

FPPA

Fire & Police Pension Association of Colorado

SWDB PLAN DOCUMENT

Colorado Revised Statutes, 2019

Title 31

Article 31

Part 4

Plan Amendments

Adopted pursuant to §31-31-408 CRS

- 1993 Plan Amendments One and Five. FPPA Resolution 1997-4.
- 1998 Plan Amendments One, FPPA Resolutions 1998-2 and 1999-2.
- 2000 Plan Amendment One. FPPA Resolution 2000-4.
- 2002 Plan Amendment One, Three and Four. FPPA Resolution 2002-2.
- 2004 Plan Amendment Two and Three. FPPA Resolution 2004-4.
- 2014 Plan Election Regarding Member Contributions. FPPA Resolutions 2014-04 and 2014-05.

EDIT KEY

- Black type indicates current statutory language.
- Green type indicates Plan Amendments.
- Struck-type indicates statutory language effectively repealed by Plan Amendments.

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**Adopted
October 15, 2020**

PART4
STATEWIDE DEFINED BENEFIT PLAN

31-31-401. Applicability of plan. (1) Every employer in this state shall provide the pension benefits of the statewide defined benefit plan established by this part 4 for members hired on or after April 8, 1978, except for the following:

(a) Any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, and any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, that chooses to cover members hired after August 11, 2005, under the federal "Social Security Act";

(b) Any employer that covers members under an exempt plan established pursuant to part 8 of article 30.5 of this title;

(c) Any employer that has withdrawn its members from the statewide defined benefit plan pursuant to part 6 of this article and established a locally administered and financed alternative pension plan;

(d) Any employer that has withdrawn its members from the statewide defined benefit plan for the purpose of covering them under the statewide money purchase plan established pursuant to part 5 of this article; and

(e) Any employer that covers a member hired on or after April 8, 1978, but before January 1, 1980, under an old hire pension plan as permitted by section 31-30.5-103(1).

(2) Nothing in this part 4 shall affect retirement pensions or disability or survivor benefits of members hired prior to April 8, 1978, who retired, were disabled, or died prior to January 1, 1980.

(3) Where an employer results from a merger, a consolidation, an exclusion, or dissolution proceeding between or among one or more employers, including a new governmental entity created by intergovernmental agreement between or among one or more employers, all members transferred to or employed by such resulting employer shall, for the purposes of this article 31 and article 30.5 of this title 31, have those rights and obligations they had prior to the merger, consolidation, exclusion, dissolution, or intergovernmental agreement. In the event of a transfer of members, provision shall be made in such agreement or proceeding for allocation and transfer of plan assets, and, in the event of the transfer of members of a defined benefit plan, provision shall be made in such agreement or proceeding for discharging plan liabilities and funding in order to maintain or enhance the actuarial soundness of the remaining and resulting plans. If the resulting employer had no members prior to the merger, consolidation, exclusion, or dissolution, it may continue as its plan any plan of a transferring employer, authorized by this article, for its members hired after the effective date of the agreement or proceeding or the resulting employer shall belong to the statewide defined benefit plan. The board may authorize the resulting employer to consolidate preexisting retirement plans and any retirement plan attributable solely to the resulting employer into one or more plans if the plans to be consolidated are identical, the benefits are equal for all members covered under the retirement provisions of the plans, and no member suffers a reduction of benefits or an increase in member contributions due to such plan consolidation. Any member employed by a predecessor department who participated in a money purchase plan prior to the merger, consolidation, exclusion, or dissolution and who participates in

the statewide defined benefit plan after the merger, consolidation, exclusion, or dissolution shall pay the continuing uniform rate of contribution established by the board pursuant to section 31-31-1101(7).

(4) (a) A department chief hired on or after April 8, 1978, shall be exempted from the statewide defined benefit plan, upon the execution of a written agreement between the department chief and the chief's employer that provides for the department chief's participation in social security or in a federal insurance contribution act replacement plan as allowed under the federal internal revenue code, and the submission of notice to the association. A department chief may satisfy the federal insurance contribution act replacement plan requirement by participating in an employer sponsored plan, the statewide money purchase plan, or the statewide hybrid plan. The transfer of member and employer contributions between the statewide defined benefit plan and the statewide money purchase plan shall be consistent with the provisions of section 31-31-501.

(b) For purposes of this subsection (4), a "department chief" means the senior command officer of any fire or police department of any employer, by whatever title known, including but not limited to chief, administrator, or director.

