



**Fire & Police Pension Association  
of Colorado**

**Colorado Revised Statutes  
with Member Approved Plan Amendments**

**Title 31  
Articles 30, 30.5 & 31**

Attached are the Colorado Revised Statutes and Amendments pertaining to the plans and benefits administered by FPPA. For more information please also refer to the FPPA Plan brochures as well as the FPPA Rules and Regulations. The FPPA Plan brochures and Rules and Regulations may be viewed and/or downloaded from our web site at [www.fppaco.org](http://www.fppaco.org) or by requesting copies from the address below.

5290 DTC Parkway, Suite 100, Greenwood Village, CO 80111-2721  
(303) 770-3772 in the Denver metro area or (800) 332-3772 toll free nationwide  
FPPAco.org

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2004-4 DATED MARCH 24, 2004  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JULY 16, 2004

Amendment Two: Removing the requirement that a DROP participant select a payment option within 30 days of termination.

Amend Sections 31-31-409.5 (13), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, to read as follows:

(13) (a) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary. At the end of the installment period, a final disbursement of remaining funds in the DROP account shall be made. If no selection is made by the retiree within 30 days of retirement, the lump sum payment method shall be utilized.

(b) Notwithstanding any provision to the contrary, any distribution under the DROP shall be made in accordance with Code Section 401(a)(9) and the regulations established there under as they are amended and shall comply with the following rules:

(i) To the extent required by Code Section 401(a) (9) and the regulations promulgated there under, payment of the benefits of a Member shall begin not later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member reaches age seventy and one-half (70½), or the calendar year in which the Member retires.

( ) No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(i) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

Amend Sections 31-31-409.5 (14), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, to read as follows:

(14) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life

or life expectancy. If no selection is made by the designated beneficiary within 30 days of death of the member, the lump sum payment method shall be utilized.

- (a) In the event of the Member's death, any remaining benefit shall be distributed according to the following subject to compliance with Code Section 401(a)(9) and regulations there under.
- (b) If the Member had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Accounts shall be paid to the Designated Beneficiary at least as rapidly as under the payment option selected by the Member.
- (c) If the Member had begun receiving payments in the form of a pension or annuity, the Designated Beneficiary shall be bound by all restrictions applicable to the pension or annuity, and the form of payment selected there under, and remaining payments, if any, shall be paid to the Designated Beneficiary in the same manner.
- (d) If the Member dies before distributions have commenced, a Spouse Designated Beneficiary may take a lump sum distribution or may delay the commencement of benefits until not later than December 31 of the year the Member would have attained age seventy and one-half (70½) and may elect to receive periodic payments over the Spouse's life expectancy.
- (e) If the Member dies before distributions have commenced, a Designated Beneficiary other than a surviving Spouse may take a lump sum or a periodic payment. In the case of a lump sum, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Member's death. In the case of a periodic payment distribution, payment must commence no later than December 31 of the year following the year of the Member's death, and in no event be payable over a period longer than the Designated Beneficiary's life expectancy at the time the distribution commences.
- (f) If the Member has not designated a Designated Beneficiary or the Plan is unable to locate the Designated Beneficiary upon death, the Member's remaining interest will be paid in a lump sum to the Member's estate.
- (g) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

Amendment Three: Allow purchase of a monthly benefit from the SRA account and the DROP account.

A new Section 31-31-410.5 to read as follows:

31-31-410.5 Purchase of Monthly Benefits. A Member who is eligible for normal, deferred, or early retirement may elect to transfer all or part of his/her SRA Account and his/her DROP balance within the Statewide Defined Benefit Plan to purchase a monthly benefit. Funds may not be transferred from outside the Statewide Defined Benefit Plan to purchase a monthly benefit.

- (a) The funds transferred are to be considered part of the member's accumulated contributions for purposes of C.R.S. § 31-31-403(6).
- (b) At retirement or separation of service, which ever comes later, a Member may make a one-time, irrevocable election to purchase a monthly benefit. The purchase must be in one lump sum, which must be transferred prior to the receipt of defined benefits.
- (c) Once the Member's monthly payment amount is calculated, it will be considered to be a portion of the Member's pension under C.R.S. §§ 31-31-403 (1) (normal retirement), (3) (deferred retirement), (4) (early retirement), or C.R.S. § 31-31-404(2) (vested retirement). It may be reduced if the member elects one of the survivor options offered under C.R.S. § 31-31-404(5)(a) of the Statewide Defined Benefit Plan.
- (d) As part of the pension, the purchased monthly benefit may be adjusted pursuant to C.R.S. § 31-31-407 of the Statewide Defined Benefit Plan.

- (e) Once the monthly benefit is purchased, the Member may not convert back to a lump sum payout.
- (f) An application to purchase a monthly benefit shall be filed by the Member with the Plan Administrator on the Applicable Form. The Member must provide any documentation that is required by the Board to complete the purchase.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2002-2 DATED FEBRUARY 27, 2002  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JUNE 19, 2002

Amendment One: Removal of consumer-price index limitation on statewide defined benefit plan:

Section 31-31-407(2)(a) C.R.S. is amended to read as follows:

The redetermination of benefits payable under subsection (1) of this section shall be computed as follows: The amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but no more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination. Beginning in 2002, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent of the prior year's benefit. In no event shall the benefit be decreased.

Section 31-31-407(3) is repealed.

Amendment One will become effective October 1, 2002.

Amendment Three: Member Self Direction of Deferred Retirement Option Plan (DROP) Assets

Section 31-31-409.5 (10), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

The DROP assets shall be held in trust for investment purposes as part of the fire and police members' self-directed investments fund, subject to such rules as may be adopted for the administration of the trust. The Board shall be authorized to charge each account a fee for the administration of the DROP.

A new Section 31-31-409.6 is adopted as follows:

**31-31-409.6 Fire and police members' self-directed investments fund - creation -management.** (1) (a) There is hereby created the fire and police members' self-directed investments fund that shall consist of the assets of member self-directed funds administered and managed by the board pursuant to section 31-31-409.5(10), as adopted as part of Amendment 3, Fire and Police Pension Association, Board of Directors Resolution No. 2002-02, dated February 27, 2002. 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.

(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' self directed investments 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.

(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) Reserved.

(6) Reserved.

(7) The board shall submit an annual audit of the fund to the general assembly and to each employer that has active or retired members with balances in the fund. Each employer shall make the audit and study available for review by its members.

Amendment Three will become effective October 1, 2002.

Amendment Four: DROP for early and vested retirements.

Section 31-31-409.5(2), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

The provisions of this section are applicable with respect to those otherwise eligible members of the Statewide Defined Benefit Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this section. An "eligible member" is any member who is eligible for normal retirement in accordance with section 31-31-403 C.R.S., who has reached retirement age but has not reached the required service, who is eligible for a vested retirement in accordance with section 31-31-404(2) C.R.S., or who is eligible for an early retirement in accordance with section 31-31-403(4)C.R.S.

Section 31-31-409.5(9), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

Upon commencement of the member's participation in the DROP, the retirement benefits provided in this part 4 and the member contributions provided in this part 4 shall be paid into the member's Deferred Retirement Option Plan account. In no case shall the employer contribution be used to fund the DROP.

