

## CHAPTER 59

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**GOVERNMENT - MUNICIPAL**

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**HOUSE BILL 06-1059**

BY REPRESENTATIVE(S) Riesberg, Berens, Cerbo, Lindstrom, McCluskey, McGihon, Ragsdale, Vigil, Butcher, Carroll M., Coleman, Gallegos, Green, Hodge, Madden, Stafford, Todd, Witwer, and Solano;  
also SENATOR(S) Williams, Entz, Taylor, and Tochtrop.

**AN ACT**

**CONCERNING THE STRUCTURE OF TRUST FUNDS AND INVESTMENT FUNDS IN THE ADMINISTRATION OF ASSETS FOR THE BENEFIT OF FIREFIGHTERS AND POLICE OFFICERS.**

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

**SECTION 1.** 31-30-1111 (2), Colorado Revised Statutes, is amended to read:

**31-30-1111. Contribution to fund.** (2) Fund moneys are HELD IN TRUST for the EXCLUSIVE use and benefit of the fire department members and retired fire department members and their surviving spouses, dependent children, dependent parents, and other beneficiaries in accordance with this part 11.

**SECTION 2.** 31-30-1133 (2) (b), Colorado Revised Statutes, is amended to read:

**31-30-1133. Qualification requirements - internal revenue code.** (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:

(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 participants and their beneficiaries and defraying reasonable expenses of administering the pension plan, EXCEPT FOR AN ASSIGNMENT FOR CHILD SUPPORT DEBT PURSUANT TO SECTION 14-14-104, C.R.S., CHILD SUPPORT ARREARAGES AS REQUESTED AS PART OF AN ENFORCEMENT ACTION UNDER ARTICLE 5 OF TITLE 14, C.R.S., OR CHILD SUPPORT ARREARAGES THAT ARE THE SUBJECT OF ENFORCEMENT SERVICES PROVIDED UNDER

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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.*

SECTION 26-13-106, C.R.S., AND EXCEPT FOR INCOME ASSIGNMENTS FOR CHILD SUPPORT PURPOSES PURSUANT TO SECTION 14-14-111.5, C.R.S., AND A WRIT OF GARNISHMENT THAT IS THE RESULT OF A JUDGMENT TAKEN FOR ARREARAGES FOR CHILD SUPPORT OR FOR CHILD SUPPORT DEBT.

**SECTION 3.** 31-30.5-209 (1) and (2), Colorado Revised Statutes, are amended to read:

**31-30.5-209. Idle funds.** (1) If the governing body of a municipality, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the municipality's police officers' old hire pension fund established pursuant to section 31-30.5-201 (2), it may authorize use of the money in the fund to make contributions to the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund pursuant to section 31-31-402 (2), to make contributions to a police benefit fund established pursuant to section 31-31-601 (1) (b), or to make contributions under the federal social security laws if the municipality's police officers are covered by the social security laws. To the extent that money in the fund exceeds three times the present yearly employer contribution to any of the preceding benefit funds on behalf of the municipality's current police officers, such excess may be used for any law-enforcement-related purpose. If the municipality does not employ any police officer, the governing body may authorize use of the money in the fund for any law-enforcement-related purpose. In addition, any money in the fund that is attributable to contributions by the municipality and to interest on such contributions may be used for any police-related purpose and, if no such police-related need exists, then for any purpose as decided by the governing body of the municipality. For the purposes of this subsection (1), contracting with the county or county sheriff for law enforcement service shall not be considered employment of a police officer.

(2) If the governing body of a municipality, fire protection district, or county improvement district, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the employer's firefighters' old hire pension fund, it may authorize use of the money in the fund to make contributions to the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund pursuant to section 31-31-402 (2) or to make contributions under the federal social security laws if the employer's firefighters are covered by the social security laws. In addition, any money in the fund that is attributable to contributions by the municipality or district and to interest on such contributions may be used for any fire-related purpose and, if no such fire-related need exists, for any purpose as decided by the governing body of the municipality or district.

**SECTION 4.** 31-30.5-212 (2), Colorado Revised Statutes, is amended to read:

**31-30.5-212. Qualification requirements - internal revenue code.** (2) The old hire pension funds established by this article shall be held in trust for the benefit of old hire members and other persons entitled to benefits. No part of the corpus or income of the pension fund shall be used for or diverted to purposes other than for the exclusive benefit of old hire members or other persons entitled to benefits from the pension fund and for expenses incident to operation of the pension fund. No person shall have any interest in or right to any part of the corpus or earnings of the pension trust except as expressly provided, INCLUDING ASSIGNMENTS FOR CHILD

SUPPORT PURPOSES AS PROVIDED FOR IN SECTION 14-14-104, C.R.S., CHILD SUPPORT ARREARAGES AS REQUESTED AS PART OF AN ENFORCEMENT ACTION UNDER ARTICLE 5 OF TITLE 14, C.R.S., OR CHILD SUPPORT ARREARAGES THAT ARE THE SUBJECT OF ENFORCEMENT SERVICES PROVIDED UNDER SECTION 26-13-106, C.R.S., INCOME ASSIGNMENTS FOR CHILD SUPPORT PURPOSES PURSUANT TO SECTION 14-14-111.5, C.R.S., WRITS OF GARNISHMENT THAT ARE THE RESULT OF A JUDGMENT TAKEN FOR ARREARAGES FOR CHILD SUPPORT OR FOR CHILD SUPPORT DEBT, AND PAYMENTS MADE IN COMPLIANCE WITH A PROPERLY EXECUTED COURT ORDER APPROVING A WRITTEN AGREEMENT ENTERED INTO PURSUANT TO SECTION 14-10-113 (6), C.R.S.

