

CHAPTER 10

GOVERNMENT - MUNICIPAL

HOUSE BILL 98-1022

BY REPRESENTATIVES Tucker, K. Alexander, G. Berry, Dean, George, June, Miller, Nichol, Saliman, and Mace;
also SENATORS Reeves, B. Alexander, Feeley, Powers, and Tebedo.

AN ACT

CONCERNING REVISIONS TO THE STATUTORY PROVISIONS GOVERNING FIRE AND POLICE PENSION PLANS
FOR PURPOSES OF COMPLIANCE WITH THE QUALIFIED PLAN REQUIREMENTS OF THE FEDERAL
INTERNAL REVENUE CODE.

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

SECTION 1. Part 11 of article 30 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-30-1133. Qualification requirements - internal revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON SEPTEMBER 1, 1974, AS APPLICABLE TO GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT, THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED AND IN EFFECT ON JANUARY 1, 1989.

(2) ANY VOLUNTEER FIREFIGHTER PENSION PLAN ESTABLISHED BY THIS PART 11 TO PROVIDE RETIREMENT BENEFITS FOR VOLUNTEER FIREFIGHTERS SHALL SATISFY THE QUALIFICATION REQUIREMENTS SPECIFIED IN SECTION 401 OF THE INTERNAL REVENUE CODE, AS APPLICABLE TO GOVERNMENTAL PLANS. IN ORDER TO MEET THOSE REQUIREMENTS, SUCH PLANS ARE SUBJECT TO THE FOLLOWING PROVISIONS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 11:

(a) THE BOARD SHALL DISTRIBUTE THE CORPUS AND INCOME OF THE PENSION PLAN TO MEMBERS AND THEIR BENEFICIARIES IN ACCORDANCE WITH THIS PART 11 AND THE RULES ADOPTED BY THE BOARD.

(b) NO PART OF THE CORPUS OR INCOME OF THE PENSION PLAN MAY BE USED FOR OR DIVERTED TO ANY PURPOSE OTHER THAN THAT OF PROVIDING BENEFITS TO

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

PARTICIPANTS AND THEIR BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PENSION PLAN.

(c) FORFEITURES ARISING FROM SEVERANCE OF EMPLOYMENT, DEATH, OR ANY OTHER REASON MAY NOT BE APPLIED TO INCREASE THE BENEFITS ANY MEMBER WOULD OTHERWISE RECEIVE UNDER THIS PART 11.

(d) IF THE PENSION PLAN IS TERMINATED, OR IF ALL CONTRIBUTIONS TO THE PENSION PLAN ARE PERMANENTLY DISCONTINUED, THE RIGHTS OF EACH AFFECTED MEMBER TO THE BENEFITS ACCRUED AT THE DATE OF THE TERMINATION OR DISCONTINUANCE, TO THE EXTENT THEN FUNDED, ARE NONFORFEITABLE.

(e) UPON ATTAINING THE ELIGIBILITY REQUIREMENTS FOR A BENEFIT, A MEMBER SHALL BE FULLY VESTED IN THE BENEFITS SUCH MEMBER HAS ACCRUED.

(f) ALL BENEFITS PAID FROM THE PENSION PLAN SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 401 (a) (9) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED UNDER THAT SECTION. IN ORDER TO MEET THOSE REQUIREMENTS, THE PENSION PLAN IS SUBJECT TO THE FOLLOWING PROVISIONS:

(I) THE LIFE EXPECTANCY OF A MEMBER, THE MEMBER'S SPOUSE, OR THE MEMBER'S BENEFICIARY SHALL NOT BE RECALCULATED AFTER THE INITIAL DETERMINATION OF THE AMOUNT OF BENEFITS THAT ARE PAYABLE.

(II) IF A MEMBER DIES BEFORE THE DISTRIBUTION OF THE MEMBER'S BENEFITS HAS BEGUN, DISTRIBUTIONS TO BENEFICIARIES MUST BEGIN NO LATER THAN DECEMBER 31 OF THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER DIED.

(III) THE AMOUNT OF AN ANNUITY PAID TO A MEMBER'S BENEFICIARY MAY NOT EXCEED THE MAXIMUM DETERMINED UNDER THE INCIDENTAL DEATH BENEFIT REQUIREMENT OF THE INTERNAL REVENUE CODE.

(g) BENEFITS PAID UNDER ANY PENSION PLAN MAY NOT EXCEED THE LIMITATIONS SPECIFIED BY SECTION 415 OF THE INTERNAL REVENUE CODE, INCLUDING THE SPECIAL RULE UNDER SECTION 415 (b) (10) OF THE INTERNAL REVENUE CODE.

(h) THE COMPENSATION TAKEN INTO ACCOUNT UNDER THIS PART 11 MAY NOT EXCEED THE APPLICABLE AMOUNT UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE.

(i) ANY DISTRIBUTEE WHO IS ENTITLED TO AN ELIGIBLE ROLLOVER DISTRIBUTION, AS DEFINED IN SECTION 402 (c) (4) OF THE INTERNAL REVENUE CODE, FROM THE STATEWIDE PENSION PLAN ON AND AFTER JANUARY 1, 1993, MAY ELECT TO HAVE THE PORTION OF SUCH DISTRIBUTION THAT WOULD OTHERWISE BE INCLUDED IN THE GROSS INCOME OF THE DISTRIBUTEE FOR FEDERAL INCOME TAX PURPOSES TRANSFERRED DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN, AS DEFINED IN SECTION 402 (c) (8) (B) OF THE INTERNAL REVENUE CODE, DESIGNATED BY THE DISTRIBUTEE.