Amendment Four will become effective October 1, 2002.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2000-4 DATED JULY 5, 2000  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JUNE 15, 2000

Amendment One: Tiered Retirement Benefit

Section 31-31-403 (1) (a), C.R.S., as amended by Amendment Three, 1993 Statewide Defined Benefit Plan Amendments, is modified to read as follows:

Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of sixty years shall be eligible for a normal retirement pension, but any member shall be eligible for a normal retirement pension at any time after attaining the age of fifty-five years if the member's employer has certified to the board that there is no available position for which such member is qualified. The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary for each of the first ten years of service and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service.

Section 31-31-404 (2) (a), C.R.S., as amended by Amendment Five, 1993 Statewide Defined Benefit Plan amendments, is modified to read as follows:

In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least ten years of credited service may leave the contributions with the fund. When the inactive member attains age sixty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary for each of the first ten years of service, and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of the member's benefit payments, the fire and police pension association shall either refund the inactive member's contributions to the member's estate or provide survivor benefits to the member's designated beneficiary, payable when the member would have been eligible to receive a vested benefit under this subsection (2), whichever is greater. The survivor benefits shall be calculated as if the member has selected option 1 as set forth in section 31-31-403 (5) (a) (I). If the member's designated beneficiary dies prior to the time the member would have been eligible to receive a vested benefit under this subsection (2), the fire and police pension association shall refund the inactive member's contributions to the beneficiary's estate.

Amendment One will become effective January 1, 2001.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTIONS  
NO. 98-2 DATED FEBRUARY 23, 1998\*  
\*Clerical error corrected by Resolution No. 99-2 dated February 24, 1999  
AND  
EXECUTIVE DIRECTOR'S CERTIFICATION OF ELECTION RESULTS  
DATED MAY 26, 1998

Amendment One: "Pop Up" Provision

(a) Section 31-31-403 (5) (a), C.R.S., as amended, is modified by adding the following subparagraphs:

(IV) Option 4. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective The first day of the month next following the date of death of the member's designated beneficiary.

(V) Option 5. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective the first day of the month next following the date of death of the member's designated beneficiary.

(b) Section 31-31-406 (3) (c), C.R.S., as amended, is modified to read as follows:

Option 3: In an annuity. The member may choose an annuity payable to the member for life or may choose any OPTION I, II or III of the joint and survivor options permitted by section 31-31-403 (5) (a).

(c) Amendment One is effective January 1, 1999.

Amendment Four: Choice of Joint and Survivor Option Upon Subsequent Marriage

(a) Section 31-31-403 (5) (c), C.R.S., as amended, is modified as follows:

After an election has been made of any of the options provided in paragraph (a) of this subsection (5) and the member has cashed the first pension check, or sixty days from date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as the result of dissolution of marriage, death of a beneficiary, marriage, remarriage, or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this provision shall only apply to any final dissolution of marriage



decree of a member entered on or after July 1, 1990. Notwithstanding the foregoing, an unmarried member who is receiving a single life annuity and whose marital status changes as the result of marriage or remarriage may elect one of the options provided in paragraph (a) of this subsection (5); provided, however, if such a member revokes his prior election and chooses a different payment option, and the member subsequently dies during the first six months following his marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage and the amount of the reduced benefit that was actually paid to the deceased member during the period after his marriage or remarriage and prior to his death.

(b) Section 31-31-403 (5) (d), C.R.S., as amended, is modified to add the following:

In the event of a change in option elected pursuant to paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits payable to the member immediately prior to the change in option.

(c) Amendment Four is effective January 1, 1999.

Amendment Five: Deferred Retirement Option Plan (DROP)

(a) A new Section 31-31-409.5, Deferred Retirement Option Plan, is hereby added to Part 4, Article 31, Title 31, C.R.S., as amended:

31-31-409.5 Deferred Retirement Option Plan.

(1) This section adds, as a part of the Statewide Defined Benefit Plan, an optional account known as the Deferred Retirement Option Plan.

(2) The provisions of this section are applicable with respect to those otherwise eligible members of the Statewide Defined Benefit Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this section. An "eligible member" is any member who is eligible for normal retirement in accordance with section 31-31-403.

(3) The program set forth in this section may be referred to as the "DROP."

(4) The purpose of the DROP is to allow an eligible member to elect, in lieu of immediate termination of employment and receipt of a service retirement benefit, to continue employment for a specified period of time and to have the member's otherwise deductible employee contribution and retirement benefits paid into the DROP account until the end of such specified period of the member's participation, at which time employment is to cease. An eligible member must choose a straight life annuity or one of the retirement options provided in section 31-31-403 (5) at the same time the member elects to participate in the DROP.

(5) An eligible member may participate in the DROP only once.

(6) The duration of a member's participation in the DROP shall not exceed a total of five years. As a condition precedent to participation in the DROP, the member shall execute an irrevocable agreement with his employer in

the form prescribed by the Board which shall, among other items, clearly and unequivocally state that the member must retire no later than the fifth anniversary of the member's participation in the DROP, and the member shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement or death of the member. The employer shall provide a copy of such agreement to the Board.

(7) If the member's participation in the DROP is interrupted by military service, reduction in work force, or job related disability, then, upon reestablishment of membership and provided that the member has not received any distribution from his DROP account, the member shall be immediately eligible for resumption of participation in the DROP for the balance of the five year maximum. Other than the above-described types of interruptions of participation, the five year period shall continue to run in all other cases.

(8) Upon commencement of the member's participation in the DROP, the member shall remain an active member. Nevertheless, the member shall earn no additional service credit or additional benefits under the Statewide Defined Benefit Plan.

(9) Upon commencement of the member's participation in the DROP, the normal retirement benefit provided in this part 4 and the member contribution provided in this part 4 shall be paid into the member's Deferred Retirement Option Plan account. In no case shall the employer contribution be used to fund the DROP.

(10) The DROP assets shall continue to be commingled for investment purposes as part of the fire and police members' benefit fund and shall be credited with net investment earnings and losses at the same rate as other assets in the fund. The Board shall be authorized to charge each account a fee for the administration of the DROP.

(11) The Board is authorized to adopt rules and regulations governing the DROP.

(12) The DROP account shall not be subject to any fees or charges of any kind for any purpose, except as otherwise provided herein.

(13) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary. At the end of the installment period, a final disbursement of remaining funds in the DROP account shall be made. If no selection is made by the retiree within 30 days of retirement, the lump sum payment method shall be utilized.

(14) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal

monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life or life expectancy. If no selection is made by the designated beneficiary within 30 days of death of the member, the lump sum payment method shall be utilized.

(15) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is someone other than the member's surviving spouse to whom the member was legally married at the time of the member's death, the designated beneficiary shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

(16) If the member dies during the period of the member's participation in the DROP and the designated beneficiary has not survived the member, the member's estate shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

(b) Amendment Five will be effective January 1, 1999 or upon receipt by FPPA of a favorable determination letter from the Internal Revenue Service approving Amendment Five, whichever occurs later.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
ADOPTED AUGUST 25, 1993

RELOCATED BY RESOLUTION 97-4

Amendment One. The provisions of section 31-31-403 (1) (a), Colorado Revised Statutes, as amended, are modified as follows:

Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of sixty years shall be eligible for a normal retirement pension, but any member shall be eligible for a normal retirement pension at any time after attaining the age of fifty-five years if the member's employer has certified to the board that there is no available position for which such member is qualified. The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary multiplied by the member's years of service, not to exceed twenty-five. In addition to the annual normal retirement pension set forth in this paragraph (a), a member shall receive two percent of the average of the member's highest three years' base salary for each year of service which the member accrues after having served at least twenty-five years and attaining the age of sixty years or such lesser age as the Board may set pursuant to paragraph (b) of this subsection (1). However, in no event shall a member receive more than seventy percent of the average of the member's highest three years' base salary as a retirement benefit. The additional benefit provided by this paragraph (a) shall only accrue with respect to years of service credit after January 1, 1994.