**SECTION 5.** 31-30.5-304 (3.5), Colorado Revised Statutes, is amended to read:

**31-30.5-304. Limitation on existing funds - procedures.** (3.5) No later than September 1, 1995, the board of directors of the fire and police pension association shall certify to the state auditor, the legislative audit committee and the joint budget committee of the general assembly, and the state treasurer the amount of state contribution necessary to fund the supplemental unfunded liability in each state-assisted policemen's or firefighters' pension plan attributable to the reduction of the state's contribution for the year 1987. On September 30, 1995, the state treasurer shall transfer the amount certified from the general fund to the OLD HIRE PLAN MEMBERS' BENEFIT TRUST fund created by ~~section 31-31-301~~ SECTION 31-31-701 (6), and from such amount the board shall distribute to each state-assisted policemen's or firefighters' pension plan the amount necessary to eliminate the supplemental unfunded liability in each plan; except that the amount transferred by the state treasurer pursuant to this subsection (3.5) shall not exceed twenty-five million five hundred thousand dollars.

**SECTION 6.** 31-30.5-306 (1) (b) (II), Colorado Revised Statutes, is amended to read:

**31-30.5-306. Actuarial studies.** (1) (b) (II) By September 30, 2001, and by September 30 of each year thereafter, until September 30, 2002, and by April 30, 2006, and by April 30 of each year thereafter, until April 30, 2012, or until all state-assisted old hire pension plans are fully funded, whichever comes first, an updated actuarial study shall be filed with the fire and police pension association. For the 2003-04 fiscal year and each fiscal year thereafter for which an actuarial study is filed, the actuarial study shall include a determination of the amount of the unfunded liability that may accrue as a result of the suspension of the state contribution of the ~~fire and police members' benefit~~ OLD HIRE PLAN MEMBERS' BENEFIT TRUST fund pursuant to section 31-30.5-307 (5) (a).

**SECTION 7.** 31-30.5-307 (2), (5) (a), (5) (b), and (6), Colorado Revised Statutes, are amended to read:

**31-30.5-307. State contribution.** (2) On September 30, 1995, and on September 30 of each year thereafter through 2002 and on April 30, 2006, and on April 30 of each year thereafter through 2012, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the OLD HIRE PLAN MEMBERS' BENEFIT TRUST fund created by ~~section 31-31-301~~ SECTION 31-31-701 (6), an amount equal to twenty-six million six hundred thousand dollars minus the amount transferred under section 31-30-1112 (2) (g) (I). Such annual transfer to the

fund under this subsection (2) shall cease when the requirements of paragraph (c) of subsection (1) of this section have been met, and the final annual transfer may be in an amount less than the amount prescribed by this subsection (2) as determined from the total amount of unfunded accrued liability of employers. Moneys in said fund shall not revert to the general fund but shall be continuously available for the purposes provided in this part 3 and part 11 of article 30 of this title.

(5) (a) Notwithstanding any other provision of law, the state treasurer shall not transfer moneys to the ~~fire and police members' benefit~~ OLD HIRE PLAN MEMBERS' BENEFIT TRUST fund pursuant to subsection (2) of this section on September 30, 2003, September 30, 2004, or September 30, 2005. The state treasurer shall resume such transfers beginning on April 30, 2006, and shall make a transfer every April 30 thereafter until 2012 pursuant to subsection (2) of this section or until all state-assisted old hire pension plans are fully funded, whichever comes first.

(b) Notwithstanding any other provision of law, the state shall transfer to the ~~fire and police members' benefit~~ OLD HIRE PLAN MEMBERS' BENEFIT TRUST fund any amount of unfunded liability accrued as a result of the suspension of the state contribution to the fund pursuant to paragraph (a) of this subsection (5) as determined in the actuarial study filed with the fire and police pension association pursuant to section 31-30.5-306 (1) (b) (II). Such transfers may occur at any time until April 30, 2012.

(6) If voters statewide approve a ballot issue submitted by a joint resolution of the general assembly as specified in section 24-115-110 (1) (a), C.R.S., that authorizes the state to issue notes, as defined in section 24-115-103 (8), C.R.S., and to credit note proceeds to the fire and police members' benefit INVESTMENT fund created by section 31-31-301, the state obligation specified by this section shall be satisfied to the extent of the actuarial equivalency of the proceeds from the notes.

**SECTION 8.** 31-31-202 (1) (a) (I), (1) (e), and (1) (h), Colorado Revised Statutes, are amended to read:

**31-31-202. Powers and duties of the board.** (1) The board shall:

(a) Establish standards for determining the actuarial soundness of:

(I) The pension plans in the DEFINED BENEFIT SYSTEM AND THE AFFILIATED OLD HIRE PLANS AND THE AFFILIATED EXEMPT PLANS WITH ASSETS IN THE fire and police members' benefit INVESTMENT fund, in accordance with ~~section 31-31-301~~ SECTION 31-31-301 (1); and

(e) Administer or provide for the administration and, in accordance with the provisions of ~~section 31-31-302 (1)~~ SECTIONS 31-31-302 (1) AND 31-31-303, the investment of the fire and police members' benefit INVESTMENT fund AND THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND;

(h) Provide for disbursements from the fire and police members' benefit INVESTMENT fund created by ~~section 31-31-301~~ SECTION 31-31-301 (1) AND FROM THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND CREATED BY SECTION 31-31-301 (4). Such disbursements shall be made only for payment of the

expenses of the association, payment of refunds to members, payment of survivor, disability, or retirement benefits, or for purposes of investment.

