

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 09-0099.02 Esther van Mourik

HOUSE BILL 09-1030

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House Committees

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A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Police Officers' and Firefighters' Pension Reform Commission.

Requires old hire pension plans to meet the qualification requirements that apply to governmental plans established by the internal revenue code.

For old hire pension plans, volunteer firefighter pension plans, and plans in the fire and police pension association defined benefit system:

! Eliminates specific requirements that were intended to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
January 16, 2009

ensure that the plans meet the qualification requirements established by the internal revenue code; and

- ! Grants the applicable governing board the authority to adopt any provision for a plan that is necessary to comply with the internal revenue code.

Allows the board of directors of the fire and police pension association (board) to create a master plan document for old hire pension plans and to submit the master plan document to the internal revenue service (IRS) for a determination of the document's status as a qualified plan under the internal revenue code. Establishes what must be included in the master plan document and when the master plan document may be modified or amended. Establishes that the board may require an affiliated board to adopt the master plan document or to obtain IRS approval for its own old hire pension plan. Specifies that an affiliated board is not precluded from seeking IRS approval for its own old hire pension plan.

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

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

4 **31-30-1133. Qualification requirements - internal revenue**
5 **code - definitions.** (1) As used in this section, "internal revenue code"
6 means ~~the federal "Internal Revenue Code of 1954", as in effect on~~
7 ~~September 1, 1974, as applicable to governmental plans, or, to the extent~~
8 ~~not inconsistent,~~ the federal "Internal Revenue Code of 1986", as
9 amended. ~~and in effect on January 1, 1989.~~

10 (2) Any volunteer firefighter pension plan established by this part
11 11 to provide retirement benefits for volunteer firefighters shall satisfy
12 the qualification requirements specified in section 401 of the internal
13 ~~revenue code, as applicable to governmental plans. In order to~~
14 ~~meet those requirements, such plans are subject to the following~~
15 ~~provisions, notwithstanding any other provision of this part 11:~~

16 (a) ~~The board shall distribute the corpus and income of the~~
17 ~~pension plan to members and their beneficiaries in accordance with this~~

1 part 11 and the rules adopted by the board.

2 (b) No part of the corpus or income of the pension plan may be
3 used for or diverted to any purpose other than that of providing benefits
4 to participants and their beneficiaries and defraying reasonable expenses
5 of administering the pension plan, except for an assignment for child
6 support debt pursuant to section 14-14-104, C.R.S., child support
7 arrearages as requested as part of an enforcement action under article 5
8 of title 14, C.R.S., or child support arrearages that are the subject of
9 enforcement services provided under section 26-13-106, C.R.S., and
10 except for income assignments for child support purposes pursuant to
11 section 14-14-111.5, C.R.S., and a writ of garnishment that is the result
12 of a judgment taken for arrearages for child support or for child support
13 debt.

14 ~~(c) Forfeitures arising from severance of employment, death, or~~
15 ~~any other reason may not be applied to increase the benefits any member~~
16 ~~would otherwise receive under this part 11.~~

17 ~~(d) If the pension plan is terminated, or if all contributions to the~~
18 ~~pension plan are permanently discontinued, the rights of each affected~~
19 ~~member to the benefits accrued at the date of the termination or~~
20 ~~discontinuance, to the extent then funded, are nonforfeitable.~~

21 ~~(e) Upon attaining the eligibility requirements for a benefit, a~~
22 ~~member shall be fully vested in the benefits such member has accrued.~~

23 ~~(f) All benefits paid from the pension plan shall be distributed in~~
24 ~~accordance with the requirements of section 401 (a) (9) of the internal~~
25 ~~revenue code and the regulations promulgated under that section. In~~
26 ~~order to meet those requirements, the pension plan is subject to the~~
27 ~~following provisions:~~

1 ~~(I) The life expectancy of a member, the member's spouse, or the~~
2 ~~member's beneficiary shall not be recalculated after the initial~~
3 ~~determination of the amount of benefits that are payable.~~

4 ~~(II) If a member dies before the distribution of the member's~~
5 ~~benefits has begun, distributions to beneficiaries must begin no later than~~
6 ~~December 31 of the calendar year immediately following the calendar~~
7 ~~year in which the member died.~~

8 ~~(III) The amount of an annuity paid to a member's beneficiary may~~
9 ~~not exceed the maximum determined under the incidental death benefit~~
10 ~~requirement of the internal revenue code.~~

11 ~~(g) Benefits paid under any pension plan may not exceed the~~
12 ~~limitations specified by section 415 of the internal revenue code,~~
13 ~~including the special rule under section 415 (b) (10) of the internal~~
14 ~~revenue code.~~

