

## CHAPTER 7

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**GOVERNMENT - MUNICIPAL**

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**HOUSE BILL 97-1006**

BY REPRESENTATIVES Entz, Allen, Dean, June, Schwarz, George, Mace, and Sullivant;  
also SENATORS B. Alexander, Chlouber, Feeley, Powers, and Reeves.

**AN ACT**

CONCERNING THE MANAGEMENT OF ASSETS HELD BY FIRE AND POLICE PENSION PLANS THAT PROVIDE  
BENEFITS FOR PAID FIREFIGHTERS AND POLICE OFFICERS.

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

**SECTION 1.** 31-30.5-503, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**31-30.5-503. Alternative investment authority.** Notwithstanding any other provision of this part 5, moneys of old hire pension plans that are not affiliated with the fire and police pension association under section 31-31-701, may be MANAGED AND invested as provided in section ~~31-30.5-803~~; BY THE TRUSTEES OF SUCH PLANS PURSUANT TO THE STANDARD AND OTHER PROVISIONS FOR TRUSTEES SET FORTH IN THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF TITLE 15, C.R.S. ~~but~~ Such investments ~~shall meet earning performance standards established by the fire and police pension association board of directors and~~ shall be audited at least biennially.

**SECTION 2.** 31-30.5-803, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**31-30.5-803. Investment authority.** (1) Except as provided in subsection (2) of this section, moneys of exempt alternative plans that are not affiliated with the fire and police pension association under section 31-31-702 or 31-31-706 may be MANAGED AND invested as provided in section ~~31-31-302 (4)~~; BY THE TRUSTEES OF SUCH PLANS PURSUANT TO THE STANDARD AND OTHER PROVISIONS FOR TRUSTEES SET FORTH IN THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF TITLE 15, C.R.S. ~~but~~ Such investments ~~shall meet earning performance standards established by the fire and police pension association board of directors and~~ shall be audited at least biennially.

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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.*

(2) (a) ~~Notwithstanding any contrary provision in section 31-31-302 (4), assets of an exempt alternative plan may be invested in corporate stocks, corporate bonds, notes, or debentures that are convertible into corporate stocks, or investment trust shares pursuant to the following conditions:~~

~~(I) The original cost of all such investments shall not exceed sixty-five percent of the then current market value of all assets in the exempt alternative plan; and~~

~~(II) The fiduciary of the exempt alternative plan is responsible for investing the assets of the plan pursuant to the investment standards provided in section 15-1-304, C.R.S., except to the extent the fiduciary allows a participant to exercise control of investments pursuant to paragraph (b) of this subsection (2).~~

(b) The ~~fiduciary~~ TRUSTEES OF AN EXEMPT ALTERNATIVE PLAN may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

(I) The ~~fiduciary~~ TRUSTEES shall select at least three investment alternatives, each of which is diversified in itself, that allow the participant a broad range of investments and a meaningful choice between risk and return in the investment of the participant's accrued benefit;

(II) The ~~fiduciary~~ TRUSTEES shall allow the participant to change investments at least once each calendar quarter; and

(III) The ~~fiduciary~~ TRUSTEES shall provide the participant with information describing the investment alternatives and the nature, investment performance, fees, and expenses of the investment alternatives and other information to enable a participant to make informed investment decisions.

(c) Neither the state nor local governments shall be held responsible to pay for any or all financial losses experienced by participants of the exempt alternative plan; except that nothing in this section relieves a local government's responsibility as a ~~fiduciary~~ TRUSTEE to the plan.