**SECTION 9.** 31-31-203, Colorado Revised Statutes, is amended to read:

**31-31-203. Fund not subject to levy.** Except for assignments for child support purposes as provided for in sections ~~14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996~~ DEBT PURSUANT TO SECTION 14-14-104, C.R.S., CHILD SUPPORT ARREARAGES AS REQUESTED AS PART OF AN ENFORCEMENT ACTION UNDER ARTICLE 5 OF TITLE 14, C.R.S., OR CHILD SUPPORT ARREARAGES THAT ARE THE SUBJECT OF ENFORCEMENT SERVICES PROVIDED UNDER SECTION 26-13-106, C.R.S., for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no portion of the funds created pursuant to ~~sections 31-31-301, 31-31-502, and 31-31-703~~ SECTIONS 31-31-204 (4), 31-31-502, 31-31-701 (6), 31-31-703, 31-31-706 (1), 31-31-813 (1), AND 31-31-901(3), before or after their order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the fire and police pension association or employers that belong to such association or the beneficiary of such funds. The funds shall be held and distributed for the purpose of this article and for no other purpose whatsoever.

**SECTION 10.** Part 2 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**31-31-204. Defined benefit system.** (1) THERE SHALL BE A DEFINED BENEFIT SYSTEM THAT SHALL CONSIST OF THE FOLLOWING PLANS:

(a) THE STATEWIDE DEFINED BENEFIT PLAN ESTABLISHED PURSUANT TO PART 4 OF THIS ARTICLE;

(b) THE STATEWIDE HYBRID PLAN ESTABLISHED PURSUANT TO PART 11 OF THIS ARTICLE;

(c) ANY EXEMPT PLAN THAT IS INCORPORATED INTO THE DEFINED BENEFIT SYSTEM, PURSUANT TO AN AGREEMENT ESTABLISHED UNDER SECTION 31-31-706(2);

(d) ANY HEALTH CARE BENEFIT PLAN ESTABLISHED IN ASSOCIATION WITH THE INCLUDED PLANS; AND

(e) ANY OTHER PLAN AUTHORIZED TO BE INCORPORATED INTO THE STATEWIDE

## DEFINED BENEFIT SYSTEM.

(2) THE BOARD MAY CREATE PLAN DOCUMENTS FOR THE PLANS WITHIN THE DEFINED BENEFIT SYSTEM THAT SHALL BE IN SUBSTANTIAL CONFORMANCE WITH THE STATUTORY PROVISIONS FOR EACH PLAN AND THAT MAY INCLUDE MODIFICATIONS AND PLAN AMENDMENTS AS AUTHORIZED UNDER LAW.

(3) **Qualification requirements - internal revenue code.** (a) AS USED IN THIS SECTION, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED AND IN EFFECT ON JANUARY 1, 1989.

(b) THE DEFINED BENEFIT SYSTEM AND EACH OF THE PLANS ESTABLISHED BY PART 2, 4, 7, OR 11 OF THIS ARTICLE INCLUDED WITHIN THE SYSTEM 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 ARTICLE:

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

(II) 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 PARTICIPANTS AND THEIR BENEFICIARIES, INCLUDING ASSIGNMENTS FOR CHILD SUPPORT PURPOSES AS PROVIDED FOR IN SECTION 14-14-104, C.R.S., CHILD SUPPORT ARREARAGES AS REQUESTED AS PART OF AN ENFORCEMENT ACTION UNDER ARTICLE 5 OF TITLE 14, C.R.S., OR CHILD SUPPORT ARREARAGES THAT ARE THE SUBJECT OF ENFORCEMENT SERVICES PROVIDED UNDER SECTION 26-13-106, C.R.S., INCOME ASSIGNMENTS FOR CHILD SUPPORT PURPOSES PURSUANT TO SECTION 14-14-111.5, C.R.S., WRITS OF GARNISHMENT THAT ARE THE RESULT OF A JUDGMENT TAKEN FOR ARREARAGES FOR CHILD SUPPORT OR FOR CHILD SUPPORT DEBT, AND PAYMENTS MADE IN COMPLIANCE WITH A PROPERLY EXECUTED COURT ORDER APPROVING A WRITTEN AGREEMENT ENTERED INTO PURSUANT TO SECTION 14-10-113 (6), C.R.S., AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PLAN.

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

(IV) 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.

(V) 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:

(A) THE LIFE EXPECTANCY OF A MEMBER, THE MEMBER'S SPOUSE, OR THE MEMBER'S BENEFICIARY SHALL NOT BE RECALCULATED AFTER THE INITIAL DETERMINATION FOR PURPOSES OF DETERMINING BENEFITS.

(B) IF A MEMBER DIES BEFORE THE DISTRIBUTION OF THE MEMBER'S BENEFITS HAS BEGUN, DISTRIBUTIONS TO BENEFICIARIES SHALL 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 A MEMBER'S BENEFICIARY MAY NOT EXCEED THE MAXIMUM DETERMINED UNDER THE INCIDENTAL DEATH BENEFIT REQUIREMENT OF THE INTERNAL REVENUE CODE.

(VI) BENEFITS PAID UNDER THE DEFINED BENEFIT SYSTEM ESTABLISHED BY THIS PART 2 MAY NOT EXCEED THE LIMITATIONS SPECIFIED BY SECTION 415 OF THE INTERNAL REVENUE CODE.

(VII) THE COMPENSATION TAKEN INTO ACCOUNT UNDER THIS PART 2 MAY NOT EXCEED THE APPLICABLE AMOUNT UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE.

(VIII) 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.

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

(4) **Trust fund.** (a) THERE IS HEREBY CREATED THE DEFINED BENEFIT SYSTEM TRUST FUND. ALL ASSETS HELD IN CONNECTION WITH THE DEFINED BENEFIT SYSTEM, INCLUDING ALL CONTRIBUTIONS TO THE PLANS IN THE SYSTEM, ALL PROPERTY AND RIGHTS ACQUIRED OR PURCHASED WITH SUCH AMOUNTS, AND ALL INCOME ATTRIBUTABLE TO SUCH AMOUNTS, PROPERTY, OR RIGHTS, SHALL BE HELD IN TRUST FOR THE EXCLUSIVE BENEFIT OF MEMBERS AND THEIR DESIGNATED BENEFICIARIES UNDER THE PLANS. SUCH ASSETS SHALL CONSTITUTE THE TRUST FUND. NO PART OF THE ASSETS AND INCOME OF THE TRUST FUND SHALL BE USED FOR, OR DIVERTED TO, PURPOSES OTHER THAN FOR THE EXCLUSIVE BENEFIT OF MEMBERS AND THEIR DESIGNATED BENEFICIARIES AND FOR DEFRAYING REASONABLE EXPENSES OF THE SYSTEM.