15 ~~(h) The compensation taken into account under this part 11 may~~
16 ~~not exceed the applicable amount under section 401 (a) (17) of the~~
17 ~~internal revenue code.~~

18 ~~(i) Any distributee who is entitled to an eligible rollover~~
19 ~~distribution, as defined in section 402 (c) (4) of the internal revenue code,~~
20 ~~from the statewide pension plan on and after January 1, 1993, may elect~~
21 ~~to have the portion of such distribution that would otherwise be included~~
22 ~~in the gross income of the distributee for federal income tax purposes~~
23 ~~transferred directly to an eligible retirement plan, as defined in section~~
24 ~~402 (c) (8) (B) of the internal revenue code, designated by the distributee.~~

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

27 **SECTION 2.** 31-30.5-102 (1), Colorado Revised Statutes, is

1 amended, and the said 31-30.5-102 is further amended BY THE
2 ADDITION OF A NEW SUBSECTION, to read:

3 **31-30.5-102. Definitions.** As used in this article, unless the
4 context otherwise requires:

5 (1) ~~"Board" means the board of trustees established as the~~
6 ~~governing body of the firefighters' or police officers' old hire pension~~
7 ~~fund as provided in sections 31-30.5-202 and 31-30.5-203~~ "AFFILIATED
8 BOARD" MEANS ANY BOARD AFFILIATED, AS SPECIFIED IN SECTION
9 31-31-701, WITH THE FIRE AND POLICE PENSION ASSOCIATION CREATED IN
10 SECTION 31-31-201.

11 (1.5) "BOARD" MEANS THE BOARD OF TRUSTEES ESTABLISHED AS
12 THE GOVERNING BODY OF THE FIREFIGHTERS' OR POLICE OFFICERS' OLD
13 HIRE PENSION FUND AS PROVIDED IN SECTIONS 31-30.5-202 AND
14 31-30.5-203.

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

17 **31-30.5-212. Qualification requirements - internal revenue**
18 **code - definitions.** (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
19 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
20 AMENDED.

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

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

27 (4) (a) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION

1 ASSOCIATION ESTABLISHED BY SECTION 31-31-201 MAY CREATE A MASTER
2 PLAN DOCUMENT FOR OLD HIRE PENSION PLANS AND MAY SUBMIT THE
3 MASTER PLAN DOCUMENT TO THE INTERNAL REVENUE SERVICE FOR A
4 DETERMINATION OF ITS STATUS AS A QUALIFIED PLAN UNDER THE
5 INTERNAL REVENUE CODE. THE MASTER PLAN DOCUMENT SHALL INCLUDE
6 PROVISIONS NECESSARY TO COMPLY WITH THE INTERNAL REVENUE CODE.

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

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

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

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

19 (5) THE OLD HIRE PENSION FUNDS ESTABLISHED BY THIS ARTICLE
20 SHALL BE HELD IN TRUST FOR THE BENEFIT OF OLD HIRE MEMBERS AND
21 OTHER PERSONS ENTITLED TO BENEFITS. NO PART OF THE CORPUS OR
22 INCOME OF A PENSION FUND SHALL BE USED FOR OR DIVERTED TO
23 PURPOSES OTHER THAN FOR THE EXCLUSIVE BENEFIT OF OLD HIRE
24 MEMBERS OR OTHER PERSONS ENTITLED TO BENEFITS FROM THE PENSION
25 FUND AND FOR EXPENSES INCIDENT TO OPERATION OF THE PENSION FUND.
26 NO PERSON SHALL HAVE ANY INTEREST IN OR RIGHT TO ANY PART OF THE
27 CORPUS OR EARNINGS OF THE PENSION TRUST EXCEPT AS EXPRESSLY

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

13 **SECTION 4.** 31-31-204 (3), Colorado Revised Statutes, is
14 amended to read:

15 **31-31-204. Defined benefit system. (3) Qualification**
16 **requirements - internal revenue code - definitions.** (a) As used in this
17 ~~section~~ SUBSECTION (3), "internal revenue code" means ~~the federal~~
18 ~~"Internal Revenue Code of 1954", as in effect on September 1, 1974, if~~
19 ~~permitted with respect to governmental plans, or, to the extent not~~
20 ~~inconsistent with the federal "Internal Revenue Code of 1954", as in~~
21 ~~effect on September 1, 1974, "internal revenue code" means the federal~~
22 ~~"Internal Revenue Code of 1986", as amended. and in effect on January~~
23 ~~1, 1989.~~

24 (b) The defined benefit system and each of the plans established
25 by part 2, 4, 7, or 11 of this article included within the system shall satisfy
26 the qualification requirements specified in section 401 of the internal
27 revenue code, as applicable to governmental plans. ~~In order to meet those~~

1 requirements, the statewide defined benefit plan is subject to the
2 following provisions, notwithstanding any other provision of this article:

3 (I) The board shall distribute the corpus and income of the pension
4 plan to members and their beneficiaries in accordance with this article
5 and the plan documents and rules adopted by the board.