(c) A department chief exempted pursuant to paragraph (a) of this subsection (4) may maintain coverage for disability and survivor benefits under part 8 of this article if the department chief participates in the statewide money purchase plan, the statewide hybrid plan, or a local money purchase plan that is qualified under section 401(a) of the federal internal revenue code and that has a contribution rate of not less than sixteen percent.

(5) A member normally serving less than one thousand six hundred hours in any calendar year shall be exempted from the statewide defined benefit plan and shall be covered under the statewide money purchase plan.

(6) If an employer that is otherwise required to enroll its members under the plan fails to properly enroll such members, neither the fire and police pension association nor the defined benefit system trust fund is obligated or liable for any purpose to any person or employer arising from such failure.

31-31-402. Employer and member contributions. (1) 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) or (1.6)(a). The member contribution rate shall increase by four percent to be implemented through eight annual increases as follows: Beginning in 2015, and each year thereafter through 2022, the member contribution rate shall increase by an additional one-half of one percent of base salary until the total member contribution rate, including the cumulative contribution rate increases, is twelve percent of base salary.¹ The payment shall be made by the employer by deduction from the salary paid such member. Each employer shall pick up the 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 member contributions directly to the retirement association, instead of paying such amounts to members, and such contributions shall be paid from the same funds that are used in paying salaries to

¹ Originally Plan election, 2014; readopted by statutory amendment HB20-1044.

the members. Such contributions, although designated as member contributions, shall be paid by the employer in lieu of contributions by members. Members may not elect to choose to receive such contributions directly instead of having them paid by the employer to the pension plan. Member contributions so picked up shall be treated for all purposes of this article, other than federal tax, in the same manner as 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.

(2) (a) Every employer employing members who are covered by the statewide defined benefit plan established by this part 4 shall pay into the defined benefit system trust fund eight percent of the salary paid to such member or such higher employer contribution rate established pursuant to section 31-31-408 (1.6)(a), and such payment shall be made no later than ten days following the date of payment of salary to the member. The employer contribution rate shall increase by four percent to be implemented through eight annual increases as follows: Beginning in 2021, and each year thereafter through 2028, the employer contribution rate shall increase by an additional one-half of one percent of base salary until the total employer contribution rate, including the cumulative contribution rate increases, is twelve percent of base salary. All such payments shall be credited to the defined benefit system trust fund.

(b) In addition to the rate established in subsection (2)(a) of this section, the employer contribution rate shall be increased by one percent of base salary to be implemented as follows: Beginning in 2021, and continuing through 2022, or beginning in a subsequent year in the event another employer contribution rate increase is under implementation, the employer contribution rate shall increase by an additional one-half of one percent of base salary in each year for a total of one percent increase in order to pay for the cost of the benefit established in section 31-31-403(4)(b).

(3) The general assembly declares that the rates of 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 member and employer contributions as may be deemed feasible and advisable so long as the employer contribution rate adjustment is equal to the member contribution rate adjustment. 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.

(4) The payments required by this section are subject to interest if not submitted when due. Payments are due no later than ten days following the date of payment of salary to the member.

(5) (a) There shall be established in the defined benefit system trust fund a new hire benefits account into which contributions made pursuant to this section shall be deposited. The benefits provided by the statewide defined benefit plan established in part 4 of this article, together with the expenses of administering the plan, shall be paid from such account.

(b) Defined benefit assets of the statewide defined benefit plan shall be administered within the fire and police members' benefit investment fund and assets of the of the plan designated for self direction shall be administered within the fire and police members' self-directed investment fund.

31-31-403. Normal retirement - statewide defined benefit plan. (1) (a) Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of fifty-five years shall be eligible for a normal retirement pension subject to adjustment pursuant to subsection (1)(b) of this section. The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary for each of the first ten years of service and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service multiplied by the member's years of service.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 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 employer and 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 subsection (1)(b) shall not be subject to annual review. If a court determines that this subsection (1)(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 subsection (1)(b) of this section may not be fully funded on an actuarially sound basis without necessitating an increase in the employer and 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 :

(l) The board has terminated granting additional benefits described in section 31-31-405;

² This section was initially amended by the 1993 Plan Amendment, which removed the twenty-five year accrual limit and replaced it with a 70% of HAS limit. The amendment was effectively repealed and replaced by the Plan Amendment One, 2000 and HB01-1011 to reflect the current language. The twenty-five year cap on service credit was removed statutorily by HB20-1044.

(b) Nothing in this subsection (2) shall be construed to prohibit the board from utilizing the provisions of section 31-31-405 to provide the benefit described in said section in any subsequent year when the total amount of additional deposits to the new hire benefits account exceeds the amount needed to meet the benefit liabilities funded by the actuarial account pursuant to section 31-31-405.