Amendment Five. The provisions of section 31-31-404 (2) (a), Colorado Revised Statutes, as amended, are modified as follows:

In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least ten years of credited service may leave the contributions with the fund. When the inactive member attains age sixty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary multiplied by years, not to exceed twenty-five, of active service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to said member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of benefit payments, the fire and police pension association shall EITHER refund the inactive member's contributions to the member's estate, or provide survivor benefits to the member's designated beneficiary, payable when the member would have been eligible to receive a vested benefit under this subsection (2), whichever is greater. The survivor benefits shall be calculated as if the member had selected option 1 as set forth in Section 31-31-403 (5) (a) (I). If the member's designated beneficiary dies prior to the time the member would have been eligible to receive a vested benefit under this subsection (2), the Fire and Police Pension Association shall refund the inactive member's contributions to the beneficiary's estate.

**Fire & Police Pension Association  
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**Colorado Revised Statutes  
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**Title 31  
Articles 30, 30.5 & 31**

Attached are the Colorado Revised Statutes and Amendments pertaining to the plans and benefits administered by FPPA. For more information please also refer to the FPPA Plan brochures as well as the FPPA Rules and Regulations. The FPPA Plan brochures and Rules and Regulations may be viewed and/or downloaded from our web site at [www.fppaco.org](http://www.fppaco.org) or by requesting copies from the address below.

5290 DTC Parkway, Suite 100, Greenwood Village, CO 80111-2721  
(303) 770-3772 in the Denver metro area or (800) 332-3772  
toll free nationwide

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2004-4 DATED MARCH 24, 2004  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JULY 16, 2004

Amendment Two: Removing the requirement that a DROP participant select a payment option within 30 days of termination.

Amend Sections 31-31-409.5 (13), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, to read as follows:

(13) (a) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary. At the end of the installment period, a final disbursement of remaining funds in the DROP account shall be made. If no selection is made by the retiree within 30 days of retirement, the lump sum payment method shall be utilized.

(b) Notwithstanding any provision to the contrary, any distribution under the DROP shall be made in accordance with Code Section 401(a)(9) and the regulations established there under as they are amended and shall comply with the following rules:

(ii) To the extent required by Code Section 401(a) (9) and the regulations promulgated there under, payment of the benefits of a Member shall begin not later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member reaches age seventy and one-half (70½), or the calendar year in which the Member retires.

(ii) No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(iii) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

Amend Sections 31-31-409.5 (14), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, to read as follows:

(14) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life

or life expectancy. If no selection is made by the designated beneficiary within 30 days of death of the member, the lump sum payment method shall be utilized.

(h) In the event of the Member's death, any remaining benefit shall be distributed according to the following subject to compliance with Code Section 401(a)(9) and regulations there under.

(i) If the Member had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Accounts shall be paid to the Designated Beneficiary at least as rapidly as under the payment option selected by the Member.

(j) If the Member had begun receiving payments in the form of a pension or annuity, the Designated Beneficiary shall be bound by all restrictions applicable to the pension or annuity, and the form of payment selected there under, and remaining payments, if any, shall be paid to the Designated Beneficiary in the same manner.

(k) If the Member dies before distributions have commenced, a Spouse Designated Beneficiary may take a lump sum distribution or may delay the commencement of benefits until not later than December 31 of the year the Member would have attained age seventy and one-half (70½) and may elect to receive periodic payments over the Spouse's life expectancy.

(l) If the Member dies before distributions have commenced, a Designated Beneficiary other than a surviving Spouse may take a lump sum or a periodic payment. In the case of a lump sum, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Member's death. In the case of a periodic payment distribution, payment must commence no later than December 31 of the year following the year of the Member's death, and in no event be payable over a period longer than the Designated Beneficiary's life expectancy at the time the distribution commences.

(m) If the Member has not designated a Designated Beneficiary or the Plan is unable to locate the Designated Beneficiary upon death, the Member's remaining interest will be paid in a lump sum to the Member's estate.

(n) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

Amendment Three: Allow purchase of a monthly benefit from the SRA account and the DROP account.

A new Section 31-31-410.5 to read as follows:

31-31-410.5 Purchase of Monthly Benefits. A Member who is eligible for normal, deferred, or early retirement may elect to transfer all or part of his/her SRA Account and his/her DROP balance within the Statewide Defined Benefit Plan to purchase a monthly benefit. Funds may not be transferred from outside the Statewide Defined Benefit Plan to purchase a monthly benefit.

(e) The funds transferred are to be considered part of the member's accumulated contributions for purposes of C.R.S. § 31-31-403(6).

(f) At retirement or separation of service, which ever comes later, a Member may make a one-time, irrevocable election to purchase a monthly benefit. The purchase must be in one lump sum, which must be transferred prior to the receipt of defined benefits.

(g) Once the Member's monthly payment amount is calculated, it will be considered to be a portion of the Member's pension under C.R.S. §§ 31-31-403 (1) (normal retirement), (3) (deferred retirement), (4) (early retirement), or C.R.S. § 31-31-404(2) (vested retirement). It may be reduced if the member elects one of the survivor options offered under C.R.S. § 31-31-404(5)(a) of the Statewide Defined Benefit Plan.

(h) As part of the pension, the purchased monthly benefit may be adjusted pursuant to C.R.S. § 31-31-407 of the Statewide Defined Benefit Plan.

- (g) Once the monthly benefit is purchased, the Member may not convert back to a lump sum payout.
- (h) An application to purchase a monthly benefit shall be filed by the Member with the Plan Administrator on the Applicable Form. The Member must provide any documentation that is required by the Board to complete the purchase.



FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2002-2 DATED FEBRUARY 27, 2002  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JUNE 19, 2002

Amendment One: Removal of consumer-price index limitation on statewide defined benefit plan:

Section 31-31-407(2)(a) C.R.S. is amended to read as follows:

The redetermination of benefits payable under subsection (1) of this section shall be computed as follows: The amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but no more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination. Beginning in 2002, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent of the prior year's benefit. In no event shall the benefit be decreased.

Section 31-31-407(3) is repealed.

Amendment One will become effective October 1, 2002.

Amendment Three: Member Self Direction of Deferred Retirement Option Plan (DROP) Assets

Section 31-31-409.5 (10), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

The DROP assets shall be held in trust for investment purposes as part of the fire and police members' self-directed investments fund, subject to such rules as may be adopted for the administration of the trust. The Board shall be authorized to charge each account a fee for the administration of the DROP.

A new Section 31-31-409.6 is adopted as follows:

**31-31-409.6 Fire and police members' self-directed investments fund - creation -management.** (1) (a) There is hereby created the fire and police members' self-directed investments fund that shall consist of the assets of member self-directed funds administered and managed by the board pursuant to section 31-31-409.5(10), as adopted as part of Amendment 3, Fire and Police Pension Association, Board of Directors Resolution No. 2002-02, dated February 27, 2002. 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:

(III) 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;

(IV) 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 fund created pursuant to this section.

(8) The board shall be the trustee of the fire and police members' self directed investments 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.

(9) 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.

(10) 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.

(11) Reserved.

(12) Reserved.

