

CHAPTER 16

GOVERNMENT - MUNICIPAL

HOUSE BILL 09-1030

BY REPRESENTATIVE(S) Labuda, Benefield, Gardner B., King S., Liston, Peniston, Rice, Riesberg, Baumgardner, Casso, Looper, McFadyen, Merrifield, Tipton, Todd;
also SENATOR(S) Tochtrop, Morse, Williams.

AN ACT

CONCERNING FIREFIGHTER AND POLICE OFFICER PENSION PLAN COMPLIANCE WITH REQUIREMENTS SET FORTH IN THE INTERNAL REVENUE CODE.

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

SECTION 1. 31-30-1133, Colorado Revised Statutes, is amended to read:

31-30-1133. Qualification requirements - internal revenue code - definitions.

(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 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

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

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., 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.

~~(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.~~

(3) A BOARD MAY ADOPT ANY PROVISION FOR A PLAN THAT IS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

SECTION 2. 31-30.5-102 (1), Colorado Revised Statutes, is amended, and the said 31-30.5-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-30.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Board" means the board of trustees established as the governing body of the firefighters' or police officers' old hire pension fund as provided in sections 31-30.5-202 and 31-30.5-203~~ "AFFILIATED BOARD" MEANS ANY BOARD AFFILIATED, AS SPECIFIED IN SECTION 31-31-701, WITH THE FIRE AND POLICE PENSION ASSOCIATION CREATED IN SECTION 31-31-201.

(1.5) "BOARD" MEANS THE BOARD OF TRUSTEES ESTABLISHED AS THE GOVERNING BODY OF THE FIREFIGHTERS' OR POLICE OFFICERS' OLD HIRE PENSION FUND AS PROVIDED IN SECTIONS 31-30.5-202 AND 31-30.5-203.

SECTION 3. 31-30.5-212, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

31-30.5-212. Qualification requirements - internal revenue code - definitions.

(1) AS USED IN THIS SECTION, "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(2) OLD HIRE PENSION PLANS SHALL SATISFY THE QUALIFICATION REQUIREMENTS SPECIFIED IN SECTION 401 OF THE INTERNAL REVENUE CODE, AS APPLICABLE TO GOVERNMENTAL PLANS.

(3) A BOARD, AS DEFINED IN SECTION 31-30.5-102 (1.5), MAY ADOPT ANY PROVISION FOR AN OLD HIRE PENSION PLAN THAT IS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

(4)(a) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION ESTABLISHED BY SECTION 31-31-201 MAY CREATE A MASTER PLAN DOCUMENT FOR OLD HIRE PENSION PLANS AND MAY SUBMIT THE MASTER PLAN DOCUMENT TO THE INTERNAL REVENUE SERVICE FOR A DETERMINATION OF ITS STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE. THE MASTER PLAN DOCUMENT SHALL INCLUDE PROVISIONS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

(b) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION ESTABLISHED BY SECTION 31-31-201 MAY:

(I) AMEND THE MASTER PLAN DOCUMENT AS MAY BE NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE; AND

(II) REQUIRE AN AFFILIATED BOARD TO ADOPT THE MASTER PLAN DOCUMENT OR TO OBTAIN INTERNAL REVENUE SERVICE APPROVAL FOR ITS OLD HIRE PENSION PLAN.

(c) NOTHING IN THIS SUBSECTION (4) SHALL PRECLUDE AN AFFILIATED BOARD FROM SUBMITTING ITS PLAN DOCUMENT TO THE INTERNAL REVENUE SERVICE FOR A DETERMINATION OF ITS PLAN DOCUMENT'S STATUS AS A QUALIFIED PLAN UNDER THE

INTERNAL REVENUE CODE.

(5) 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 A 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 4. 31-31-204 (3), Colorado Revised Statutes, is amended to read:

31-31-204. Defined benefit system. (3) Qualification requirements - internal revenue code - definitions. (a) As used in this section SUBSECTION (3), "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.~~

~~(c) THE BOARD MAY ADOPT ANY PROVISION FOR A PLAN ESTABLISHED BY PART 2, 4, 7, OR 11 OF THIS ARTICLE THAT IS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.~~

SECTION 5. 43-1-1209 (1) (d), Colorado Revised Statutes, is amended to read:

43-1-1209. Notice of investment opportunities. (1) The department or the private entity responsible for funding a public-private initiative under this part 12 may forward the agreement and a description of the investment opportunity for such initiative to any of the following for consideration under their respective statutory authority:

(d) The boards of trustees of the firefighters' and police officers' old hire pension funds, as defined in ~~section 31-30.5-102 (+)~~ SECTION 31-30.5-102 (1.5), C.R.S.;

SECTION 6. 43-3-220 (1) (d), Colorado Revised Statutes, is amended to read:

43-3-220. Notice of investment opportunity. (1) The department or the private entity responsible for issuing bonds under this part 2 may forward a copy of the bonds and a description of the investment opportunity for such bonds to any of the following for consideration under their respective statutory authority:

(d) The boards of trustees of the firefighters' and police officers' old hire pension funds, as defined in ~~section 31-30.5-102 (+)~~ SECTION 31-30.5-102 (1.5), C.R.S.;

SECTION 7. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 18, 2009

Editor's note: The August 4 date specified in the effective date section of this act reflects the ninetieth day, therefore the act takes effect at 12:01 a.m. on August 5, 2009.