(b) ALL AMOUNTS OF COMPENSATION CONTRIBUTED PURSUANT TO THE PLANS,

ALL PROPERTY AND RIGHTS ACQUIRED OR PURCHASED WITH SUCH AMOUNTS, AND ALL INCOME ATTRIBUTABLE TO SUCH AMOUNTS, PROPERTY, OR RIGHTS HELD AS PART OF THE DEFINED BENEFIT SYSTEM, INCLUDING MEMBER CONTRIBUTIONS, EMPLOYER CONTRIBUTIONS, ANY STATE CONTRIBUTIONS, FEES COLLECTED, GIFTS RECEIVED, UNCLAIMED DEPOSITS, AND INVESTMENT INCOME, SHALL BE TRANSFERRED TO THE BOARD TO BE HELD, MANAGED, INVESTED, AND DISTRIBUTED AS PART OF THE TRUST FUND IN ACCORDANCE WITH THE PROVISIONS OF THE DOCUMENTS GOVERNING THE SYSTEM. ALL CONTRIBUTIONS TO THE PLANS SHALL BE TRANSFERRED BY THE EMPLOYERS TO THE TRUST FUND. ALL BENEFITS UNDER THE PLANS SHALL BE DISTRIBUTED SOLELY FROM THE TRUST FUND PURSUANT TO THE DOCUMENTS GOVERNING THE SYSTEM.

(c) THE BOARD IS THE TRUSTEE OF THE DEFINED BENEFIT SYSTEM TRUST FUND.

(d) THE FOLLOWING ACCOUNTS SHALL BE ESTABLISHED WITHIN THE TRUST FUND:

(I) A NEW HIRE BENEFITS ACCOUNT FOR THE STATEWIDE DEFINED BENEFIT PLAN, INTO WHICH CONTRIBUTIONS SHALL BE DEPOSITED. THE BENEFITS PROVIDED BY THE STATEWIDE DEFINED BENEFIT PLAN SHALL BE PAID FROM SUCH ACCOUNT.

(II) ACCOUNTS FOR THE STATEWIDE HYBRID PLAN AS MAY BE REQUIRED UNDER THE STATEWIDE HYBRID PLAN DOCUMENT;

(III) ACCOUNTS FOR EXEMPT PLANS INCORPORATED INTO THE STATEWIDE DEFINED BENEFIT PLAN AS MAY BE REQUIRED UNDER THE PLAN DOCUMENTS; AND

(IV) ACCOUNTS FOR HEALTH CARE BENEFIT PLANS AS MAY BE REQUIRED UNDER THE HEALTH CARE PLAN DOCUMENTS.

**SECTION 11.** 31-31-301, Colorado Revised Statutes, is amended to read:

**31-31-301. Investment funds - creation.** (1) (a) There is hereby created the fire and police members' benefit INVESTMENT fund, which shall consist of THE PORTION OF THE assets THAT ARE DESIGNATED FOR INVESTMENT BY THE BOARD of the following ~~fire and police benefit plans: including member contributions, employer contributions, any state contributions, fees collected, gifts received, unclaimed deposits, and investment income:~~

(I) The ~~statewide~~ defined benefit ~~plan~~ SYSTEM established in ~~part 4~~ PART 2 of this article;

(II) Old hire police and fire pension plans established in article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(III) Exempt plans established pursuant to part 8 of article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(IV) Volunteer firefighter pension plans, which are affiliated with the association pursuant to part 7 of this article; and

(V) The statewide ~~health care defined benefit~~ DEATH AND DISABILITY plan



established in ~~section 31-31-904~~ PART 8 OF THIS ARTICLE.

(b) The board shall keep an accurate account of ~~each~~ THE ASSETS OF EACH PLAN DEPOSITED IN THE INVESTMENT fund and shall disburse moneys in accordance with the provisions of this article AND THE APPLICABLE PLAN DOCUMENT.

~~(2) There shall be established in the fund a disability and death benefits account into which contributions for death and disability benefits, including state contributions made pursuant to section 31-31-811, shall be deposited. The benefits provided by part 8 of this article, together with the expenses of administering such part, shall be paid from such account.~~

~~(3) (a) There shall be established in the fund a new hire benefits account, into which contributions made pursuant to section 31-31-402 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) Within the new hire benefits account, there shall be established two subaccounts:~~

~~(i) 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;~~

~~(ii) A stabilization reserve account, into which the remainder in the new hire benefits account, after allocation pursuant to subparagraph (i) of this paragraph (b), may be deposited.~~

~~(c) In each year after 1987, 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 is not sufficient to meet the benefit liabilities funded by the actuarial account, then such additional amount as may be necessary to fund the increase shall be transferred from the stabilization reserve account to the actuarial account. 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. Any excess allocated to the stabilization reserve account in any year shall be allocated from that portion of deposits to the new hire benefits account constituting employer contributions to the statewide defined benefit plan established by part 4 of this article.~~

~~(d) Repealed.~~

(4) (a) THERE IS HEREBY CREATED THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND, WHICH SHALL CONSIST OF THE PORTION OF THE ASSETS THAT ARE DESIGNATED FOR SELF-DIRECTION BY THE MEMBER OF THE FOLLOWING PLANS:

(I) THE DEFINED BENEFIT SYSTEM ESTABLISHED IN PART 2 OF THIS ARTICLE;