(13) The board shall submit an annual audit of the fund to the general assembly and to each employer that has active or retired members with balances in the fund. Each employer shall make the audit and study available for review by its members.

Amendment Three will become effective October 1, 2002.

Amendment Four: DROP for early and vested retirements.

Section 31-31-409.5(2), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

The provisions of this section are applicable with respect to those otherwise eligible members of the Statewide Defined Benefit Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this section. An "eligible member" is any member who is eligible for normal retirement in accordance with section 31-31-403 C.R.S., who has reached retirement age but has not reached the required service, who is eligible for a vested retirement in accordance with section 31-31-404(2) C.R.S., or who is eligible for an early retirement in accordance with section 31-31-403(4)C.R.S.

Section 31-31-409.5(9), as adopted as part of Amendment 5, Fire and Police Pension Association, Board of Directors Resolution No. 98-2, dated February 23, 1998, is amended to read as follows:

Upon commencement of the member's participation in the DROP, the retirement benefits provided in this part 4 and the member contributions provided in this part 4 shall be paid into the member's Deferred Retirement Option Plan account. In no case shall the employer contribution be used to fund the DROP.

Amendment Four will become effective October 1, 2002.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTION  
NO. 2000-4 DATED JULY 5, 2000  
AND  
EXECUTIVE DIRECTOR/CEO CERTIFICATION OF ELECTION RESULTS  
DATED JUNE 15, 2000

Amendment One: Tiered Retirement Benefit

Section 31-31-403 (1) (a), C.R.S., as amended by Amendment Three, 1993 Statewide Defined Benefit Plan Amendments, is modified to read as follows:

Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of sixty years shall be eligible for a normal retirement pension, but any member shall be eligible for a normal retirement pension at any time after attaining the age of fifty-five years if the member's employer has certified to the board that there is no available position for which such member is qualified. The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary for each of the first ten years of service and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service.

Section 31-31-404 (2) (a), C.R.S., as amended by Amendment Five, 1993 Statewide Defined Benefit Plan amendments, is modified to read as follows:

In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least ten years of credited service may leave the contributions with the fund. When the inactive member attains age sixty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary for each of the first ten years of service, and two and one-half percent of the average of the member's highest three years' base salary for each additional year of service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of the member's benefit payments, the fire and police pension association shall either refund the inactive member's contributions to the member's estate or provide survivor benefits to the member's designated beneficiary, payable when the member would have been eligible to receive a vested benefit under this subsection (2), whichever is greater. The survivor benefits shall be calculated as if the member has selected option 1 as set forth in section 31-31-403 (5) (a) (I). If the member's designated beneficiary dies prior to the time the member would have been eligible to receive a vested benefit under this subsection (2), the fire and police pension association shall refund the inactive member's contributions to the beneficiary's estate.

Amendment One will become effective January 1, 2001.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
AMENDED BY BOARD OF DIRECTORS RESOLUTIONS  
NO. 98-2 DATED FEBRUARY 23, 1998\*  
\*Clerical error corrected by Resolution No. 99-2 dated February 24, 1999  
AND  
EXECUTIVE DIRECTOR'S CERTIFICATION OF ELECTION RESULTS  
DATED MAY 26, 1998

Amendment One: "Pop Up" Provision

(a) Section 31-31-403 (5) (a), C.R.S., as amended, is modified by adding the following subparagraphs:

(VI) Option 4. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective The first day of the month next following the date of death of the member's designated beneficiary.

(VII) Option 5. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life; provided, however, that if the member's designated beneficiary predeceases the member, the member's base pension shall increase to the amount computed in accordance with subsection (1), (3), or (4) of this section, effective the first day of the month next following the date of death of the member's designated beneficiary.

(b) Section 31-31-406 (3) (c), C.R.S., as amended, is modified to read as follows:

Option 3: In an annuity. The member may choose an annuity payable to the member for life or may choose any OPTION I, II or III of the joint and survivor options permitted by section 31-31-403 (5) (a).

(c) Amendment One is effective January 1, 1999.

Amendment Four: Choice of Joint and Survivor Option Upon Subsequent Marriage

(a) Section 31-31-403 (5) (c), C.R.S., as amended, is modified as follows:

After an election has been made of any of the options provided in paragraph (a) of this subsection (5) and the member has cashed the first pension check, or sixty days from date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as the result of dissolution of marriage, death of a beneficiary, marriage, remarriage, or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this provision shall only apply to any final dissolution of marriage

decree of a member entered on or after July 1, 1990. Notwithstanding the foregoing, an unmarried member who is receiving a single life annuity and whose marital status changes as the result of marriage or remarriage may elect one of the options provided in paragraph (a) of this subsection (5); provided, however, if such a member revokes his prior election and chooses a different payment option, and the member subsequently dies during the first six months following his marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage and the amount of the reduced benefit that was actually paid to the deceased member during the period after his marriage or remarriage and prior to his death.

(d) Section 31-31-403 (5) (d), C.R.S., as amended, is modified to add the following:

In the event of a change in option elected pursuant to paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits payable to the member immediately prior to the change in option.

(e) Amendment Four is effective January 1, 1999.

Amendment Five: Deferred Retirement Option Plan (DROP)

(a) A new Section 31-31-409.5, Deferred Retirement Option Plan, is hereby added to Part 4, Article 31, Title 31, C.R.S., as amended:

31-31-409.5 Deferred Retirement Option Plan.

(7) This section adds, as a part of the Statewide Defined Benefit Plan, an optional account known as the Deferred Retirement Option Plan.

(8) The provisions of this section are applicable with respect to those otherwise eligible members of the Statewide Defined Benefit Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this section. An "eligible member" is any member who is eligible for normal retirement in accordance with section 31-31-403.

(9) The program set forth in this section may be referred to as the "DROP."

(10) The purpose of the DROP is to allow an eligible member to elect, in lieu of immediate termination of employment and receipt of a service retirement benefit, to continue employment for a specified period of time and to have the member's otherwise deductible employee contribution and retirement benefits paid into the DROP account until the end of such specified period of the member's participation, at which time employment is to cease. An eligible member must choose a straight life annuity or one of the retirement options provided in section 31-31-403 (5) at the same time the member elects to participate in the DROP.

(11) An eligible member may participate in the DROP only once.

(12) The duration of a member's participation in the DROP shall not exceed a total of five years. As a condition precedent to participation in the DROP, the member shall execute an irrevocable agreement with his employer in

the form prescribed by the Board which shall, among other items, clearly and unequivocally state that the member must retire no later than the fifth anniversary of the member's participation in the DROP, and the member shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement or death of the member. The employer shall provide a copy of such agreement to the Board.

(15) If the member's participation in the DROP is interrupted by military service, reduction in work force, or job related disability, then, upon reestablishment of membership and provided that the member has not received any distribution from his DROP account, the member shall be immediately eligible for resumption of participation in the DROP for the balance of the five year maximum. Other than the above-described types of interruptions of participation, the five year period shall continue to run in all other cases.

(16) Upon commencement of the member's participation in the DROP, the member shall remain an active member. Nevertheless, the member shall earn no additional service credit or additional benefits under the Statewide Defined Benefit Plan.

(17) Upon commencement of the member's participation in the DROP, the normal retirement benefit provided in this part 4 and the member contribution provided in this part 4 shall be paid into the member's Deferred Retirement Option Plan account. In no case shall the employer contribution be used to fund the DROP.