(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).

(3) Any member retiring and eligible for a normal retirement pension as provided by subsection (1) of this section may elect to defer receipt of such pension until attaining the age of sixty-five years. In the case of such election, the annual deferred retirement pension shall be the actuarial equivalent of the normal retirement pension.

(4) (a) Any member covered by the statewide defined benefit plan who has completed at least thirty years of active service or has attained the age of fifty years and who is not receiving benefits pursuant to section 31-31-803 may elect to retire from active service and shall be eligible for an early retirement pension. The annual early retirement pension for a member shall be the benefit, as determined by the board, that the member would have received at normal retirement reduced on an actuarial equivalent basis to reflect the early receipt of the benefit.

(b) Beginning January 1, 2021, any member covered by the statewide defined benefit plan who has attained the age of fifty years, whose combined age and years of accrued service is equal to at least eighty and who is not receiving the benefits pursuant to section 31-31-803 shall be eligible for an unreduced normal retirement pension.

(c) If the board adjusts the age of eligibility pursuant to subsection (1)(b) of this section, it shall also adjust the age of eligibility for benefits under subsections (4)(a) and (4)(b) of this section in a like manner.

(5) (a) A member eligible for a normal, deferred, or early retirement pension may elect to receive one of the following pension options in lieu of a pension computed in accordance with subsection (1), (3), or (4) of this section:

(I) Option 1. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life;

(III) Option 3. A reduced pension payable jointly to the member and the member's designated beneficiary and, upon the death of either, one-half of such reduced pension to be paid to the survivor for life.

(IV) Option 4. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective the first day of the month next following the date of death of the member's designated beneficiary.³

³ Plan Amendment One, 1998

(V) Option 5. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective the first day of the month next following the date of death of the member's designated beneficiary.⁴

(b) A member shall be considered to have elected option 1 and retired on the day before the member's death if the member is eligible for a normal or early retirement pension and dies:

(I) Before making an election as provided in paragraph (a) of this subsection (5);

(II) Before the first pension payment has been deposited or otherwise negotiated or sixty days from the date of issuance of such check, whichever occurs first; and

(III) Is survived by a spouse, a dependent child, or a designated beneficiary.

(c) (I) After an election has been made of any of the options provided in paragraph (a) of this subsection (5) and the first pension payment has been deposited or otherwise negotiated by the member, or sixty days from date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as the result of dissolution of marriage, marriage, remarriage, or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this provision shall only apply to any final dissolution of marriage decree of a member entered on or after July 1, 1990.⁵

(II) Notwithstanding subparagraph (I) of this paragraph (c), an unmarried member who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as the result of marriage or remarriage may elect one of the options provided in paragraph (a) of this subsection (5) within one hundred eighty days of the date of the marriage or remarriage or January 1, 2008, whichever date is later. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or remarriage and prior to the member's death.⁶

(d) The joint pension benefits provided by this subsection (5) shall be calculated as the actuarial equivalent of the normal or early retirement pension otherwise payable as provided in subsections (1), (3), and (4) of this section. In the event of a change in beneficiary designation pursuant to paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits based upon the member's initial beneficiary designation, if any. In the event of a change in option elected pursuant to subparagraph (II) of paragraph (c) of this subsection (5), the joint pension benefits

⁴ Plan Amendment One, 1998

⁵ Plan Amendment Four, 1998 was adopted by HB01-1011 and HB07-1028

⁶ Plan Amendment Four, 1998 was adopted by HB07-1028

payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits payable to the member immediately prior to the change in option.⁷

(6) If the total amount of pension benefits paid as provided in this section is less than the amount of the member's accumulated contributions at the time of death, the difference shall be paid to:

(a) The member's estate if no pension payment was made pursuant to subsection (5) of this section; or

(b) The survivor's estate if pension payments were made pursuant to subsection (5) of this section.

(7) All service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by this section if the service for each employer was rendered while the employer covered its members under the statewide defined benefit plan established by this part 4. The service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by the statewide defined benefit plan established by this part 4 if the service for any employer was rendered while the employer did not cover its members under the statewide defined benefit plan established by this part 4 only on the basis of agreements made with the board.

(8) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section 401(a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401(a)(9), as amended, and the regulations promulgated pursuant to section 401(a)(9).

