUTE TO THE DISPUTE RESOLUTION PANEL CREATED IN SUBSECTION (7) OF THIS SECTION, BUT THE DECISION OF THE PANEL SHALL NOT BE BINDING ON THE PARTIES. AN INITIAL VALUATION SHALL BE COMPLETED WITHIN SIXTY DAYS OF SIGNING THE MERGER AGREEMENT USING THE AUDITED FINANCIAL REPORTS OF THE RESPECTIVE SYSTEMS AS OF DECEMBER 31, 2007, WITH CONSIDERATION OF THE PROCEEDS TO THE MERGING SYSTEM OF ANY PENSION CERTIFICATES OF PARTICIPATION CONTRIBUTED TO THE MERGING SYSTEM AFTER DECEMBER 31, 2007, AND TAKING INTO FULL ACCOUNT HOW THE PROVISIONS OF THE AGREEMENT WILL AFFECT THE SYSTEMS ON A GOING-FORWARD BASIS. THE FINAL VALUATION OF THE SYSTEMS SHALL BE COMPLETED ON OR BEFORE AUGUST 1, 2009, OR SUCH OTHER DATE AS AGREED TO BY THE PARTIES IN THE AGREEMENT, USING THE AUDITED FINANCIAL REPORTS OF THE RESPECTIVE SYSTEMS AS OF DECEMBER 31, 2008, OR SUCH OTHER DATE AS AGREED TO BY THE PARTIES IN THE AGREEMENT, AND TAKING INTO FULL ACCOUNT HOW THE PROVISIONS OF THE AGREEMENT WILL AFFECT THE SYSTEMS ON A GOING-FORWARD BASIS. IN THE EVENT THAT THE SCHOOL DISTRICT OR THE CONTINUING SYSTEM DISAGREES WITH THE SINGLE UP-FRONT PAYMENT DETERMINED BY THE CONTINUING SYSTEM'S ACTUARY PURSUANT TO THE ACTUARIAL METHODOLOGY COMPLETED AFTER THE EFFECTIVE DATE OF THE MERGER, SUCH DISPUTE SHALL BE REFERRED TO THE DISPUTE RESOLUTION PANEL CREATED IN SUBSECTION (7) OF THIS SECTION, AND THE DECISION OF THE PANEL SHALL BE FINAL AND BINDING ON THE PARTIES.

~~(j) (I) A final actuarial valuation of the costs of the merger, based upon the actuarial valuation dated December 31, 2006, shall be received no later than June 1, 2007. Upon receipt of the final actuarial valuation, a final reconciliation of the costs and actuarial funding of the merger by the respective parties shall be determined. The SCHOOL DISTRICT SHALL HAVE THE AUTHORITY TO MEET ITS EMPLOYER CONTRIBUTION OBLIGATIONS AND THE OBLIGATIONS TO FUND THE AMORTIZATION EQUALIZATION DISBURSEMENT AND THE SUPPLEMENTAL AMORTIZATION EQUALIZATION DISBURSEMENT OF THE CONTINUING SYSTEM, OR SOME PORTION THEREOF, BY CREDITING A PORTION OF THE ASSET SURPLUS ACCOUNT REFERRED TO IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (j), HELD BY THE CONTINUING SYSTEM AS A RESULT OF THE ASSET TRANSFER UNTIL SUCH TIME AS ALL FUNDS IN THE ASSET SURPLUS ACCOUNT HAVE BEEN FULLY UTILIZED; EXCEPT THAT IN NO EVENT SHALL THE ASSET SURPLUS ACCOUNT BE APPLIED TO THE AMOUNT OF EMPLOYER CONTRIBUTIONS ATTRIBUTABLE TO THE HEALTH CARE TRUST FUND AS SPECIFIED IN THE CONTINUING SYSTEM'S GOVERNING STATUTES.~~

~~(II) In the event that amounts are due the continuing system in addition to the assets of the merging system in order to meet the requirements of paragraph (k) of this subsection (4), such amounts shall be paid by the school district no later than sixty days after receipt of the final actuarial valuation or at the end of the school district's then-current fiscal year, whichever is earlier. The ASSET SURPLUS ACCOUNT SHALL BE CREATED UPON TRANSFER OF THE MERGING SYSTEM'S ASSETS TO THE CONTINUING SYSTEM AND SHALL BE TEMPORARILY FUNDED WITH THE AMOUNT BY WHICH THE VALUE OF THE MERGING SYSTEM'S ASSETS EXCEEDS THE SINGLE UP-FRONT PAYMENT AS DETERMINED BY THE INITIAL VALUATION AS SPECIFIED IN PARAGRAPH (i) OF THIS SUBSECTION (4).~~

