

CHAPTER 10

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**GOVERNMENT - MUNICIPAL**

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**HOUSE BILL 97-1022**

BY REPRESENTATIVES Schwarz, Allen, Entz, June, George, Mace, Taylor, and S. Williams;  
also SENATORS Powers, B. Alexander, Chlouber, Feeley, Congrove, Hernandez, J. Johnson, Martinez, Phillips, Reeves, and Weddig.

**AN ACT**

CONCERNING THE USE OF EXCESS FUNDS OF OLD HIRE FIRE AND POLICE PENSION PLANS.

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

**SECTION 1.** 31-30.5-209, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**31-30.5-209. Idle funds.** (4) (a) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (4), IF NO MEMBERS ARE PARTICIPATING IN AN EMPLOYER'S OLD HIRE PENSION PLAN ESTABLISHED UNDER THIS ARTICLE, THE GOVERNING BODY OF THE EMPLOYER, BY RESOLUTION, MAY AUTHORIZE THE USE OF THE EXCESS BALANCE IN THE PLAN FUND FOR THE PURPOSES PERMITTED IN SUBSECTIONS (1) AND (2) OF THIS SECTION. IF A GOVERNING BODY AUTHORIZES THE USE OF THE EXCESS BALANCE UNDER THIS SUBSECTION (4), THE EMPLOYER SHALL MAINTAIN THE PLAN FUND AT A LEVEL EQUAL TO AT LEAST TWO TIMES THE AMOUNT NECESSARY TO FUND THE BENEFIT LIABILITIES OF ANY PERSONS CONTINUING TO RECEIVE BENEFITS FROM THE PLAN FUND.

(II) FOR PURPOSES OF THIS PARAGRAPH (a), "EXCESS BALANCE" MEANS THE AMOUNT IN AN OLD HIRE PLAN FUND IN EXCESS OF TWO TIMES THE AMOUNT NECESSARY TO FUND THE BENEFIT LIABILITIES OF PERSONS CONTINUING TO RECEIVE BENEFITS FROM THE PLAN FUND, AS DETERMINED BY THE PLAN'S ACTUARY. IN DETERMINING THE EXCESS BALANCE IN AN OLD HIRE PLAN FUND, THE ACTUARY SHALL UTILIZE THE ASSUMPTIONS APPROVED BY THE BOARD OF DIRECTORS OF THE FIRE AND

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

POLICE PENSION ASSOCIATION PURSUANT TO SECTION 31-30.5-306 (2) (b).

(b) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION AND PARAGRAPH (a) OF THIS SUBSECTION (4) AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (4), IF NO MEMBERS ARE PARTICIPATING IN AN EMPLOYER'S OLD HIRE PENSION PLAN ESTABLISHED UNDER THIS ARTICLE AND THE PLAN PROVIDES NO RANK ESCALATION BENEFIT OR OTHER TYPE OF COST-OF-LIVING BENEFIT TO PERSONS RECEIVING BENEFITS FROM THE PLAN FUND OTHER THAN COST-OF-LIVING BENEFITS PROVIDED THROUGH THE ANNUAL ADJUSTMENT REQUIRED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THE BOARD, AFTER DISCLOSURE TO THE AFFECTED RETIREES, IS AUTHORIZED TO USE THE ASSETS IN THE PLAN FUND FOR THE PURPOSE OF PURCHASING ANNUITIES IN AMOUNTS SUFFICIENT TO PAY ANY REQUIRED BENEFITS TO THOSE PERSONS WHO CONTINUE TO RECEIVE BENEFITS FROM THE PLAN FUND. IF THE BOARD PURCHASES ANNUITIES FOR SUCH PERSONS, THE GOVERNING BODY OF THE EMPLOYER, BY RESOLUTION, MAY AUTHORIZE THE USE OF ANY ADDITIONAL FUNDS THAT REMAIN IN THE PLAN FUND AFTER PURCHASING SUCH ANNUITIES FOR THE PURPOSES PERMITTED IN SUBSECTIONS (1) AND (2) OF THIS SECTION. ANNUITIES MAY BE PURCHASED PURSUANT TO THIS PARAGRAPH (b) ONLY FROM INSURANCE COMPANIES RATED AT LEAST A+ BY THE A.M. BEST COMPANY OR RATED AT LEAST AA BY STANDARD & POORS CORPORATION. IF THERE IS A DEFAULT ON THE PAYMENT OF BENEFITS RESULTING FROM AN ANNUITY PURCHASED UNDER THIS PARAGRAPH (b), THE EMPLOYER SHALL REMAIN LIABLE TO MAKE ANY REQUIRED BENEFIT PAYMENTS TO PERSONS FOR WHOM THE ANNUITIES WERE PURCHASED.

(c) IF A PLAN FUND DOES NOT PROVIDE ANY TYPE OF COST-OF-LIVING BENEFIT TO PERSONS RECEIVING BENEFITS FROM THE PLAN FUND, THE ASSETS IN THE PLAN FUND SHALL BE USED TO PROVIDE AN ANNUAL ADJUSTMENT TO THE PENSION BENEFITS FOR SUCH PERSONS PRIOR TO USING THE EXCESS BALANCE IN THE PLAN FUND AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (4) AND PRIOR TO PURCHASING ANNUITIES AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4). THE MINIMUM ANNUAL ADJUSTMENT SHALL BE CALCULATED IN THE SAME MANNER AS THE ANNUAL ADJUSTMENT TO TOTAL DISABILITY BENEFITS PROVIDED FOR MEMBERS OF THE STATEWIDE DEATH AND DISABILITY PLAN PURSUANT TO SECTION 31-31-407 (2) (b) AND (3); EXCEPT THAT THE EFFECTIVE DATE OF THE BENEFIT FOR PURPOSES OF THE FORMULA SET FORTH IN SAID SECTION SHALL BE THE DATE ON WHICH THE BOARD PROVIDES THE ANNUAL ADJUSTMENT REQUIRED UNDER THIS PARAGRAPH (c).

**SECTION 2. Effective date - applicability.** This act shall take effect July 1, 1997, and shall apply to old hire pension plans existing on or after said date.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 20, 1997