**SECTION 3.** 31-31-302 (1), (4), (5), and (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**31-31-302. Fund - management - investment.** (1) The board shall be the trustee of the fund and shall have full and unrestricted discretionary power and authority to invest and reinvest such portions of the fund as in its judgment may not be immediately required for the payment of refunds or benefits. In exercising its discretionary authority with respect to the ~~acquisition or disposition of any investments;~~ MANAGEMENT AND INVESTMENT OF FUND ASSETS, the board shall be governed by the standard ~~for investments prescribed in section 15-1-304, C.R.S., except as provided in subsection (4) of this section~~ AND OTHER PROVISIONS FOR TRUSTEES SET FORTH IN THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF TITLE 15, C.R.S. ~~The board may, by resolution, delegate to its executive director, appointed pursuant to section 31-31-201 (3) (b), the investment authority created by this subsection (1). The board shall not delegate to its executive director the authority~~

to invest or reinvest more than five percent of the market value of the assets of the fund between regularly scheduled meetings of the board.

~~(4) (a) Subject to the limitations on investments described in section 15-1-304, C.R.S., the board may invest all or any part of the fund in the types of investments authorized by such section, including, but not limited to, obligations of the United States government and obligations fully guaranteed as to principal and interest by the United States government, in state and municipal bonds, in corporate notes, bonds, or debentures, convertible or otherwise, in railroad equipment trust certificates, in real property and in loans secured by first mortgages or deeds of trust on real property, in participation guarantee agreements with life insurance companies, in real estate limited partnerships, and in other types of investment agreements. Such investments may be made without limitation as to the percentage of the book value of the assets of the retirement fund so invested. Investments may also be made in either common or preferred corporate stocks, but the original cost of all investments in corporate stocks or corporate bonds, notes, or debentures that are convertible into corporate stock, or in investment trust shares, shall not exceed fifty percent of the then book value of the assets of the fund. In no event shall any investment be made in the common or preferred stock, or both, of any single corporation in an amount in excess of five percent of the then book value of the assets of the fund, nor shall more than seven percent of the outstanding stock or bonds of any single corporation be acquired for the fund; except that the board may acquire up to one hundred percent of the outstanding stock of any corporation described in sections 501 (c) (2) and 501 (c) (25) of the "Internal Revenue Code of 1986", as amended. To the extent that any moneys in the fund have been withdrawn from local financial institutions, the board shall attempt to return a proportional share of such moneys in the fund to the localities from which moneys were withdrawn.~~

~~(b) As used in this subsection (4), unless the context otherwise requires:~~

~~(I) "Book value" means current market value.~~

~~(II) "Current market value" means the current exchange price of an asset that is publicly traded, and, for a nonpublicly traded asset, it means the current valuation as reflected in the books of the association.~~

~~(III) "Original cost" means the acquisition cost of an asset.~~

~~(5) (a) The board shall purchase and acquire and hold for the benefit of the fund such investments in such amounts as may from time to time be directed by the board in writing. Any such investments shall be disposed of by the board when it determines such disposition to be necessary to provide money for payment of refunds or pension benefits or in order to reinvest the proceeds of such disposition in other investments determined by the board to be in the best interests of the fund.~~

~~(b) Notwithstanding any other provision of this section, the board may employ or contract with investment counselors to manage a portion of the assets of the fund and may grant to such investment counselors the authority to make investment decisions with respect to the assets they manage, including the authority to purchase and sell investment assets. The investment counselors retained by the board shall at all times be subject to the standards and limitations set forth in subsection (4) of this section~~

~~and section 15-1-304, C.R.S.~~

(6) All transactions involving the purchase and sale of investments authorized in this section shall be effected on behalf of the association. To facilitate sale and exchange transactions, securities belonging to the association may be registered in the name of nominees in the discretion of the board and in accordance with standard business practices. All such nominees shall be bonded in such amounts as may be determined to be advisable by the board. NOTHING IN THIS SUBSECTION (6) SHALL PRECLUDE THE BOARD OR ITS AUTHORIZED AGENTS FROM FORMING A CORPORATION DESCRIBED IN SECTION 501 (c) (2) AND (c) (25) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (2) AND (c) (25), AS AMENDED, WITH RESPECT TO THE OWNERSHIP OF INVESTMENTS IN REAL PROPERTY.