SECTION 2. 31-30.5-212 (8), Colorado Revised Statutes, is amended, and the

said 31-30.5-212 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-30.5-212. Qualification requirements - internal revenue code. (8) Any distributee who is entitled to an eligible rollover distribution, as defined in section 402 (c) (4) of the internal revenue code, from the pension fund on or after January 1, 1993, may elect to have the portion of such distribution that would otherwise be included in the gross income of the distributee for federal income tax purposes transferred directly to an eligible retirement plan, as defined in ~~section 402 (a) (5) (E)~~ SECTION 402 (c) (8) (B) of the internal revenue code, designated by the distributee.

(9) ALL BENEFITS PAID FROM AN OLD HIRE PENSION FUND SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 401 (a) (9) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED UNDER THAT SECTION. IN ORDER TO MEET THOSE REQUIREMENTS, AN OLD HIRE PENSION FUND IS SUBJECT TO THE FOLLOWING PROVISIONS:

(a) THE LIFE EXPECTANCY OF AN OLD HIRE MEMBER, THE MEMBER'S SPOUSE, OR THE MEMBER'S BENEFICIARY SHALL NOT BE RECALCULATED AFTER THE INITIAL DETERMINATION OF THE AMOUNT OF BENEFITS THAT ARE PAYABLE.

(b) IF AN OLD HIRE MEMBER DIES BEFORE THE DISTRIBUTION OF THE MEMBER'S BENEFITS HAS BEGUN, DISTRIBUTIONS TO BENEFICIARIES MUST BEGIN NO LATER THAN DECEMBER 31 OF THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER DIED.

(c) THE AMOUNT OF AN ANNUITY PAID TO AN OLD HIRE MEMBER'S BENEFICIARY MAY NOT EXCEED THE MAXIMUM DETERMINED UNDER THE INCIDENTAL DEATH BENEFIT REQUIREMENT OF THE INTERNAL REVENUE CODE.

(10) NOTWITHSTANDING ANY PROVISION OF AN OLD HIRE PENSION PLAN TO THE CONTRARY, CONTRIBUTIONS, BENEFITS, AND SERVICE CREDIT WITH RESPECT TO SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 414 (u) OF THE INTERNAL REVENUE CODE.

SECTION 3. 31-31-102 (5), Colorado Revised Statutes, is amended to read:

31-31-102. Definitions. As used in this article, unless the context otherwise requires:

(5) "Money purchase plan" OR "MONEY PURCHASE PENSION PLAN" means a ~~program~~ RETIREMENT PLAN under which: ~~member and employer contributions are accumulated with interest to purchase a benefit at retirement. The benefit amount is determined by actuarially converting the accumulated sum in a member's retirement account into a monthly benefit based on uniform actuarial assumptions approved by the board for such plans. The term does not include a plan that provides for minimum benefits or other defined benefits.~~

(a) THE EMPLOYER HAS A FIXED OBLIGATION TO MAKE AN ANNUAL CONTRIBUTION TO THE PLAN;

(b) THE PLAN PROVIDES FOR AN INDIVIDUAL ACCOUNT FOR EACH MEMBER; AND

(c) THE MEMBER'S BENEFITS ARE BASED SOLELY ON THE AMOUNT CONTRIBUTED TO THE MEMBER'S ACCOUNT AND ANY INCOME, EXPENSES, GAINS, AND LOSSES ALLOCATED TO THE MEMBER'S ACCOUNT.

SECTION 4. 31-31-409 (2) (f), (2) (i), and (2) (j), Colorado Revised Statutes, are amended, and the said 31-31-409 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-31-409. Qualification requirements - internal revenue code. (2) The statewide defined benefit plan established by this part 4 to provide retirement benefits for members hired on or after April 8, 1978, shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. In order to meet those requirements, the statewide defined benefit plan is subject to the following provisions, notwithstanding any other provision of this part 4:

(f) ~~The board may not determine eligibility for benefits, compute rates of contribution, or compute benefits of members or beneficiaries in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under section 401 (a) (4) of the internal revenue code.~~

(i) ~~The board may not engage in a transaction prohibited by section 503 (b) of the internal revenue code.~~

(j) Any distributee who is entitled to an eligible rollover distribution, as defined in section 402 (c) (4) of the internal revenue code, from the statewide pension plan on and after January 1, 1993, may elect to have the portion of such distribution that would otherwise be included in the gross income of the distributee for federal income tax purposes transferred directly to an eligible retirement plan, as defined in ~~section 402 (a) (5) (E) (iv)~~ SECTION 402 (c) (8) (B) of the internal revenue code, designated by the distributee.

(k) UPON ATTAINING THE ELIGIBILITY REQUIREMENTS FOR A BENEFIT, A MEMBER SHALL BE FULLY VESTED IN THE BENEFITS SUCH MEMBER HAS ACCRUED.

SECTION 5. 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 16, 1998