31-31-404. Return or transfer of contributions - vested retirement. (1)(a) Any member covered by the statewide defined benefit plan established by this part 4 and terminating service may elect to have the member's accumulated contributions refunded in a lump sum and shall sign a statement to be filed with the member's employer evidencing such election and acknowledging that the member has no right to benefits provided by this article. A member shall only be eligible for a refund, from the association, of the contributions paid by the member to the association and any of the member's contributions that have been transferred to the association by an affiliating employer. Nothing in this subsection (1) shall prevent a member from obtaining a refund to which the member may be entitled from a nonaffiliating employer pursuant to policies established by the employer prior to December 1, 1978. In addition to receiving accumulated contributions, the member shall also receive, as interest, five percent of the member's total accumulated contributions. The contributions refunded pursuant to this subsection (1) shall not include contributions other than those required to be made by the member, and the return of contributions shall be made within one hundred twenty days.

(b) If the member who terminated service subsequently returns to service as an active member with an employer that covers its members under the statewide defined benefit plan, the member's prior service credit shall be restored when the member returns the member's refunded contributions, with interest accrued from the date of refund to the date of return, according to the terms and conditions established by the board. If the member fails to return such contributions and interest, the member shall be

⁷ Plan Amendment Four, 1998 was adopted by HB07-1028

treated as a new member, and the member's prior service shall not be recognized in determining pension eligibility or pension benefits.

(2) (a) In lieu of having the member's contributions returned as provided in subsection (1)(a) of this section, a member who has at least five years of credited service may leave the contributions with the fund. When the inactive member attains age fifty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary for each of the first ten years of service, and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service multiplied by years of active service.⁸ Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403(5). All the provisions of section 31-31-403(5) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of the member's benefit payments, the fire and police pension association shall refund the inactive member's contributions to the member's estate, and no vested benefits shall be payable to the inactive member's survivors or beneficiaries.⁹

(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 employer and member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408(l.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 subsection (2)(b) shall not be subject to annual review. If a court determines that this subsection (2)(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.

(3) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401(a)(9), as amended, and the regulations promulgated pursuant to section 401(a)(9).

31-31-405. Stabilization reserve account and separate retirement account creation - allocation. (1) Within the new hire benefits account, created pursuant to section 31-31-402(5), there shall be established two subaccounts:

(a) An actuarial account, into which that portion of the new hire benefits account necessary to fund benefit liabilities accrued under sections 31-31-403 and 31-31-404(2), as determined by the 1987 actuarial study, shall be deposited;

⁸ Plan Amendment One, 2000, The 25 year cap on service was statutorily removed by HB20-1044.

⁹ Plan Amendment Five, 1993 was amended and restated by Plan Amendment One, 2000

(b) A stabilization reserve account, into which the remainder in the new hire benefits account, after allocation pursuant to subparagraph (a) of this subsection (1), may be deposited.

(2) In each year after 2021, the board may allocate additional deposits to the new hire benefits account between the actuarial account and the stabilization reserve account based upon the actuarial study for the previous year. If in any year the total amount of additional deposits to the new hire benefits account exceeds the amount required to meet any increase in the benefit liabilities funded by the actuarial account, the board, in its sole discretion, may allocate all or any part of such excess to the stabilization reserve account.

(3) The stabilization reserve account created by subsection (1) of this section 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. Funds allocated to the separate retirement accounts shall be in the nature of a defined contribution account and subject to self direction by the member. The board shall transfer the balances of the predecessor separate retirement accounts contained within the members benefit investment fund to defined contribution accounts on or about January 1, 2021. Members covered on a supplemental basis pursuant to section 31-31-704.5 shall be eligible for individual separate retirement accounts.

(4) Such amount as may be allocated to the stabilization reserve account pursuant to subsection (1) of this section shall be further allocated to each member's separate retirement account based upon the difference between a member's employer and employee contributions to the new hire benefits account for each payroll period and the proportionate amount of such contributions that is allocated to the actuarial account pursuant to subsection (1) of this section.

(5) Earnings or losses on the amount allocated to the member's separate retirement account while invested as part of the member's benefit investment fund shall be allocated at least monthly on a time-weighted basis as determined by the board until the account is exhausted. Earnings or losses on the amount allocated to the member's separate retirement account while invested as part of the members self-directed investment fund shall be allocated as determined by the record keeper.

(6) Any amount allocated to a member's separate retirement account shall be subject to the vesting and distribution requirements under the plan..

31-31-406. Separate retirement accounts - administration. (1) Any member having a separate retirement account who terminates service and at the time of termination has less than five years of credited service or who terminates service and at the time of termination has more than five years of credited service but elects a refund of contributions as provided under section 31-31-404(1)(a) shall forfeit the entire balance in the member's separate retirement account to the actuarial account.

