

CHAPTER 18

GOVERNMENT - MUNICIPAL

SENATE BILL 10-022

BY SENATOR(S) Morse, Lundberg, Tochtrop, Williams;
also REPRESENTATIVE(S) Riesberg and King S., Benefield, Gardner B., Labuda, Liston, Peniston, Schafer S., Waller, Apuan,
Casso, Looper, Nikkel, Stephens.

AN ACT

CONCERNING A MEMBER-APPROVED INCREASE IN THE MEMBER CONTRIBUTION RATE TO THE STATEWIDE DEFINED BENEFIT PLAN ADMINISTERED BY THE FIRE AND POLICE PENSION ASSOCIATION.

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

SECTION 1. 31-31-402 (1) and (3), Colorado Revised Statutes, are amended to read:

31-31-402. Employer and member contributions. (1) On and after January 1, 1980, until the board is able to determine a contribution rate from the first annual actuarial valuation, every member covered under the statewide defined benefit plan established by this part 4 shall pay into the defined benefit system trust fund eight percent of salary paid OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). The payment shall be made by the employer by deduction from the salary paid such member. Each employer shall pick up the ~~employee~~ MEMBER contributions required for all salaries paid after July 1, 1985, and the contributions so picked up 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 such code. The employer shall pay these ~~employee~~ MEMBER contributions directly to the retirement association, instead of paying such amounts to ~~employees~~ MEMBERS, and such contributions shall be paid from the same funds that are used in paying salaries to the ~~employees~~ MEMBERS. Such contributions, although designated as ~~employee~~ MEMBER contributions, shall be paid by the employer in lieu of contributions by ~~employees~~ MEMBERS. MEMBERS may not elect to receive such contributions directly instead of having them paid by the employer to the pension plan. ~~Employee~~ MEMBER contributions so picked up shall be treated for all purposes of this article, other than federal tax, in the same manner as ~~employee~~

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

MEMBER contributions made before the date picked up. Payment shall be made by one voucher for the aggregate amount deducted and shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the defined benefit system trust fund.

(3) The general assembly declares that the rates of ~~employee~~ MEMBER and employer contributions shall be adequate to fund benefit liabilities accrued under the statewide defined benefit plan established by this part 4, and to this end, the board shall submit an annual actuarial valuation report to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities as accrued. Amortization of such liability over a forty-year period shall be deemed adequate to maintain actuarial stability. If the actual financial experience of the new hire benefits account in the defined benefit system trust fund is found to be more or less favorable than the assumed experience during the two-year period from January 1, 1980, and each biennium thereafter, adjustments may be made by the board in the ~~employee~~ MEMBER and employer contributions as may be deemed feasible and advisable so long as THE employer ~~contributions are~~ CONTRIBUTION RATE IS at least equal to ~~employee contributions~~ THE MEMBER CONTRIBUTION RATE. IF THE MEMBER CONTRIBUTION RATE HAS BEEN INCREASED PURSUANT TO SECTION 31-31-408 (1.5) (a), THE REQUIREMENT THAT THE EMPLOYER CONTRIBUTION RATE BE AT LEAST EQUAL TO THE MEMBER CONTRIBUTION RATE SHALL NOT APPLY, BUT IN SUCH CIRCUMSTANCE, ANY INCREASE TO THE EMPLOYER CONTRIBUTION RATE SHALL BE AT LEAST EQUAL TO THE INCREASE IN THE MEMBER CONTRIBUTION RATE AND ANY DECREASE IN THE MEMBER CONTRIBUTION RATE SHALL BE AT LEAST EQUAL TO THE DECREASE IN THE EMPLOYER CONTRIBUTION RATE.

SECTION 2. 31-31-403 (1) (b) and the introductory portion to 31-31-403 (2) (a), Colorado Revised Statutes, are amended, and the said 31-31-403 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-31-403. Normal retirement - statewide defined benefit plan. (1) (b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under this section and the cost of a normal retirement pension beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). If the board cannot so determine, it shall order that the normal retirement pension commence such number of months as are actuarially supportable, from one to sixty, after age fifty-five for members who have completed at least twenty-five years of active service and are otherwise eligible in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A pension commenced after age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age of retirement to be eligible for any normal retirement benefit shall be age sixty except for persons receiving a benefit at the time of the court's decision.