~~(III) If there is an actuarial funding differential whereby the merging system funded ratio is above that of the continuing system relating to retirement benefits, the contribution rate for employers, as defined in section 22-64-201 (10), shall be reduced for so long as necessary to actuarially amortize such differential over a period agreed upon, but in no event shall the reduction in employer contribution cause the contribution rate of employers, as defined in section 22-64-201 (10), to be below the amount necessary to pay the employer actuarial normal cost of the continuing system combined with the statutory contribution rate specified to be made to the health care trust fund of the continuing system. The INITIAL FUNDING OF THE ASSET SURPLUS ACCOUNT SHALL BE FINALLY ADJUSTED TO REFLECT THE AMOUNT BY WHICH THE VALUE OF THE MERGING SYSTEM'S ASSETS, AS OF THE EFFECTIVE DATE OF THE MERGER, EXCEEDS THE SINGLE UP-FRONT PAYMENT AS DETERMINED BY THE FINAL VALUATION AS SPECIFIED IN PARAGRAPH (i) OF THIS SUBSECTION (4).~~

~~(IV) Final reconciliation of any costs of the merger not related to retirement benefits shall be paid no later than sixty days following receipt of the final actuarial valuation or at the end of the school district's then-current fiscal year, whichever is earlier. The ASSET SURPLUS ACCOUNT BALANCE SHALL BE COMBINED WITH ASSETS OF THE CONTINUING SYSTEM FOR PURPOSES OF INVESTMENT, AND THE ASSET SURPLUS ACCOUNT BALANCE SHALL INCREASE OR DECREASE IN ACCORDANCE WITH THE NET RETURN ON ASSETS EARNED BY THE CONTINUING SYSTEM. GAINS OR LOSSES SHALL BE ALLOCATED CONSISTENT WITH OTHER ASSETS MANAGED BY THE CONTINUING SYSTEM.~~

(k) (I) The merger shall not require subsidy by or between the merging system and the continuing system or the school district and the continuing system, recognizing that actuarial calculations and valuations are based on varying assumptions. ~~The continuing system shall receive from the merging system and school district assets sufficient, based on actuarial valuations, to:~~

~~(A) Fully fund all liabilities associated with benefits payable to retirees and beneficiaries of the merging system, as of the day preceding the effective date of the merger in accordance with the rules of the merging system as they exist on such preceding day, including all those persons described in subparagraph (f) of paragraph (c) of this subsection (4);~~

~~(B) Fully fund the liability associated with enhanced benefits resulting from the merger and payable to members and beneficiaries of the merging system;~~

~~(C) Fund all other actuarial costs at the funded ratio of the continuing system based on the actuarial valuations as of December 31, 2006; and~~

~~(D) Fully fund those costs incidental to the merger identified in the merger agreement.~~

(II) If the parties wish to take into account experience following the merger, the parties shall provide in the merger agreement for an escrow arrangement as follows: EACH PARTY SHALL BEAR ALL OF ITS OWN COSTS ASSOCIATED WITH THE MERGER; EXCEPT THAT THE PARTIES SHALL SHARE THE COSTS RELATED TO THE ACTUARIAL VALUATIONS SPECIFIED IN PARAGRAPH (i) OF THIS SUBSECTION (4), AND THE SCHOOL DISTRICT SHALL BEAR ALL COSTS RELATED TO OBTAINING A RULING AND DETERMINATION LETTER FROM THE FEDERAL INTERNAL REVENUE SERVICE RELATED TO THIS MERGER.

~~(A) The actuarial cost of such benefits shall first be calculated in accordance with the highest reasonable estimate determined by the actuaries for the continuing system, and from the amount so calculated shall be deducted an amount calculated as the lowest reasonable cost of such benefits, similarly determined. The resulting amount, plus interest on such amount at the earnings assumption rate applicable at the time the escrow is established and compounded annually from such date to the date of the termination of the escrow, shall be placed in an escrow account for ultimate distribution as hereinafter provided. Payment into the escrow account shall be made by the school district no later than sixty days after the earlier of the receipt of the final actuarial valuation or the end of the school district's then-current fiscal year. The parties shall determine in the merger agreement described in subsection (5) of this section the period following the effective date of the merger over which additional experience is to be accumulated regarding the cost of such benefits, which period shall not exceed ten years following the effective date of the merger. At the end of such period, a final actuarial valuation of the cost of the particular benefits involved shall be made.~~

~~(B) Upon certification of such cost by the actuaries for the continuing system, the amount in the escrow account shall be disbursed as follows: The continuing system shall receive the amount of the actuarial cost of such benefits so determined in excess of the amount previously paid as the lowest reasonable estimate of such cost~~

~~plus interest on such excess from the date of establishment of the escrow, calculated at the earnings assumption rate utilized by the continuing system over the period of the escrow and compounded annually; and any remainder of the escrow account shall be returned to the school district.~~

~~(III) Notwithstanding any other provision of law, any proceeds that are held in a separate account to secure the school district's obligation to make payments to the continuing system in connection with such merger may be invested by the school district in any investment in which moneys of the continuing system may be invested. If the proceeds so invested and earnings thereon are in excess of the amounts payable to the continuing system in connection with the merger, the excess shall be deposited in the general fund of the school district and shall be used to pay the school district's employer contribution to the continuing system after the merger, or as otherwise agreed by the school district and the continuing system.~~