**SECTION 4.** 31-31-502 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**31-31-502. Statewide money purchase plan - creation - management.**

(2) (a) There is hereby created the fire and police members' statewide money purchase plan benefit fund, which shall consist of moneys of employers that have withdrawn from the statewide defined benefit plan pursuant to section 31-31-501, including member and employer contributions and such amounts as are transferred pursuant to section 31-31-501. The board shall keep an accurate account of the fund and of each member's separate account in the fund. ~~The board may create, and is authorized to offer to each member of the statewide money purchase plan, various investment options including, but not limited to the following:~~ ALLOW A MEMBER TO EXERCISE CONTROL OF THE INVESTMENT OF PART OR ALL OF THE MEMBER'S ACCRUED BENEFIT UNDER THE PLAN. IN ALLOWING A MEMBER TO EXERCISE SUCH CONTROL, THE BOARD SHALL:

(I) ~~Option A, which is investment in the fire and police members' benefit fund created by section 31-31-301 (1) (a)~~ 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) ~~Option B, which is investment in a stock portfolio fund~~ ALLOW THE MEMBER TO CHANGE INVESTMENTS AT LEAST ONCE EACH CALENDAR QUARTER; AND

(III) ~~Option C, which is investment in a bond portfolio fund; and~~ 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.

(IV) ~~Option D, which is investment in a guaranteed fund.~~

(b) The plan document created by the board pursuant to subsection (1) of this section shall govern the calculation and allocation of earnings and losses under the various investment ~~options listed in paragraph (a) of this subsection (2)~~ ALTERNATIVES which the board may offer, the transfer of assets between funds under each ~~option~~ ALTERNATIVE, the allocation of a member's account between investment

~~options~~ ALTERNATIVES, and such other matters as may be necessary to the board's administration and management of the fund created pursuant to this section.

(c) In its administration, INVESTMENT, and management of the fund, the board shall be subject to the same provisions applicable to its administration, INVESTMENT, and management of the fire and police members' money purchase plan benefit fund as set forth in section 31-31-703 (2) to (7). ~~Further, in its administration and management of the fund, the board shall consider employing or contracting with investment counselors to manage all or a portion of the assets of the fund and may grant to such investment counselors the authority to make investment decisions with respect to the assets they manage, including the authority to purchase and sell investment assets. Any investment counselors retained by the board shall at all times be subject to the standards and limitations set forth in section 15-1-304, C.R.S.~~

**SECTION 5.** 31-31-602, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**31-31-602. Withdrawn local alternative pension plans - investment authority.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, any locally administered and financed alternative pension plan fund established pursuant to this part 6 may be MANAGED AND invested ~~as provided in section 31-30.5-803~~ BY THE TRUSTEES OF SUCH PLAN PURSUANT TO THE STANDARD AND OTHER PROVISIONS FOR TRUSTEES SET FORTH IN THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF TITLE 15, C.R.S. SUCH INVESTMENTS SHALL BE AUDITED AT LEAST BIENNIALY.

(2) THE TRUSTEES OF A LOCALLY ADMINISTERED AND FINANCED ALTERNATIVE PLAN MAY ALLOW A PARTICIPANT TO EXERCISE CONTROL OF THE INVESTMENT OF THE PARTICIPANT'S ACCRUED BENEFIT UNDER THE PLAN, SUBJECT TO THE FOLLOWING REQUIREMENTS:

(a) THE TRUSTEES SHALL SELECT AT LEAST THREE INVESTMENT ALTERNATIVES, EACH OF WHICH IS DIVERSIFIED IN ITSELF, THAT ALLOW THE PARTICIPANT A BROAD RANGE OF INVESTMENTS AND A MEANINGFUL CHOICE BETWEEN RISK AND RETURN IN THE INVESTMENT OF THE PARTICIPANT'S ACCRUED BENEFIT;

(b) THE TRUSTEES SHALL ALLOW THE PARTICIPANT TO CHANGE INVESTMENTS AT LEAST ONCE EACH CALENDAR QUARTER; AND

(c) THE TRUSTEES SHALL PROVIDE THE PARTICIPANT WITH INFORMATION DESCRIBING THE INVESTMENT ALTERNATIVES AND THE NATURE, INVESTMENT PERFORMANCE, FEES, AND EXPENSES OF THE INVESTMENT ALTERNATIVES AND OTHER INFORMATION TO ENABLE A PARTICIPANT TO MAKE INFORMED INVESTMENT DECISIONS.