(2) (a) Any member having a separate retirement account who is retired for disability shall receive the entire balance in the member's separate retirement account in accordance with the member's selection of one of the payment options permitted by subsection (3) of this section or pursuant to rules promulgated by the board that allow members who are eligible to receive retirement benefits to defer receipt of the benefits to the extent permitted under section 401(a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401(a)(9), as amended, and the regulations promulgated pursuant to section 401(a)(9). If the member subsequently returns to work pursuant to section

31-31-805(2) and had been receiving periodic payments from the member's separate retirement account, such payments shall cease and any remaining balance shall remain in the member's separate retirement account, subject to subsequent distribution in accordance with this section.

(b) If any member having a separate retirement account dies prior to termination, the entire balance in the member's separate retirement account shall be payable to the member's surviving spouse or dependent children in accordance with their selection of one of the payment options permitted by subsection (3) of this section.

(3) Any member retiring pursuant to the provisions of section 31-31-403 or 31-31-404 may elect to receive the balance in the member's separate retirement account in accordance with one of the following payment options:

(a) Option 1: In a lump sum;

(b) Option 2: In periodic installments of a specified and substantially equal amount, payable monthly over a period not to exceed the joint life expectancy of the member and the member's spouse. This maximum period shall be determined under the applicable actuarial tables then being used by the association at the time the initial monthly installment payment becomes payable.

(c) Option 3: In an annuity. The member may choose an annuity payable to the member for life or may choose any [option 1](#), [option 2](#), or [option 3](#) of the joint and survivor options permitted by section 31-31-403(5)(a).¹⁰

(4) A member may elect to take a distribution of the amount in the member's separate retirement account at any time after the member terminates service and in accordance with the rules adopted by the Board. Members terminating service and electing a distribution or partial distribution are no longer eligible to elect a refund of contributions..

(5) The restoration of a member's service credit pursuant to section 31-31-404(l)(b) shall not entitle the member to reinstatement of any previously forfeited balance in the member's separate retirement account.

(6) repealed

(7) The balance in a member's separate retirement account, the member's accumulated contributions to the account, and the earnings on the account shall be paid to the member's estate if the member:

(a) Dies while in active service; and

(b) repealed;

(c) Does not leave a surviving spouse, dependent child, or designated beneficiary.

(d) repealed.

31-31-407. Adjustment of benefits. (1) The benefits payable under the statewide defined benefit plan established by this part 4 may be redetermined effective October 1 each year. If such benefits are redetermined, such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. Any redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

¹⁰ Plan Amendment One, 1998

(2) and (3) (Deleted by amendment, L. 2008, p. 13, § 1, effective August 5, 2008.)¹¹

(4) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other defined benefits established by this part 4.

(5) (a) Effective October 1, 2008, and each year thereafter, any redetermination of benefits made pursuant to subsection (1) of this section shall be determined by the board in its discretion as a fiduciary of the statewide defined benefit plan after considering the funding level of the plan, the cost of such increase, whether the increase creates an adverse actuarial impact on the plan's ability to fund future benefits, and any other factors the board deems appropriate. The redetermined benefits shall not exceed the greater of:

(I) One hundred three percent of the benefits paid for the prior twelve-month period; or

(II) The benefits paid during the prior twelve-month period multiplied by a fraction using the consumer price index for the immediately preceding calendar year as the numerator and the consumer price index for the calendar year prior to the immediately preceding calendar year as the denominator.

(b) As used in subparagraph (II) of paragraph (a) of this subsection (5), the term "consumer price index" means the national consumer price index for urban wage earners and clerical workers prepared by the United States department of labor.

31-31-408. Modification of state plan by the board. (1) Notwithstanding any other provision of this part 4, and in addition to the authority granted in part 2 of this article, 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:

(a) The board determines that such modification will maintain or enhance the actuarial soundness, as specified in section 31-31-102(1), of the plan;

(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;

(c) The modification does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(d) The modification is approved by sixty-five percent of the active members of the plan who vote in: the election proposing the modification;

(e) The modification is approved by more than fifty percent of the employers having active members covered by the plan who vote in the election proposing the modification, 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; and

(f) The modification does not adversely affect the pension benefits of retired members.

(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:

¹¹ Plan Amendment One, 2002 was repealed by HB08-1070

(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 who vote in the election proposing an increase in the member contribution rate; and

(IV) Is approved by more than fifty percent of the employers having active members covered by the plan who vote in the election proposing an increase in the member contribution rate, 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.