(18) The DROP assets shall continue to be commingled for investment purposes as part of the fire and police members' benefit fund and shall be credited with net investment earnings and losses at the same rate as other assets in the fund. The Board shall be authorized to charge each account a fee for the administration of the DROP.

(19) The Board is authorized to adopt rules and regulations governing the DROP.

(20) The DROP account shall not be subject to any fees or charges of any kind for any purpose, except as otherwise provided herein.

(21) A participant in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary. At the end of the installment period, a final disbursement of remaining funds in the DROP account shall be made. If no selection is made by the retiree within 30 days of retirement, the lump sum payment method shall be utilized.

(22) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is the member's surviving spouse to whom the member was legally married at the time of the member's death, the member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal

monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life or life expectancy. If no selection is made by the designated beneficiary within 30 days of death of the member, the lump sum payment method shall be utilized.

(17) If the member dies during the period of the member's participation in the DROP and the member's designated beneficiary is someone other than the member's surviving spouse to whom the member was legally married at the time of the member's death, the designated beneficiary shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

(18) If the member dies during the period of the member's participation in the DROP and the designated beneficiary has not survived the member, the member's estate shall receive a lump sum payment equal to the member's individual DROP account balance plus net investment earnings or losses.

(b) Amendment Five will be effective January 1, 1999 or upon receipt by FPPA of a favorable determination letter from the Internal Revenue Service approving Amendment Five, whichever occurs later.

FIRE AND POLICE PENSION ASSOCIATION  
AMENDMENTS TO THE STATEWIDE DEFINED BENEFIT PLAN  
ADOPTED AUGUST 25, 1993

RELOCATED BY RESOLUTION 97-4

Amendment One. The provisions of section 31-31-403 (1) (a), Colorado Revised Statutes, as amended, are modified as follows:

Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of sixty years shall be eligible for a normal retirement pension, but any member shall be eligible for a normal retirement pension at any time after attaining the age of fifty-five years if the member's employer has certified to the board that there is no available position for which such member is qualified. The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary multiplied by the member's years of service, not to exceed twenty-five. In addition to the annual normal retirement pension set forth in this paragraph (a), a member shall receive two percent of the average of the member's highest three years' base salary for each year of service which the member accrues after having served at least twenty-five years and attaining the age of sixty years or such lesser age as the Board may set pursuant to paragraph (b) of this subsection (1). However, in no event shall a member receive more than seventy percent of the average of the member's highest three years' base salary as a retirement benefit. The additional benefit provided by this paragraph (a) shall only accrue with respect to years of service credit after January 1, 1994.

Amendment Five. The provisions of section 31-31-404 (2) (a), Colorado Revised Statutes, as amended, are modified as follows:

In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least ten years of credited service may leave the contributions with the fund. When the inactive member attains age sixty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary multiplied by years, not to exceed twenty-five, of active service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to said member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of benefit payments, the fire and police pension association shall EITHER refund the inactive member's contributions to the member's estate, or provide survivor benefits to the member's designated beneficiary, payable when the member would have been eligible to receive a vested benefit under this subsection (2), whichever is greater. The survivor benefits shall be calculated as if the member had selected option 1 as set forth in Section 31-31-403 (5) (a) (I). If the member's designated beneficiary dies prior to the time the member would have been eligible to receive a vested benefit under this subsection (2), the Fire and Police Pension Association shall refund the inactive member's contributions to the beneficiary's estate.



# **TITLE 31**

## **GOVERNMENT -MUNICIPAL**

### **ARTICLE 30**

#### **Fire - Police - Sanitation**

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##### **STREET DEPARTMENT**

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- 31-30-102. Civil service commission - withdrawal.
- 31-30-103. Purpose.
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##### **PART7**

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- 31-30-702. (Repealed)

##### **PART8**

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- 31-30-1201. Short title.
- 31-30-1202. Definitions.
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PART 13  
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PART 1  
FIRE, POLICE, OR STREET  
DEPARTMENT - PAID - CIVIL SERVICE

**31-30-101. Authority to provide for classified departments.** The governing body of any city or town may provide by ordinance for a paid fire department, a paid police department, or a paid street department or all of same and may fix, define, and classify the various grades of employment in such departments, which grades and classifications shall be based upon the nature of the services to be rendered and the duties to be performed and shall also fix uniform wages and salaries to be paid to all employees in each particular class, which wages may be lowered or increased uniformly for each class from time to time.

**31-30-102. Civil service commission - withdrawal.** The governing body of any city or town in the state maintaining a paid police department, a paid fire department, or a paid street department may establish a commission which shall be known as "the city (town) of .... fire and police and street department civil service commission". Said governing body shall not have the authority to withdraw said departments from operation of such system unless and until the withdrawal thereof has been submitted to the registered electors of said city or town at a special or regular election held in said city or town pursuant to an ordinance properly passed submitting the same to said electors and has been approved by not less than a majority vote of said electors voting on such proposition.

**31-30-103. Purpose.** It is the intent of this part 1 to enable the governing body of any city or town within this state to adopt by ordinance such civil service system for fire, police, or street departments as may be adaptable to the size and type of city or town involved and consist of a comprehensive civil service system as in the sound discretion of said governing body may be for the best interests of the public service in said city or town. The provisions of this part 1 shall not apply to or in any way annul, repeal, or set aside the civil service provisions in force on or before May 17, 1939, in any city or town.

**31-30-104. Contract for conducting examination.** The governing body of any city or town may contract with the governing body of any municipality or county within this state or with any department of the state for the conducting of competitive examinations to ascertain the fitness of applicants for positions and employment in the fire, police, or street department or all of same and for the performance of any other service in connection with personnel selection and administration.

**31-30-105. Ordinance -violation.** (1) Any ordinance adopted by the governing body of any city or town under the provisions of this part I shall include the following provisions and penalty for violation thereof: No person holding an office or place in a fire, police, or street department placed by the governing body under a civil service system pursuant to the provisions of this part 1 shall seek or accept election, nomination, or appointment as an officer of a political club or organization; take an active part in a county or municipal political campaign; serve as a member of a committee of such club, organization, or circle; seek signatures to any petition provided for by any law; act as a worker at the polls; or distribute badges, pamphlets, dodgers, or handbills of any kind favoring or opposing any candidate for election or for nomination to a public office, whether county or municipal. Nothing in this part 1 shall prevent any such officer or employee from becoming or continuing to be a member of a political club or organization,

attending a political meeting, or enjoying entire freedom from all interference in casting his vote.

(2) Any willful violation of this section or violation through culpable negligence is sufficient grounds to authorize the discharge of any firefighter, police officer, or street department employee.

**31-30-106. Police to provide identification cards to retired peace officers upon request - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Peace officer" means a certified peace officer described in section 16-2.5-102, C.R.S.

(b) "Photographic identification" means a photographic identification that satisfies the description at 18 U.S.C. sec. 926C (d).

(2) Except as described in subsection (3) of this section, on and after August 7, 2013, if a police department of a city or town has a policy, on August 7, 2013, of issuing photographic identification to peace officers who have retired from the police department, and the police department discontinues said policy after August 7, 2013, the police department shall continue to provide such photographic identification to peace officers who have retired from the police department if:

(a) The peace officer requests the identification;

(b) The peace officer retired from the police department before the date upon which the police department discontinued the policy; and

(c) The peace officer is a qualified retired law enforcement officer, as defined in 18 U.S.C. sec. 926C (c).