(II) OLD HIRE POLICE AND FIRE PENSION PLANS ESTABLISHED IN ARTICLE 30.5 OF THIS TITLE, WHICH ARE AFFILIATED WITH THE ASSOCIATION PURSUANT TO PART 7 OF THIS ARTICLE;

(III) THE FIRE AND POLICE MEMBERS' STATEWIDE MONEY PURCHASE PLAN ESTABLISHED IN PART 5 OF THIS ARTICLE;

(IV) THE AFFILIATED FIRE AND POLICE MEMBERS' MONEY PURCHASE PLANS ESTABLISHED IN PART 7 OF THIS ARTICLE;

(V) THE FIRE AND POLICE MEMBERS' DEFERRED COMPENSATION PLANS ESTABLISHED IN PART 9 OF THIS ARTICLE; AND

(VI) THE AFFILIATED EXEMPT PLANS WHICH ARE AFFILIATED WITH THE ASSOCIATION PURSUANT TO PART 7 OF THIS ARTICLE.

(b) THE BOARD SHALL KEEP AN ACCURATE ACCOUNT OF THE ASSETS OF EACH PLAN DEPOSITED IN THE INVESTMENT FUND AND SHALL DISBURSE MONEYS IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND THE APPLICABLE PLAN DOCUMENT.

**SECTION 12.** 31-31-302 (1) (a), Colorado Revised Statutes, is amended to read:

**31-31-302. Fund - management - investment - definitions.** (1) (a) The board shall be the trustee of the FIRE AND POLICE MEMBERS' BENEFIT INVESTMENT 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 management and investment of fund assets, the board shall be governed by the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S.

**SECTION 13.** Part 3 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**31-31-303. Fire and police members' self-directed investment fund - management - investment.** (1) THE BOARD SHALL BE THE TRUSTEE OF THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT 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 MEMBERS' 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.

(2) THE BOARD SHALL DESIGNATE ONE OR MORE FINANCIAL INSTITUTIONS AS CUSTODIANS OF THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT 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.

(3) DISBURSEMENTS FROM THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT 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.

(4) (a) 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 FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND CREATED PURSUANT TO THIS SECTION.

(5) ANY PROVIDER OF INVESTMENT PRODUCTS THAT CONTRACTS WITH THE BOARD SHALL BE HELD TO THE STANDARD OF CONDUCT SET FORTH IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION WITH RESPECT TO THOSE FUNCTIONS OVER WHICH THE PROVIDER HAS SUBSTANTIAL DISCRETION. THE BOARD IS AUTHORIZED TO TAKE SUCH STEPS, INCLUDING BUT NOT LIMITED TO MAKING CONTRACT AMENDMENTS, AS ARE REQUIRED TO ACCOMPLISH THE PROVISIONS OF THIS SUBSECTION (5).

(6) THE BOARD SHALL SUBMIT AN ANNUAL AUDIT OF THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND TO THE GENERAL ASSEMBLY AND THE ANNUAL AUDIT OF THE FUND TO EACH EMPLOYER. EACH EMPLOYER SHALL MAKE THE AUDIT AVAILABLE FOR REVIEW BY ITS MEMBERS.

**SECTION 14.** 31-31-402 (1), (2), and (3), Colorado Revised Statutes, are amended, and the said 31-31-402 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**31-31-402. Employer and member contributions.** (1) On and after January 1, 1980, until the board is able to determine a contribution rate from the first annual actuarial valuation, every member covered under the statewide defined benefit plan

established by this part 4 shall pay into the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid such member. Each employer shall pick up the employee contributions required for all salaries paid after July 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, in determining tax treatment under such code. The employer shall pay these employee contributions directly to the retirement association, instead of paying such amounts to employees, and such contributions shall be paid from the same funds that are used in paying salaries to the employees. Such contributions, although designated as employee contributions, shall be paid by the employer in lieu of contributions by employees. Employees may not elect to choose to receive such contributions directly instead of having them paid by the employer to the pension plan. Employee contributions so picked up shall be treated for all purposes of this article, other than federal tax, in the same manner as employee 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 the tenth day after the end of each pay period. All such payments shall be credited to the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund.

(2) On and after January 1, 1980, until the board is able to determine a contribution rate from the first annual actuarial valuation, every employer employing members who are covered by the statewide defined benefit plan established by this part 4 shall pay into the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund eight percent of the salary paid to such member, and such payment shall be made no later than the tenth day after the end of each pay period. All such payments shall be credited to the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund.

(3) The general assembly declares that the rates of employee 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 ~~fire and police members'~~ DEFINED benefit SYSTEM TRUST fund is found to be more or less favorable than the assumed experience during the two-year period from January 1, 1980, and each biennium thereafter, adjustments may be made by the board in the employee and employer contributions as may be deemed feasible and advisable so long as employer contributions are at least equal to employee contributions.

(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.

**SECTION 15.** 31-31-403 (2) (a) (II) and (2) (b), Colorado Revised Statutes, are amended to read:

**31-31-403. Normal retirement - statewide defined benefit plan.** (2) (a) If in any year the board determines pursuant to this part 4 that the cost of the benefits described in paragraph (b) of subsection (1) of this section, excluding the benefit described in section 31-31-405, may not be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contribution made pursuant to section 31-31-402, the board shall not increase such employer or member contributions unless:

(II) The board has transferred all funds in the stabilization reserve account to the actuarial account as required by ~~section 31-31-301 (3) (b) and (3) (c)~~ SECTION 31-31-405 (1) AND (2), except such funds as are attributable to the separate retirement account of any member who has terminated service after at least five years of credited service.

(b) Nothing in this subsection (2) shall be construed to prohibit the board from utilizing the provisions of ~~section 31-31-301 (3)~~ SECTION 31-31-405 to provide the benefit described in ~~section 31-31-405~~ 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 31-31-301 (3)~~ SECTION 31-31-405.