(2) (a) If in any year the board determines pursuant to this part 4 that the cost of the benefits described in paragraph (b) of subsection (1) of this section, excluding

the benefit described in section 31-31-405, may not be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contribution made pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a), the board shall not increase such employer or member contributions unless:

(c) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO REQUIRE THE REDUCTION OF BENEFITS BELOW THE LEVEL SUSTAINABLE BY THE HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a).

SECTION 3. 31-31-404 (2) (b), Colorado Revised Statutes, is amended to read:

31-31-404. Return or transfer of contributions - vested retirement.

(2) (b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under section 31-31-403 and the cost of vested benefits beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-408 (1.5) (a). If the board cannot so determine, it shall order that the vested benefits commence such number of months as are actuarially supportable, from one to one hundred twenty, after age fifty-five for eligible members in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A vested benefit commenced before age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age to be eligible for a vested benefit shall be age sixty-five except for persons receiving a benefit at the time of the court's decision.

SECTION 4. 31-31-408 (1) (b), (3), (4), and (5), Colorado Revised Statutes, are amended, and the said 31-31-408 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-31-408. Modification of state plan by the board. (1) Notwithstanding any other provision of this part 4, the board may modify the pension benefits and the age and service requirements for pension benefits set forth in this part 4 with respect to the members of the statewide defined benefit plan if:

(b) The modification does not require an increase in the employer and member contribution rates established as of January 1, 1980, pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS SECTION;

(1.5) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 4, THE BOARD MAY INCREASE THE MEMBER CONTRIBUTION RATE ABOVE THE RATE ESTABLISHED PURSUANT TO SECTION 31-31-402 WITH RESPECT TO THE MEMBERS OF THE STATEWIDE DEFINED BENEFIT PLAN IF THE INCREASE:

(I) DOES NOT REQUIRE AN INCREASE IN THE EMPLOYER CONTRIBUTION RATE ESTABLISHED PURSUANT TO SECTION 31-31-402;

(II) DOES NOT ADVERSELY AFFECT THE PLAN'S STATUS AS A QUALIFIED PLAN PURSUANT TO THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(III) IS APPROVED BY SIXTY-FIVE PERCENT OF THE ACTIVE MEMBERS OF THE PLAN;
AND

(IV) IS APPROVED BY MORE THAN FIFTY PERCENT OF THE EMPLOYERS HAVING ACTIVE MEMBERS COVERED BY THE PLAN, EACH EMPLOYER TO BE ASSIGNED ONE VOTE; EXCEPT THAT EMPLOYERS HAVING BOTH ACTIVE POLICE AND FIRE MEMBERS IN THE PLAN SHALL BE ASSIGNED TWO VOTES.

(b) THE INCREASE IN THE MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5) SHALL BE PAID FROM A MEMBER'S SALARY AND OTHERWISE BE TREATED IN THE SAME MANNER SPECIFIED IN SECTION 31-31-402 (1) FOR OTHER MEMBER CONTRIBUTIONS FOR PURPOSES OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THE INCREASE IN THE MEMBER CONTRIBUTION RATE SHALL NOT BE SUBJECT TO NEGOTIATION FOR PAYMENT BY THE EMPLOYER.

(c) THE BOARD MAY ELIMINATE AN INCREASE IN THE MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5) SO LONG AS THE REQUIREMENTS FOR AN INCREASE SET FORTH IN SAID PARAGRAPH (a) ARE MET.

(3) The board shall adopt rules setting forth the procedures for the member ~~election~~ ELECTIONS required by paragraph (d) of subsection (1) AND SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1.5) of this section. Each employer having members in the statewide defined benefit plan shall comply with the procedures established by the board and shall certify the results of any member election to the board as prescribed by the board's rules.

(4) A written copy of the language of any modifications to the statewide defined benefit plan OR AN INCREASE IN THE MEMBER CONTRIBUTION RATE adopted by the board pursuant to this section shall be kept and maintained by the board at its offices and be made available for copying and inspection by any interested party.

(5) If at any time the cost of any modification adopted by the board pursuant to SUBSECTION (1) OF this section would require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS SECTION, the board shall revoke the modification as it applies to active members of the plan. The board may reinstitute the modification at a later date, in its discretion, if reinstating the modification would not require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 OR SUCH HIGHER MEMBER CONTRIBUTION RATE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS SECTION.

SECTION 5. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is

on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 10, 2010