(3) Before issuing or renewing a photographic identification to a retired law enforcement officer pursuant to this section, a law enforcement agency of the state shall complete a criminal background check of the officer through a search of the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act", Pub.L. 103-159, the relevant portion of which is codified at 18 U.S.C. sec. 922 (t), and a search of the state integrated criminal justice information system. If the background check indicates that the officer is prohibited from possessing a firearm by state or federal law, the law enforcement agency shall not issue the photographic identification.

(4) The police department may charge a fee for issuing a photographic identification to a retired peace officer pursuant to subsection (2) of this section, which fee shall not exceed the direct and indirect costs assumed by the police department in issuing the photographic identification.

(5) Notwithstanding any provision of this section to the contrary, a police department shall not be required to issue a photographic identification to a particular peace officer if the chief administrative officer of the police department elects not to do so.

(6) If a police department denies a photographic identification to a retired peace officer who requests a photographic identification pursuant to this section, the police department shall provide the retired peace officer a written statement setting forth the reason for the denial.

**31-30-107. Disclosure of knowing misrepresentation by a peace officer required - disclosure waivers - reports - definitions.** (1) Subject to the limitations of this section, a municipal police department or town marshal's office that employs, employed, or deputized on or after January 1, 2010, a peace officer who applies for employment with another Colorado law enforcement agency shall disclose to the hiring agency information, if available, indicating whether the peace officer's employment history included any instances in which the peace officer had a sustained violation for making a knowing misrepresentation:

(a) In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or

(b) During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct, as described in section 18-8-404 or 18-8-405, C.R.S.; or use of excessive force, regardless of whether the alleged criminal conduct, official misconduct, or use of excessive force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

(2) The disclosure described in subsection (1) of this section is required only upon the presentation of a written waiver to a municipal police department or town marshal's office, which waiver explicitly authorizes the municipal police department or town marshal's office to disclose the information described in said subsection (1), has been signed by the applicant peace officer, and identifies the Colorado law enforcement agency that is considering the applicant peace officer for employment. A municipal police department or town marshal's office that receives such a waiver shall provide the disclosure to the Colorado law enforcement agency that is considering the applicant peace officer for employment not more than seven days after such receipt.

(3) A municipal police department or town marshal's office is not required to provide the disclosure described in subsection (1) of this section if the police department or town marshal's office is prohibited from providing such disclosure pursuant to a binding nondisclosure agreement to which the police department or town marshal's office is a party, which agreement was executed before August 5, 2015.

(4) (a) A municipal police department or town marshal's office shall notify the local district attorney whenever the municipal police department or town marshal's office learns that any peace officer of the municipal police department or town marshal's office has made a knowing misrepresentation:

(I) In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or

(II) During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct, as described in section 18-8-404 or 18-8-405, C.R.S.; or use of excessive force, regardless of whether the alleged criminal conduct, official misconduct, or use of excessive force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

(b) A municipal police department or town marshal's office shall provide the notice described in paragraph (a) of this subsection (4) not more than seven days after the municipal police department or town marshal's office learns that a peace officer of the municipal police department or town marshal's office has made a knowing misrepresentation, as described in said paragraph (a).

(5) A municipal police department or town marshal's office is not liable for complying with the provisions of this section.

(6) As used in this section, unless the context requires otherwise, "state or local law enforcement agency" means:

(a) The Colorado state patrol created pursuant to section 24-33.5-201, C.R.S.;

(b) The Colorado bureau of investigation created pursuant to section 24-33.5-401, C.R.S.;

(c) A county sheriff's office;

(d) A municipal police department;

(e) The division of parks and wildlife within the department of natural resources created pursuant to section 24-1-124, C.R.S.; or

(f) A town marshal's office.

**31-30-108. Peace officer hiring - required use of waiver - definitions.** (1) A municipal police department or town marshal's office shall require each candidate that it interviews for a peace officer position who has been employed by another law enforcement agency or governmental agency to execute a written waiver that explicitly authorizes each law enforcement agency or governmental agency that has employed the candidate to disclose the applicant's files, including internal affairs files, to the municipal police department or town marshal's office interviewing the candidate and releases the interviewing agency and each law enforcement agency or governmental agency that employed the candidate from any liability related to the use and disclosure of the files. A law enforcement agency or governmental agency may disclose the applicant's files by either providing copies or allowing the municipal police department or town marshal's office to review the files at the law enforcement agency's office or governmental agency's office. A candidate who refuses to execute the waiver shall not be considered for employment by the department or office. The department or office interviewing the candidate shall, at least twenty-one days prior to making the hiring decision, submit the waiver to each law enforcement agency or governmental agency that has employed the candidate. A state or local law enforcement agency or governmental agency that receives such a waiver shall provide the disclosure to the municipal police department or town marshal's office that is interviewing the candidate not more than twenty-one days after such receipt.

(2) A state or local law enforcement agency is not required to provide the disclosures described in subsection (1) of this section if the agency is prohibited from providing the disclosure pursuant to a binding nondisclosure agreement to which the agency is a party, which agreement was executed before June 10, 2016.

(3) A state or local law enforcement agency or governmental agency is not liable for complying with the provisions of this section or participating in an official oral interview with an investigator regarding the candidate.

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

(a) "Files" means all performance reviews, any other files related to job performance, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, and all complaints, early warnings, and commendations, but does not include nonperformance or conduct-related data, including medical files, schedules, pay and benefit information, or similar administrative data or information.

(b) "State or local law enforcement agency" means:

(I) The Colorado state patrol created pursuant to section 24-33.5-201, C.R.S.;

(II) The Colorado bureau of investigation created pursuant to section 24-33.5-401, C.R.S.;

(III) A county sheriff's office;

(IV) A municipal police department;

(V) The division of parks and wildlife within the department of natural resources created pursuant to section 24-1-124, C.R.S.; or

(VI) A town marshal's office.

**31-30-109. Mental health professionals - grant applications encouraged - definition - repeal.** (1) Each municipal police department is encouraged to adopt a policy whereby mental health professionals, to the extent practicable, provide:

- (a) On-scene response services to support officers' handling of persons with mental health disorders; and
- (b) Counseling services to officers of the police department.
- (2) In implementing a policy as described in subsection (1) of this section, a municipal police department shall not require a mental health professional to counsel both a person with a mental health disorder and an officer if, in the judgment of the mental health professional, doing so would constitute a conflict of interest or a breach of a professional code of ethics.
- (3) For the purposes of this section, each municipal police department is encouraged to apply annually for a grant from the peace officers mental health support grant program created in section 24-32-3501.
- (4) As used in this section, "mental health professional" means a mental health professional licensed to practice medicine pursuant to part 1 of article 36 of title 12 or a person licensed as a mental health professional pursuant to article 43 of title 12.
- (5) This section is repealed, effective September 1, 2027.

## PART 2 FIREFIGHTERS' CIVIL SERVICE

**31-30-201. Authorization - petition - election.** (1) All cities or towns organized under the general laws of this state which have paid fire departments are authorized to adopt civil service regulations pertaining to such departments in the following manner:

(a) The governing body may, and upon the petition of registered electors in number not less than fifteen percent of the last preceding vote for mayor shall, submit the question of accepting civil service provisions relative to such fire department to a vote of the registered electors at the next regular election. If a petition is submitted, the signatures to such petition shall be acknowledged before a notary public and need not be all on one paper. The ordinance or resolution calling for submission of the question shall provide for classification of all members of the fire department.