**SECTION 16.** 31-31-405, Colorado Revised Statutes, is amended to read:

**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;

(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 1987, 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 IS NOT SUFFICIENT TO MEET THE BENEFIT LIABILITIES FUNDED BY THE ACTUARIAL ACCOUNT, THEN SUCH ADDITIONAL AMOUNT

AS MAY BE NECESSARY TO FUND THE INCREASE SHALL BE TRANSFERRED FROM THE STABILIZATION RESERVE ACCOUNT TO THE ACTUARIAL ACCOUNT. 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. ANY EXCESS ALLOCATED TO THE STABILIZATION RESERVE ACCOUNT IN ANY YEAR SHALL BE ALLOCATED FROM THAT PORTION OF DEPOSITS TO THE NEW HIRE BENEFITS ACCOUNT CONSTITUTING EMPLOYER CONTRIBUTIONS TO THE STATEWIDE DEFINED BENEFIT PLAN ESTABLISHED BY THIS PART 4.

~~(1)~~ (3) For accounting purposes only, the stabilization reserve account created by ~~section 31-31-301 (3) (a) (H)~~ 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, except such members as are covered on a supplemental basis pursuant to section 31-31-704.

~~(2)~~ (4) Such amount as may be allocated to the stabilization reserve account pursuant to ~~section 31-31-301 (3) (b)~~ 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 ~~section 31-31-301 (3) (b)~~ SUBSECTION (1) OF THIS SECTION.

~~(3)~~ (5) Earnings accruing on the amount allocated to the member's separate retirement account shall be allocated at least monthly on a time-weighted basis as determined by the board until the account is exhausted.

~~(4)~~ (6) Any amount allocated to a member's separate retirement account shall be subject to reduction prior to the time a member has terminated service in the event that additional amounts must be transferred to the actuarial account as set forth in ~~section 31-31-301 (3) (b) and (3) (c)~~ SUBSECTIONS (1) AND (2) OF THIS SECTION. Reductions in a member's separate retirement account pursuant to this ~~subsection (4)~~ SUBSECTION (6) shall be made on a pro rata basis in the proportion that the balance in a member's separate retirement account bears to the total balance of all members' separate retirement accounts.

**SECTION 17. Repeal.** 31-31-409, Colorado Revised Statutes, is repealed as follows:

**31-31-409. 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, if permitted with respect to governmental plans, or, to the extent not inconsistent with the federal "Internal Revenue Code of 1954", as in effect on September 1, 1974, "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended and in effect on January 1, 1989.~~

~~(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:~~

~~(a) The board shall distribute the corpus and income of the pension plan to members and their beneficiaries in accordance with this part 4 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 participants and their beneficiaries and defraying reasonable expenses of administering the 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 4.~~

~~(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) 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:~~

~~(f) The life expectancy of a member, the member's spouse, or the member's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.~~

~~(H) 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.~~

~~(H) 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.~~

~~(f) (Deleted by amendment, L. 98, p. 25, § 4, effective March 16, 1998.)~~

~~(g) Benefits paid under the statewide defined benefit plan established by this part 4 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 4 may not exceed the applicable amount under section 401 (a) (17) of the internal revenue code.~~

~~(i) (Deleted by amendment, L. 98, p. 25, § 4, effective March 16, 1998.)~~

~~(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 (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 18.** 31-31-501 (5) (b), Colorado Revised Statutes, is amended to read:

**31-31-501. Withdrawal into statewide money purchase plan.** (5) (b) In the event that the amount of the reserves on deposit in the new hire benefits account, as calculated by the actuary, for the employer making application for withdrawal, exceeds the amount of reserves required pursuant to the provisions of subsection (4) of this section, such excess amount and the amount required for the transfer of member contributions as provided in subsection (6) of this section shall be transferred to the fire and police members' statewide money purchase plan benefit TRUST fund on the effective date of withdrawal. Allocation of such amounts to individual member accounts under the statewide money purchase plan shall be made as set forth in section 31-31-502.

**SECTION 19.** 31-31-502 (1), (2) (a), and (2) (c), Colorado Revised Statutes, are amended to read:

**31-31-502. Statewide money purchase plan - creation - management.** (1) The board shall develop, maintain, and amend a statewide money purchase plan document that is intended to comply with the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. As used in this subsection (1), "internal revenue code" shall have that meaning set forth in ~~section 31-31-409 (1)~~ SECTION 31-31-204 (3). The plan shall cover the members of those employers that have withdrawn from the statewide defined benefit plan pursuant to section 31-31-501.

(2) (a) There is hereby created the fire and police members' statewide money purchase plan benefit TRUST 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 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) 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.~~

~~(IV) (Deleted by amendment, L. 97, p. 13, § 4, effective March 13, 1997.)~~

(c) In its administration, investment, and management of the FIRE AND POLICE MEMBERS' STATEWIDE MONEY PURCHASE PLAN BENEFIT TRUST 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) OF SECTION 31-31-303.~~

**SECTION 20.** 31-31-701 (3), Colorado Revised Statutes, is amended, and the said 31-31-701 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**31-31-701. Affiliation by old hire pension plans.** (3) On the effective date of affiliation pursuant to this section, the assets of the old hire pension plan shall be transferred to the TRUST fund created by ~~section 31-31-301(2)~~ SUBSECTION (6) OF THIS SECTION. Such transfer shall be at the market value of such assets at the close of business on date of affiliation. Upon affiliation and the transfer of assets to the fund, benefits due pursuant to the old hire plan shall be paid by the association.

(6) THERE IS HEREBY CREATED THE OLD HIRE PLAN MEMBERS' BENEFIT TRUST FUND THAT SHALL CONSIST OF THE ASSETS OF OLD HIRE PLANS ADMINISTERED AND MANAGED BY THE BOARD PURSUANT TO THIS SECTION. THE BOARD SHALL KEEP AN ACCURATE ACCOUNT OF EACH SUCH INDIVIDUAL OLD HIRE PLAN.