(1.6) (a) Notwithstanding any other provision of this part 4, the board may increase the contribution rate above the rate established pursuant to section 31-31-402 with respect to the members and employers of the statewide defined benefit plan if:

(I) The rate of increase is equal for the member and the employer;

(II) The increase does not adversely affect the plan's status as a qualified plan pursuant to the federal "internal revenue code of 1986", as amended;

(III) The increase is approved by sixty-five percent of the active members of the plan who vote in the election proposing an increase in the member contribution rate; and

(IV) The increase is approved by more than fifty percent of the employers having active members covered by the plan who vote in the election proposing an increase in the member contribution rate, 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 subsection (1.6)(a) of this section 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.

(c) The board may eliminate an increase in the member and employer contribution rate established pursuant to subsection (1.6)(a) of this subsection, so long as the requirements for an increase set forth in subsection (1.6)(a) of this section are met.

(2) In no event shall the board adopt a modification that reduces the statewide defined benefit plan's normal retirement age below that permitted by section 31-31-403(1)(b).

(3) The board shall adopt rules setting forth the procedures for the member 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.

31-31-409. Qualification requirements - internal revenue code. (Repealed)

31-31-409.5 Deferred Retirement Option Plan.¹²

(1) This section adds, as a part of the Statewide Defined Benefit Plan, an optional account known as the Deferred Retirement Option Plan.

(2) The provisions of this section are applicable with respect to those otherwise eligible members of the Statewide Defined Benefit Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this section. An "eligible member" is any member who is eligible for normal retirement in accordance with section 31-31-403 C.R.S., who has reached retirement age but has not reached the required service, who is eligible for a vested retirement in accordance with section 31-31-404(2) C.R.S., or who is eligible for an early retirement in accordance with section 31-31-403(4) C.R.S.¹³

(3) The program set forth in this section may be referred to as the "DROP."

(4) The purpose of the DROP is to allow an eligible member to elect, in lieu of immediate termination of employment and receipt of a service retirement benefit, to continue employment for a specified period of time and to have the member's otherwise deductible employee contribution and retirement benefits paid into the DROP account until the end of such specified period of the member's participation, at which time employment is to cease. An eligible member must choose a straight life annuity or one of the retirement options provided in section 31-31-403(5) at the same time the member elects to participate in the DROP.

(5) An eligible member may participate in the DROP only once.

(6) The duration of a member's participation in the DROP shall not exceed a total of five years. As a condition precedent to participation in the DROP, the member shall execute an irrevocable agreement with his employer in the form prescribed by the Board which shall, among other items, clearly and unequivocally state that the member must retire no later than the fifth anniversary of the member's participation in the DROP,

¹² Plan Amendment Five, 1998. The entire Section 409.5 as added in 1998 unless amended as further noted.

¹³ Plan Amendment Four, 2002

and the member shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement or death of the member. The employer shall provide a copy of such agreement to the Board.

(7) If the member's participation in the DROP is interrupted by military service, reduction in work force, or job related disability, then, upon reestablishment of membership and provided that the member has not received any distribution from his DROP account, the member shall be immediately eligible for resumption of participation in the DROP for the balance of the five year maximum. Other than the above-described types of interruptions of participation, the five year period shall continue to run in all other cases.

(8) Upon commencement of the member's participation in the DROP, the member shall remain an active member. Nevertheless, the member shall earn no additional service credit or additional benefits under the Statewide Defined Benefit Plan.

(9) Upon commencement of the member's participation in the DROP, the retirement benefits provided in this part 4 and the member contributions provided in this part 4 shall be paid into the member's Deferred Retirement Option Plan account. In no case shall the employer contribution be used to fund the DROP.¹⁴

(10) The DROP assets shall held for investment purposes as part of the fire and police members' self-directed investment fund, subject to such rules as many be adopted for the administration of the trust. The Board shall be authorized to charge each account a fee for the administration of the DROP.¹⁵

(11) The Board is authorized to adopt rules and regulations governing the DROP.

(12) The DROP account shall not be subject to any fees or charges of any kind for any purpose, except as otherwise provided herein.

(13)(a) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary. At the end of the installment period, a final disbursement of remaining funds in the DROP account shall be made. If no selection is made by the retiree within 30 days of retirement, the lump sum payment method shall be utilized.