(b) The election notice shall state that the question is submitted for the purpose of ascertaining whether or not the city or town will adopt civil service regulations relative to said fire department. The election shall be conducted as nearly as may be in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The ballots or voting machine tabs shall contain the words "For the Merit System" and "Against the Merit System".

(c) If, upon the official determination of the result of such election, it appears that a majority of all the votes cast are for the adoption of the merit system under civil service regulations, this part 2 and all rules made under this part 2 shall immediately be in full force and effect in said city or town.

**31-30-202. Commissioners appointed - terms - vacancies - expenses allowed.** Immediately upon the adoption of the merit system under civil service regulations, the governing body shall appoint three persons as civil service commissioners who shall be known and designated as the board of civil service commissioners or board of public safety to serve for six years, four years, and two years, respectively, from the date of their appointment and until their successors are appointed and qualified. Every alternate year the governing body shall appoint one person, as the successor of the commissioner whose term shall expire, to serve for the term of six years from the date of the appointment and until a successor is appointed and qualified. Any vacancy may be filled for the unexpired term by appointment by the governing body. At no time shall more than two commissioners be members of the same political party. Said

commissioners shall serve without compensation but shall be paid their necessary expenses actually incurred in the discharge of their official duties.

**31-30-203. Merit.** Appointments and employment in and promotion to said fire department and said classified civil service shall be made according to merit and fitness, to be ascertained by competitive tests of competency except as provided in section 31-30-206.

**31-30-204. Removal - public hearings.** The classified civil service of the said city or town shall comprise all members of the fire department. Persons in the classified civil service shall hold their respective positions and be graded according to their competency, which shall be the same for all persons having like duty; except that the members of any paid fire department holding positions on the same at the time said city or town adopts the provisions of this part 2 shall retain their respective positions until removed after a public hearing for good cause shown, as provided in this section. They shall be removed or discharged only upon written charges which shall be filed by the head of the department or by any citizen of the city or town acting for the good of the service, to be promptly acted upon by the commission. All hearings before the commission shall be open to the public. No person shall be discharged for a political or religious reason. In case of emergency, the commission shall authorize the temporary appointment of members to the fire department without competitive tests for a period of not to exceed ninety days.

**31-30-205. Commission to make rules.** The making or enforcement of rules to carry out the purpose of the classified civil service of such city or town, the alteration and discharge of such rules, the conducting of all competitive tests and determination of all removals or discharge cases, and the standardization in such classified civil service shall be vested in the commission. No person in the classified civil service shall be paid until a certificate is made by the commission that his appointment is made pursuant to law.

**31-30-206. Positions retained.** All persons holding regular positions in the classified civil service, as defined by this part 2, at the time of the adoption of the civil service provision, as provided in this part 2, shall retain their respective positions without examination or further appointment. In all other respects said persons shall be subject to the provisions and rules of this part 2.

**31-30-207. Commission to make inquiries - record - report.** (1) It is the duty of the commission to investigate alleged breaches of this part 2 and its rules, and in the course of such investigations they, or any of them, may subpoena witnesses, administer oaths, and compel the testimony of witnesses and production of books, papers, and records relative to such inquiry, and it is the duty of such persons so subpoenaed to appear and testify and to produce such books, papers, and records as are called for in such subpoena. Should the person subpoenaed fail to appear and testify or produce documentary evidence, the commission may apply to the district court for an order compelling compliance with the subpoena. Failure to obey the order of the court shall be punishable as a contempt of court. The commission shall keep records of its proceedings and of all examinations held by it or under its authority. All records and documents filed by the commission shall be filed as public records. The minutes of the commission shall be kept in a separate book and shall be open to the public at all reasonable times.

(2) The commission, on or before the December 1 preceding each regular session of the governing body, shall make a report to the governing body of its work during the preceding year



and include therein all rules adopted and any suggestions for legislation to carry out the purposes of the civil service.

**31-30-208. Fee of applicants.** Every applicant for examination shall pay the commission a fee of one dollar for the purpose of defraying the expenses of conducting such examination. All moneys received or collected by the commission shall be paid into the municipal treasury and shall be placed by the treasurer in a separate fund to the credit of the commission for the use of said commission. No person shall be examined unless such fee has been paid.

**31-30-209. Powers of commission.** The commission has the power to make and enforce all rules and regulations, which rules and regulations shall be printed for distribution. No rule shall become effective until five days after publication of the same in some newspaper in said city or town.

**31-30-210. Qualifications - notice of examination.** Applicants for appointment shall be citizens of the United States and reside in the city and county of such municipality for one year next preceding the date of their application. All examinations shall be impartial and only relate to the fitness of such persons examined for the service they wish to enter. No question shall relate to political or religious affiliation, and no appointment shall be affected in any manner by such political or religious affiliation. Notice of time, place, and scope of such examination shall be given in said notice published in said paper. No person shall be certified to appointment whose standing shall be less than sixty-five percent of complete proficiency. Preference shall be given to persons honorably discharged from the naval or military service of the United States and whose qualifications are otherwise equal.

PART3  
PENSION - POLICE - GENERAL

**31-30-301 to 31-30-325. (Repealed)**

PART4  
PENSION - FIREFIGHTERS' - GENERAL

**31-30-401 to 31-30-418. (Repealed)**

PART5  
FIREFIGHTERS' PENSIONS - CITIES OF OVER 100,000

**31-30-501 to 31-30-523. (Repealed)**

PART6  
POLICEMEN'S PENSIONS - CITIES OF OVER 100,000

**31-30-601 to 31-30-621. (Repealed)**

PART7  
PENSION FUNDS - INVESTMENT - PERSONNEL INSURANCE

**31-30-701 and 31-30-702. (Repealed)**

PART 8  
POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM LAW

**31-30-801 to 31-30-806. (Repealed)**

PART 9  
POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM COMMISSION

**31-30-901. (Repealed)**

PART 10  
MEMBERS' BENEFITS

**31-30-1001 to 31-30-1019. (Repealed)**

PART 11  
VOLUNTEER FIREFIGHTER PENSION ACT

**31-30-1101. Short title.** This part 11 shall be known and may be cited as the "Volunteer Firefighter Pension Act".

**31-30-1102. Definitions.** As used in this part 11, unless the context otherwise requires:

(1) "Board" means the board of trustees of the volunteer firefighter pension fund that is created in a municipality or district under this part 11.

(2) "District" means a fire protection district or county improvement district in this state having fire department members and offering fire protection services, and any county that provides funding, including volunteer pension funding, through intergovernmental cooperation for the provision of fire protection services.

(3) "Fire and police pension association" means the association created by section 31-31-201.

(4) "Fire department member" means a volunteer firefighter who is in a fire department that serves a municipality, county, or district and who accrues benefits in the volunteer firefighter pension fund.

(5) "Fund" means the volunteer firefighter pension fund provided in this part 11.

(6) "Municipality" means a municipality in this state that maintains a regularly organized volunteer fire department and that offers fire protection services.

(7) "Plan" means a program of benefits provided under this part 11.

(7.5) "Previous net valuation" means an amount equal to the total valuation for assessment certified by the county assessor pursuant to section 39-5-128, C.R.S., and amended pursuant to section 39-1-111 (5), C.R.S., less the valuation for assessment that has been divided for an urban renewal area pursuant to section 31-25-107 (9) or for a downtown development authority pursuant to section 31-25-807 (3) for the property tax year in which the municipality or district made a contribution to the fund. If the total valuation for assessment certified by the county assessor, as amended, does not include the valuation for assessment that has been divided for an urban renewal area, such urban renewal valuation for assessment shall not be subtracted from the total valuation for assessment.