**SECTION 21.** 31-31-703, Colorado Revised Statutes, is 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 TRUST fund that shall consist of the assets of money purchase ~~plan funds~~ PLANS 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 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.~~

~~(IV) (Deleted by amendment, L. 97, p. 15, § 6, effective March 13, 1997.)~~

~~(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' money purchase plan benefit 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. In exercising its discretionary authority with respect to the investment and management of the fund assets that are allocated to the fire and police members' benefit fund created pursuant to section 31-31-301 (1) (a), the board shall be governed by the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S.~~

~~(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) (Deleted by amendment, L. 97, p. 15, § 6, effective March 13, 1997).~~

~~(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.~~

~~(7) (2) The board shall submit an annual audit of the fund to the general assembly and to each employer that has affiliated its money purchase plan fund pursuant to section 31-31-702. Each employer shall make the audit and study available for review by its members.~~

**SECTION 22.** 31-31-706 (2) (a) and (2) (b), Colorado Revised Statutes, are amended to read:

**31-31-706. Affiliation by exempt defined benefit pension plans.** (2) (a) As an alternative to affiliation for investment management pursuant to subsection (1) of this section, at the request of any local employer having an exempt defined benefit pension plan, the board is authorized to make an agreement with the employer's governing body to incorporate the exempt defined benefit pension plan into the ~~statewide~~ defined benefit ~~plan~~ SYSTEM. The incorporation shall be under terms and conditions that are mutually agreeable to the employer's governing body and the board and as may be required to maintain the qualified status of the plan under the federal "Internal Revenue Code of 1986", as amended.

(b) Prior to the implementation of an agreement of incorporation pursuant to paragraph (a) of this subsection (2), the board shall find that the incorporation is not projected to have an adverse actuarial impact on existing members of the ~~statewide~~ defined benefit ~~plan~~ SYSTEM. The board and the employer's governing body are authorized to take all actions necessary to accomplish the agreement and to maintain the qualified status of the formerly exempt defined benefit pension plan after incorporation into the ~~statewide~~ defined benefit ~~plan~~ SYSTEM. Notwithstanding any other requirement, an exempt defined benefit pension plan may be incorporated into the ~~statewide~~ defined benefit ~~plan~~ SYSTEM without the approval of the members of the exempt plan or the statewide plan.

**SECTION 23.** 31-31-811 (1), Colorado Revised Statutes, is amended to read:

**31-31-811. State funding of death and disability.** (1) Every employer in this state, except those employers covering their employees under social security and those described in section 31-31-802 (2) (b) and (2) (c) who have not elected to be subject to the provisions of this part 8, shall be governed by the provisions of this section. For members who die or are disabled on or after January 1, 1980, the death and disability benefits provided to any member pursuant to this part 8 shall be paid for by state moneys transferred to the FIRE AND POLICE MEMBERS' BENEFIT INVESTMENT fund created by section 31-31-301 (1) (a), subject to the limitations imposed by this section. Moneys in the ~~account~~ DISABILITY AND DEATH BENEFITS TRUST FUND created by ~~section 31-31-301 (2)~~ SECTION 31-31-813 shall not be used for any purpose other than the payment of the death and disability benefits established by this part 8.

**SECTION 24.** Part 8 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**31-31-813. Statewide death and disability trust fund - created.** (1) THERE IS HEREBY CREATED A DISABILITY AND DEATH BENEFITS TRUST FUND INTO WHICH CONTRIBUTIONS FOR DEATH AND DISABILITY BENEFITS, INCLUDING STATE CONTRIBUTIONS MADE PURSUANT TO SECTION 31-31-811, SHALL BE DEPOSITED. THE BENEFITS PROVIDED BY THIS PART 8, TOGETHER WITH THE EXPENSES OF ADMINISTERING SAID PART, SHALL BE PAID FROM THE FUND.

(2) THE ASSETS OF THE DISABILITY AND DEATH BENEFITS TRUST FUND SHALL BE INVESTED IN THE FIRE AND POLICE MEMBERS' BENEFIT INVESTMENT FUND.

**SECTION 25.** 31-31-901, Colorado Revised Statutes, is amended to read:

**31-31-901. Deferred compensation plan - definitions.** (1) Upon the request of any employer, the board may administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by such employer for members or other employees who provide direct support to the employer's public safety department.

(2) In order to assist employers in establishing a deferred compensation plan, the board may develop, maintain, and amend a master deferred compensation plan document that is intended to comply with the provisions of section 457 of the "Internal Revenue Code of 1986", 26 U.S.C. sec. 457, as amended. Any employer may adopt such master plan for its participants with the assistance of the board; however, such employer shall be responsible for ensuring that such master plan is in compliance with applicable law. Participation by nonmember employees shall be subject to the requirements and limitations of said section 457 of the "Internal Revenue Code of 1986", and the regulations promulgated under section 457.

(3) There is hereby created the fire and police members' deferred compensation TRUST fund, which shall consist of the assets of deferred compensation plans administered by the board pursuant to the provisions of this section. The board shall be the trustee of the TRUST fund and shall keep a separate account of the assets of each deferred compensation plan held within the TRUST fund. The assets of each deferred compensation plan shall be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of the plan and any trust established to hold the assets of the plan. ~~The board shall allow each participant to exercise control over the investment of the participant's assets in a plan. In allowing a participant to exercise such control, the board shall:~~ THE BOARD SHALL ALLOW INVESTMENT OF THE TRUST FUND THROUGH THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND PURSUANT TO SECTION 31-31-301 (4).