6 (II) No part of the corpus or income of the pension plan may be
7 used for or diverted to any purpose other than that of providing benefits
8 to participants and their beneficiaries, including assignments for child
9 support purposes as provided for in section 14-14-104, C.R.S., child
10 support arrearages as requested as part of an enforcement action under
11 article 5 of title 14, C.R.S., or child support arrearages that are the subject
12 of enforcement services provided under section 26-13-106, C.R.S.,
13 income assignments for child support purposes pursuant to section
14 14-14-111.5, C.R.S., writs of garnishment that are the result of a
15 judgment taken for arrearages for child support or for child support debt,
16 and payments made in compliance with a properly executed court order
17 approving a written agreement entered into pursuant to section 14-10-113
18 (6), C.R.S., and defraying reasonable expenses of administering the plan.

19 (III) Forfeitures arising from severance of employment, death, or
20 any other reason shall not be applied to increase the benefits any member
21 would otherwise receive under this article.

22 (IV) If the pension plan is terminated, or if all contributions to the
23 pension plan are permanently discontinued, the rights of each affected
24 member to the benefits accrued at the date of the termination or
25 discontinuance, to the extent then funded, are nonforfeitable.

26 (V) All benefits paid from the pension plan shall be distributed in
27 accordance with the requirements of section 401 (a) (9) of the internal

1 ~~revenue code and the regulations promulgated under that section. In~~
2 ~~order to meet those requirements, the pension plan is subject to the~~
3 ~~following provisions:~~

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

7 ~~(B) If a member dies before the distribution of the member's~~
8 ~~benefits has begun, distributions to beneficiaries shall begin no later than~~
9 ~~December 31 of the calendar year immediately following the calendar~~
10 ~~year in which the member died.~~

11 ~~(C) The amount of an annuity paid to a member's beneficiary may~~
12 ~~not exceed the maximum determined under the incidental death benefit~~
13 ~~requirement of the internal revenue code.~~

14 ~~(VI) Benefits paid under the defined benefit system established by~~
15 ~~this part 2 may not exceed the limitations specified by section 415 of the~~
16 ~~internal revenue code.~~

17 ~~(VII) The compensation taken into account under this part 2 may~~
18 ~~not exceed the applicable amount under section 401 (a) (17) of the~~
19 ~~internal revenue code.~~

20 ~~(VIII) Any distributee who is entitled to an eligible rollover~~
21 ~~distribution, as defined in section 402 (c) (4) of the internal revenue code,~~
22 ~~from the statewide pension plan on and after January 1, 1993, may elect~~
23 ~~to have the portion of such distribution that would otherwise be included~~
24 ~~in the gross income of the distributee for federal income tax purposes~~
25 ~~transferred directly to an eligible retirement plan, as defined in section~~
26 ~~402 (c) (8) (B) of the internal revenue code, designated by the distributee.~~

27 ~~(IX) Upon attaining the eligibility requirements for a benefit, a~~

1 ~~member shall be fully vested in the benefits such member has accrued.~~

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

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

7 **43-1-1209. Notice of investment opportunities.** (1) The
8 department or the private entity responsible for funding a public-private
9 initiative under this part 12 may forward the agreement and a description
10 of the investment opportunity for such initiative to any of the following
11 for consideration under their respective statutory authority:

12 (d) The boards of trustees of the firefighters' and police officers'
13 old hire pension funds, as defined in ~~section 31-30.5-102 (1)~~ SECTION
14 31-30.5-102 (1.5), C.R.S.;

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

17 **43-3-220. Notice of investment opportunity.** (1) The
18 department or the private entity responsible for issuing bonds under this
19 part 2 may forward a copy of the bonds and a description of the
20 investment opportunity for such bonds to any of the following for
21 consideration under their respective statutory authority:

22 (d) The boards of trustees of the firefighters' and police officers'
23 old hire pension funds, as defined in ~~section 31-30.5-102 (1)~~ SECTION
24 31-30.5-102 (1.5), C.R.S.;

25 **SECTION 7. Act subject to petition - effective date.** This act
26 shall take effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly that is

1 allowed for submitting a referendum petition pursuant to article V,
2 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
3 sine die is on May 6, 2009); except that, if a referendum petition is filed
4 against this act or an item, section, or part of this act within such period,
5 then the act, item, section, or part, if approved by the people, shall take
6 effect on the date of the official declaration of the vote thereon by
7 proclamation of the governor.