(l) Continuing fiduciary liability insurance protection and general business and employer's liability insurance coverage shall be provided to members and former members of the governing body of the merging system and to employees and former employees of the merging system on and after the effective date of the merger. The insurance shall also name the continuing system, the members of the governing body of the continuing system, employees of the continuing system and the school district, members of the governing body of the school district, and employees of the school district as named insureds. The insurance shall be maintained by the continuing system for a period as agreed upon by the parties after the date of merger, and the cost shall be paid by the school district or merging system. ~~or by the escrow account described in subparagraph (H) of paragraph (k) of this subsection (4).~~

(m) Each staff member employed by the merging system on the date of the merger shall ~~become~~ BE HIRED AS an employee-at-will of the continuing system at a salary not less than the annual salary received from the merging system as of a date agreed upon in the merger agreement described in subsection (5) of this section, and the staff member's employment thereafter shall be governed by the policies, rules, and statutes applicable to the employees of the continuing system; EXCEPT THAT SUCH STAFF MEMBERS MAY ACCRUE RETIREMENT BENEFITS IN ACCORDANCE WITH THE RULES OF THE MERGING SYSTEM AS THEY EXISTED ON THE DAY PRECEDING THE EFFECTIVE DATE OF THE MERGER UNLESS OTHERWISE AGREED TO BY THE PARTIES IN THE MERGER AGREEMENT SPECIFIED IN SUBSECTION (5) OF THIS SECTION. AS OF THE EFFECTIVE DATE OF THE MERGER, the school district or merging system shall be responsible for the payment to the continuing system of any accrued employment benefits other than benefits provided for under the retirement system owed to each employee of the merging system.

(5) The final terms of the merger shall be fixed by agreement among the governing bodies of the merging system, continuing system, and school district in accordance with their respective internal procedures and the requirements set forth in this section. The agreement, once executed by the governing bodies of the merging system, continuing system, and school district, shall be binding upon the merging system, continuing system, and school district and shall thereafter govern the resulting relationship among the merging system, continuing system, and school district and the payment of benefits to members of the merging system and their

beneficiaries. ~~The school district and the continuing system may agree in the written agreement to an arrangement for funding costs related to preparation for the merger, without regard for whether the merger becomes effective.~~

(7) IN THE EVENT OF A DISPUTE ARISING UNDER PARAGRAPH (i) OF SUBSECTION (4) OF THIS SECTION, THE SCHOOL DISTRICT AND THE CONTINUING SYSTEM SHALL EACH SELECT A CREDENTIALLED ACTUARY. THE TWO ACTUARIES SHALL THEN SELECT A THIRD CREDENTIALLED ACTUARY EXPERIENCED IN PUBLIC PENSION FUND ANALYSIS TO FORM A DISPUTE RESOLUTION PANEL. THE THIRD ACTUARY SHALL NOT HAVE ANY CURRENT OR PROSPECTIVE FINANCIAL OR COMMERCIAL DEALINGS WITH EITHER OF THE PARTIES. THE LOSING PARTY IN THE DISPUTE RESOLUTION SHALL BE RESPONSIBLE FOR BEARING ALL REASONABLE COSTS AND ATTORNEY FEES INCURRED BY THE WINNING PARTY IN THE DISPUTE.

(8) NOTHING CONTAINED IN THIS SECTION OR ELSEWHERE IN THE LAWS GOVERNING THE PARTIES, THE MERGER, OR THE MERGER AGREEMENT SHALL PREVENT THE PARTIES FROM AGREEING, AS PART OF THE WRITTEN MERGER AGREEMENT SPECIFIED IN SUBSECTION (5) OF THIS SECTION, THAT A PORTION OF ANY ASSET SURPLUS ACCOUNT CREATED AS PART OF THE MERGER MAY BE DESIGNATED FOR AND UTILIZED AS A RESERVE OR GUARANTEE ACCOUNT TO PROTECT MEMBERS OR BENEFICIARIES OF THE MERGING SYSTEM FROM ANY REDUCTION IN BENEFITS OTHERWISE PAYABLE TO THEM FOLLOWING THE EFFECTIVE DATE OF THE MERGER.

(9) THE PARTIES SHALL PROVIDE EACH OTHER ALL NECESSARY INFORMATION ON A TIMELY BASIS TO ENABLE THE PARTIES TO COMPLETE THE VALUATIONS SPECIFIED IN THIS SECTION.

SECTION 3. 24-51-219 (2), Colorado Revised Statutes, is amended to read:

24-51-219. Merger of school district retirement system. (2) On and after the effective date of the merger described in sections 22-64-220 (4) (a) and 22-64-221, C.R.S., the board shall be authorized to administer benefits in accordance with section 22-64-220 and the written agreement described in ~~section 22-64-220 (5)~~ SECTION 22-64-220 (4) (d) AND (5), including, but not limited to, administering the provisions regarding the benefit increases pursuant to section 22-64-220 (4) (c) (II), C.R.S.

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: May 28, 2008