~~(a) 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 investment risk and return in the investment of the member's assets;~~

~~(b) Allow the participant to change investments at least once each calendar quarter; and~~

~~(c) Provide the participant with information describing the investment alternatives, the nature of such alternatives, investment performance, fees and expenses of investment alternatives, and other information to enable the participant to make informed investment decisions;~~

~~(4) In its administration of deferred compensation plans pursuant to the provisions of this section, the board shall act in accordance with the provisions of this article;~~

~~(5) Any provider of investment products that contracts with the board shall be held to the standard of conduct set forth in subsection (3) of this section with respect to those functions over which the provider has substantial discretion. The board is authorized to take such steps, including but not limited to, making contract amendments, as are required to accomplish the provisions of this subsection (5).~~

~~(6) The directors of the board shall not engage in any activities that might result in a conflict of interest with the function of the board as administrator of any deferred compensation plan or with the role of the board as trustee of the fund created in section 31-31-301.~~

~~(7)~~ (4) The expenses incurred by the board in the administration of each deferred compensation plan shall be paid from the assets of such plan being held in the fire and police members' deferred compensation fund pursuant to the provisions of subsection (3) of this section. Such expenses shall not be paid for by the fire and police pension association.

~~(8)~~ (5) For the purposes of this section, unless the context otherwise requires:

(a) "Deferred compensation" means that income that a participant may legally defer pursuant to current rulings of the internal revenue service and that, while invested under a deferred compensation plan adopted pursuant to this section, is exempt from federal income taxes on both the employer's contribution and all interest, dividends, and capital gains until the ultimate distribution to the participant.

(b) "Participant" means:

(I) A member employed by an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer; or

(II) An employee who provides direct support to the public safety department of an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer.

**SECTION 26.** 31-31-904 (4) and (6) (b), Colorado Revised Statutes, are amended to read:

**31-31-904. Statewide health care defined benefit plan - definitions.**

(4) Contributions to the statewide health care defined benefit plan shall be the responsibility of the eligible members, unless an eligible member's employer elects to pay all or a portion of his or her contribution. All of the contributions shall be credited to the ~~fire and police members' benefit~~ DEFINED BENEFIT SYSTEM TRUST fund.

(6) As used in this section, unless the context otherwise requires:

(b) "Internal revenue code" shall have the same meaning as provided in ~~section 31-31-409 (1)~~ SECTION 31-31-204 (3).

**SECTION 27.** 31-31-1102 (1), (2), (3), and (4) (a), Colorado Revised Statutes, are amended to read:

**31-31-1102. Statewide hybrid plan - creation - management.** (1) The board is authorized to develop, maintain, and amend a statewide hybrid plan document

THAT IS A COMPONENT OF THE DEFINED BENEFIT SYSTEM AND that offers a combination of defined benefit and defined contribution benefits and that is intended to comply with the qualification requirements specified in section 401 of the federal "Internal Revenue Code of 1986", as amended, that are applicable to governmental plans. The plan shall cover the members of those employers that have elected coverage under the plan pursuant to section 31-31-1101.

(2) (a) There is hereby created the fire and police members' statewide hybrid plan benefit fund ACCOUNT THAT SHALL BE A COMPONENT OF THE DEFINED BENEFIT SYSTEM TRUST FUND AND that shall consist of moneys of employers that have elected coverage pursuant to section 31-31-1101, including member and employer contributions and such amounts as may be transferred pursuant to section 31-31-1101. The board shall keep an accurate account of the fund, each member's separate account in the fund, and each member's service credit earned under the statewide hybrid plan. ~~The board may allow a member to exercise control of the investment of part of the member's accrued benefit under the 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 statewide hybrid plan document created by the board pursuant to subsection (1) of this section shall govern the accrual of service credit, vesting, the benefits to be offered based on age and service, the allocation of contributions towards funding the defined benefit and the defined contribution, the calculation and allocation of earnings and losses under the various investment alternatives which the board may offer, the transfer of assets between funds under each investment alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to the board's administration and management of the ~~statewide hybrid plan benefit fund~~ created pursuant to this section.

(c) DEFINED BENEFIT ASSETS OF THE STATEWIDE HYBRID PLAN SHALL BE ADMINISTERED WITHIN THE FIRE AND POLICE MEMBERS' BENEFIT INVESTMENT FUND, AND SELF-DIRECTED ASSETS OF THE PLAN SHALL BE ADMINISTERED WITHIN THE FIRE AND POLICE MEMBERS' SELF-DIRECTED INVESTMENT FUND. In its administration, investment, and management of the defined contribution assets ~~within~~ OF the statewide hybrid plan ~~benefit 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). ~~In its administration, investment, and management of the defined benefit assets within the statewide hybrid plan benefit fund, the board shall be subject to the same provisions applicable to its administration of the fire and police member's benefit~~

~~fund as set forth in section 31-31-302~~ OF SECTION 31-31-303.

(3) Each member's member and employer contributions transferred to the statewide hybrid plan ~~benefit fund~~ pursuant to section 31-31-1101 shall be allocated to the member's separate account within the ~~fund~~ PLAN.

(4) (a) Except as provided in paragraph (b) of this subsection (4), upon the effective date of coverage under the statewide hybrid plan, each member covered by the plan shall pay into the DEFINED BENEFIT SYSTEM TRUST fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid to such member. Except as provided in paragraph (b) of this subsection (4), for each such member, the employer shall pay into the ~~statewide hybrid plan benefit~~ DEFINED BENEFIT SYSTEM TRUST fund eight percent of the salary paid to such member. Payments are due no later than ten days following the date of payment of salary to the member, unless the salary is paid more than once monthly, in which event such payments are due no later than the tenth day of the month following the month the salary is paid to the member. An interest charge of one-half of one percent per month shall be levied against any unpaid amount and added to the employer payments required pursuant to this section.

**SECTION 28. Applicability.** Section 5 of this act shall apply to transfers made on or after the effective date of this act.

**SECTION 29. 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 31, 2006