**SECTION 6.** 31-31-703 (1), (2), (5), and (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**31-31-703. Money purchase plan benefit fund - creation - management.** (1) (a) There is hereby created the fire and police members' money purchase plan benefit fund that shall consist of the assets of money purchase plan funds administered and managed by the board pursuant to section 31-31-702. 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 ~~create, and is authorized to offer to each member of an affiliated money purchase plan, various investment options including, but not limited to, the following:~~ 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) ~~Option A, which is investment in the fire and police members' benefit fund created by section 31-31-301~~ 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) ~~Option B, which is investment in a stock portfolio fund~~ ALLOW THE MEMBER TO CHANGE INVESTMENTS AT LEAST ONCE EACH CALENDAR QUARTER; AND

(III) ~~Option C, which is investment in a bond portfolio fund; and~~ 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.

(IV) ~~Option D, which is investment in a guaranteed fund.~~

(b) The board shall adopt rules governing the calculation and allocation of earnings and losses under the various investment ~~options listed in paragraph (a) of this subsection (1)~~ ALTERNATIVES that it may offer, the transfer of assets between funds under each ~~option~~ ALTERNATIVE, the allocation of a member's account between investment ~~options~~ 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 fund and, subject to the members' allocation of moneys in their accounts to the ~~options set forth in subsection (1) of this section~~ ALTERNATIVES OFFERED BY THE BOARD, shall have full and unrestricted discretionary power and authority to invest and reinvest such portions of the fund as in its judgment may not be immediately required for the payment of refunds or benefits. In exercising its discretionary authority with respect to the ~~acquisition or disposition of any investments~~ INVESTMENT AND MANAGEMENT OF THE FUND ASSETS, the board shall be governed by the standard ~~for investments prescribed in section 15-1-304, C.R.S.~~ AND OTHER PROVISIONS FOR TRUSTEES SET FORTH IN THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF TITLE 15, C.R.S. ~~The board may, by resolution, delegate to its executive director, appointed pursuant to section 31-31-201 (3) (b), the investment authority created by this subsection (2). The board shall not delegate to its executive director the authority to invest or reinvest more than five percent of the market value of the assets of the fund between regularly scheduled meetings of the board.~~

(5) ~~The board shall purchase and acquire and hold for the benefit of the fund such investments in such amounts as may from time to time be directed by the board in~~

~~writing. Any such investments shall be disposed of by the board when it determines such disposition to be necessary to provide money for payment of refunds or pension benefits or in order to reinvest the proceeds of such disposition in other investments determined by the board to be in the best interests of the fund. Notwithstanding any other provision of this section, the board may employ or contract with investment counselors to manage a portion of the assets of the fund and may grant to such investment counselors the authority to make investment decisions with respect to the assets they manage, including the authority to purchase and sell investment assets. The investment counselors retained by the board shall at all times be subject to the standards and limitations set forth in section 15-1-304, C.R.S.~~

(6) All transactions involving the purchase and sale of investments authorized in this section shall be effected on behalf of the association. To facilitate sale and exchange transactions, securities belonging to the association may be registered in the name of nominees in the discretion of the board and in accordance with standard business practices. All such nominees shall be bonded in such amounts as may be determined to be advisable by the board. NOTHING IN THIS SUBSECTION (6) SHALL PRECLUDE THE BOARD OR ITS AUTHORIZED AGENTS FROM FORMING A CORPORATION DESCRIBED IN SECTION 501 (c) (2) AND (c) (25) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (2) AND (c) (25), AS AMENDED, WITH RESPECT TO THE OWNERSHIP OF INVESTMENTS IN REAL PROPERTY.

**SECTION 7. 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 13, 1997