(b) Notwithstanding any provision to the contrary, any distribution under the DROP shall be made in accordance with Code Section 401(a)(9) and the regulations established there under as they are amended and shall comply with the following rules:

(i) To the extent required by Code Section 401(a)(9) and the regulations promulgated there under, payment of the benefits of a Member shall begin no later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member reaches age seventy and one-half (70½), or the calendar year in which the Member retires.¹⁶

¹⁴ Plan Amendment Four, 2002

¹⁵ Plan Amendment Three, 2002

¹⁶ Subsection revised, Plan Amendment Two, 2004

(ii) No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(iii) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

(14) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life or life expectancy. If no selection is made by the designated beneficiary within 30 days of death of the member, the lump sum payment method shall be utilized.¹⁷

(a) In the event of the Member's death, any remaining benefit shall be distributed according to the following subject to compliance with Code Section 401(a)(9) and regulations there under.

(b) If the Member had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Accounts shall be paid to the Designated Beneficiary at least as rapidly as under the payment option selected by the Member.

(c) If the Member had begun receiving payments in the form of a pension or annuity, the Designated Beneficiary shall be bound by all restrictions applicable to the pension or annuity, and the form of payment selected there under, and remaining payments, if any, shall be paid to the Designated Beneficiary in the same manner.

(d) If the Member dies before distributions have commenced, a Spouse Designated Beneficiary may take a lump sum distribution or may delay the commencement of benefits until not later than December 31 of the year the Member would have attained age seventy and one-half (70½) and may elect to receive periodic payments over the Spouse's life expectancy.

(e) If the Member dies before distributions have commenced, a Designated Beneficiary other than a surviving Spouse may take a lump sum or a periodic payment. In the case of a lump sum, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Member's death. In the case of a periodic payment distribution, payment must commence no later than December 31 of the year following the year of the Member's death, and in no event be payable over a period longer than the Designated Beneficiary's life expectancy at the time the distribution commences.

(f) If the Member has not designated a Designated Beneficiary or the Plan is unable to locate the Designated Beneficiary upon death, the Member's remaining interest will be paid in a lump sum to the Member's estate.

(g) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

(15) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is someone other than the member's surviving spouse to whom the member was legally married at the time of the member's death, the designated beneficiary shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

¹⁷ Subsection revised, Plan Amendment Two, 2004

(16) If the member dies during the period of the member's participation in the DROP and the designated beneficiary has not survived the member, the member's estate shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

31-31-409.6 Fire and police members' self-directed investments fund¹⁸ - creation -management. (1) (a) There is hereby created the fire and police members' self-directed investments fund that shall consist of the assets of member self-directed funds administered and managed by the board pursuant to section 31-31-409.5(10), as adopted as part of Amendment 3, Fire and Police Pension Association, Board of Directors Resolution No. 2002-02, dated February 27, 2002. The board shall keep an accurate account of each such individual fund. In addition, the board shall keep an accurate account of each member's separate account in any such individual fund. The board may allow a member to exercise control of the investment of part or all of the member's accrued benefit under the member's plan. In allowing a member to exercise such control, the board shall:

(I) Select at least three investment alternatives, each of which is diversified in itself, that allow the member a broad range of investments and a meaningful choice between risk and return in the investment of the member's accrued benefit;

(II) Allow the member to change investments at least once each calendar quarter; and

(III) Provide the member with information describing the investment alternatives, the nature, investment performance, fees, and expenses of investment alternatives, and other information to enable a member to make informed investment decisions.

(b) The board shall adopt rules governing the calculation and allocation of earnings and losses under the various investment alternatives that it may offer, the transfer of assets between funds under each alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to its administration and management of the fund created pursuant to this section.

(2) The board shall be the trustee of the fire and police members' self directed investments fund subject to the members' allocation of moneys in their accounts to the alternatives offered by the board. A member who exercises control over the plan assets in the member's account shall not be deemed to be a fiduciary by reason of such exercise of control, and the board shall not be liable for any loss that results from such exercise of control.

(3) The board shall designate one or more financial institutions as custodians of the fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund, and the custodian shall maintain a current inventory of all investments of the fund.

(4) Disbursements from the fund shall be made, subject to the approval of the board, only for payment of the expenses of the association in connection with the administration of the fund, refunds to the members, benefits, and investment purposes.

(5) Reserved.

(6) Reserved.

¹⁸ Subsection added, Plan Amendment Three, 2002

(7) The board shall submit an annual audit of the fund to the general assembly and to each employer that has active or retired members with balances in the fund. Each employer shall make the audit and study available for review by its members.

31-31-410. Purchased or rolled-over service credit. (1) A member may be granted service credit upon the qualified transfer of funds from an eligible pension plan for other public employment within the United States not covered by the plan, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member provides documentation that the benefits in the eligible plan were earned based on public employment; and

(c) The member transfers funds to the fire and police pension association at the time and in the manner prescribed by the board. The board shall award service credit to the member in an amount calculated by the board on an actuarially equivalent basis.

(1.5) A member may purchase service credit for other public employment within the United States not covered by the plan, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received;

(c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law; and

(d) The member pays or transfers funds from an eligible account to the fire and police pension association, at the time and in the manner prescribed by the board, to pay for the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(2) A member may purchase up to five years of service credit for periods of active duty in the uniformed services of the United States, subject to all of the following conditions:

(a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member provides documentation of the dates of service in the uniformed services of the United States and that the member was honorably discharged from such service;

(c) The member provides certification from the employer that the service is not intervening service covered by the federal "Uniformed Services Employment and Reemployment Rights Act of 1994", chapter 43 of title 38, U.S.C., as amended;

(d) The member verifies that the member will not receive a benefit from any retirement plan covering such service and that the service credit to be purchased has not vested with that plan, except to the extent otherwise required by federal law; and

(e) The member pays to the fire and police pension association, at the time and in the manner prescribed by the board, the cost of the service credit purchased, such cost to be calculated by the board on an actuarially equivalent basis.

(2.4) A member may be granted up to five years of service credit upon the qualified transfer of funds from an eligible pension plan, for employment with any private

employer in the United States, as may be allowed under the rules adopted by the board, subject to all of the following conditions:

(a) The member has at least five years of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member transfers funds to the fire and police pension association at the time and in the manner prescribed by the board. The board shall award service credit to the member in an amount calculated by the board on an actuarially equivalent basis.

(c) A member may be awarded or purchase service credit pursuant to this subsection (2.4) and subsection (2.5) of this section in an amount that, when combined, does not exceed five years.

(2.5) A member may purchase up to five years of service credit for employment with any private employer in the United States, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least five years of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received;

(c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law; and

(d) The member pays or transfers funds from an eligible account to the fire and police pension association, at the time and in the manner prescribed by the board, to pay for the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(3) (Deleted by amendment, L. 2015.)

31-31-410.5 Purchase of Monthly Benefits.¹⁹ A member who is eligible for normal, deferred, or early retirement may elect to transfer all or part of his/her SRA Account and his/her DROP balance within the Statewide Defined Benefit Plan to purchase a monthly benefit. Funds may not be transferred from outside the Statewide Defined Benefit Plan to purchase a monthly benefit.

(a) The funds transferred are to be considered part of the member's accumulated contributions for purposes of C.R.S. § 31-31-403 (6).

(b) At retirement or separation of service, which ever comes later, a member may make a one-time, irrevocable election to purchase a monthly benefit. The purchase must be in one lump sum, which must be transferred prior to the receipt of defined benefits.

(c) Once the member's monthly payment amount is calculated, it will be considered to be a portion of the member's pension under C.R.S. §§ 31-31-403 (1) (normal retirement), (3) (deferred retirement), (4) (early retirement), or C.R.S. § 31-31-404 (2) (vested retirement). It may be reduced if the member elects one of the survivor options offered under C.R.S. § 31-31-404 (5)(a) of the Statewide Defined Benefit Plan.

(d) As part of the pension, the purchased monthly benefit may be adjusted pursuant to C.R.S. § 31-31-407 of the Statewide Defined Benefit Plan.

¹⁹ New section added. Plan Amendment Three, 2004

(e) Once the monthly benefit is purchased, the member may not convert back to a lump sum payout.

(f) An application to purchase a monthly benefit shall be filed by the member with the Plan Administrator on the Applicable Form. The member must provide any documentation that is required by the Board to complete the purchase

31-31-411. Return to work by participating member after retirement - rules.

(1) The board may, in its discretion, adopt rules suspending the benefits of a member who participates in the defined benefit system, separates from service, elects a retirement, and subsequently returns to work with an employer who participates in the defined benefit system. Such rules shall indicate whether the member shall earn additional service credit as determined by the plan in which the subsequent employer participates and whether the benefit distribution shall resume at such time as the member subsequently separates from service.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules that allow a member who has reached normal retirement age and who has separated from service, elected a retirement under the defined benefit system, and subsequently returned to work with an employer who provides benefits under the defined benefit system to:

(a) Continue receiving distribution of the member's retirement benefits; and

(b) Earn additional retirement benefits in an alternate money purchase plan.

(3) Prior to the adoption of any rules promulgated pursuant to subsection (2) of this section, the board shall make a finding that such rules are in compliance with section 31-31-204 (3), and that there will be no adverse actuarial impact to the defined benefit system as a result of the implementation of such rules.