(8) "Retired fire department member" means a volunteer firefighter who is not on active duty and who receives pension benefits from the volunteer firefighter pension fund.

(9) (a) "Volunteer firefighter" means a firefighter who renders service to a fire department in a municipality, county, or district, who does not receive compensation as a firefighter, and who is not classified as an employee for purposes of the federal "Fair Labor Standards Act of 1938", as amended, based on payments, fees, or benefits that the firefighter receives. "Volunteer firefighter" may include other designations or titles given to firefighters provided that the firefighter meets all of the requirements for being a volunteer firefighter in this part 11.

(b) For the purposes of this subsection (9), "compensation" does not include:

(I) Actual expenses incurred by and reimbursed to a volunteer firefighter;

(II) (Deleted by amendment, L. 2010, (SB 10-021), ch. 17, p. 79, § 1, effective August 11, 2010.)

(III) Participation in or receipt of benefits from the fund;

(IV) Participation in or receipt of benefits upon termination of volunteer services to any district or municipality provided as part of an internal revenue code qualified volunteer service award plan established for the benefit of volunteer firefighters;

(V) Payments from federal moneys, either through the district or municipality or to the volunteer firefighter directly, for participation in a temporary emergency incident;

(VI) Nominal fees or benefits paid on a per-call basis or as part of an annual merit or recognition award program or other incentive award program.

**31-30-1103. Board of trustees - fund.** (1) In any municipality or district that maintains a regularly organized volunteer fire department, there is created a board of trustees of the volunteer firefighter pension fund. The board:

(a) Shall manage, use, and disburse moneys in the fund according to its rules and bylaws and this part 11;

(b) Shall supervise and control the fund;

(c) May take all necessary steps and pursue all necessary remedies to preserve the fund.

**31-30-1104. Board - municipality.** (1) In a municipality, the board must consist of the following members:

(a) The mayor for a term equal to the mayor's tenure as mayor;

(b) The municipal treasurer or finance officer for a term equal to the treasurer's or finance officer's tenure with the municipality;

(c) Two other persons appointed by and for terms determined by the governing body of the municipality; and

(d) (I) Prior to August 6, 2014, three fire department members serving the municipality who are elected by the fire department members of those fire departments for three-year terms.

(II) Beginning at the next election to elect a board member pursuant to this paragraph (d) after August 6, 2014, three individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to active service pursuant to section 31-30-1132. The three individuals shall be elected by the fire department members, retired fire department members, and retired fire department members returned to active service of those fire departments and shall serve for three-year terms as such terms exist on August 6, 2014. Nothing in this subparagraph (II) shall be construed to effect the term of any person serving on the board of a municipal volunteer firefighter pension board pursuant to subparagraph

(l) of this paragraph (d) on August 6, 2014.

(2) The board shall elect a president and secretary from its members. The municipal treasurer or finance officer shall serve as the ex officio treasurer of the board.

(3) Repealed.

**31-30-1105. Board - fire protection district.** (1) In a fire protection district, the board must consist of the following members:

(a) The board of directors of the fire protection district for terms equal to their tenure on the fire protection district board;

(b) The treasurer of the board of the fire protection district who shall be treasurer of the fund for a term equal to the treasurer's tenure on the fire protection district board; and

(c) (I) Prior to August 15, 2010, two fire department members elected by the fire department members for two-year terms; except that, at the initial election, one member shall be elected for two years and one member for one year. In all subsequent elections, these members shall be elected for two years.

(II) (A) On and after August 15, 2010, two individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to active service pursuant to section 31-30-1132. All members in each group existing at the time of election shall be given the opportunity to vote for the two individuals. The two individuals shall serve for two-year terms; except that, at the initial election, one individual shall be elected for two years and one individual for one year. In all subsequent elections, these individuals shall be elected for two years.

(B) Nothing in sub-subparagraph (A) of this subparagraph (II) shall be construed to limit the term of a board member elected pursuant to subparagraph (I) of this paragraph (c).

(2) The board shall elect a president and secretary from its members.

(3) The treasurer of the board shall obtain a bond paid from the fund in an amount determined by the board.

**31-30-1106. Board - county improvement district.** (1) In a county improvement district, the board must consist of the following members:

(a) One county commissioner of the county in which the district is located for a term equal to the commissioner's tenure as county commissioner;

(b) The county treasurer for a term equal to the treasurer's tenure with the county;

(c) Three residents of the county obligated to pay real or personal property taxes who are appointed by the county commissioners for staggered terms determined by the county commissioners; and

(d) Two fire department members for two-year terms.

(2) The treasurer of the fund shall obtain a bond paid from the fund in an amount determined by the board.

**31-30-1107. Board - consolidation or merger.** (1) If a municipality or district merges or consolidates with one or more municipalities or districts, the former trustees of the various volunteer firefighter pension funds of the consolidated or merged municipalities or districts shall:

(a) Elect seven persons from their members, not more than three of whom are fire department members, to serve as trustees of the volunteer firefighter pension fund of the consolidated or merged fund with due regard to equal representation;

(b) Cease to hold office if they are not elected under paragraph (a) of this subsection (1).

(2) The trustees of the consolidated or merged fund shall elect from its members a president, secretary, and treasurer. The treasurer of the consolidated or merged district's fund shall obtain a bond paid from the fund in an amount determined by the board.

**31-30-1108. Board powers and duties.** (1) A board created by this part 11 to control a fund:

(a) Shall adopt necessary rules that are not inconsistent with this part 11 for the management and discharge of its duties, for its own government and procedure, and for the preservation and protection of the fund;

(b) Shall hear and decide each application for benefits under this part 11 in accordance with section 24-4-105, C.R.S. Action on an application is final and conclusive; except that, if in the opinion of a board, justice demands reconsideration of the action, the board may reverse the action.

(c) Shall keep and preserve a record of the action and all other matters properly before the board;

(d) May make agreements with the fire and police pension association to administer the plan and manage the funds of the plan for investment in accordance with section 31-31-705;

(e) May consolidate its fund with the fund of another municipality or district and shall administer the consolidated funds as a single fund if in the opinion of the board the total moneys allocated to a fund by a municipality or district are inadequate to sustain a proper fund for retirement or for the other purposes of the fund under this part 11. The boards of these single funds may consolidate the funds under conditions and terms provided in an agreement consistent with this part 11.

**31-30-1109. Attorney representation.** (1) The attorney for a municipality or district shall:

(a) When required by the board, advise the board on all matters pertaining to the board's duties and management of the fund;

(b) Represent and defend the board in any suit or action at law or in equity brought against the board; and

(c) Bring all suits and actions on the board's behalf as the board requires or requests.

(2) If a conflict between a board and a municipality or district exists, the board may obtain an attorney to represent the board in any action described in this section at the board's expense.

**31-30-1110. Property tax - other tax revenue.** (1) The governing body of a municipality with a population of less than one hundred thousand, the board of directors of each fire protection district, the board of county commissioners, or the board of a county improvement district may levy and set apart a tax for each year of not more than one mill on the taxable property in the municipality, county, or district. The governing body or board shall contribute the proceeds of this tax, if any, to the municipality's, county's, or district's fund. The total tax levied under this section and section 31-30.5-403 (1), if any, for a fire department that has both paid and volunteer firefighters must not exceed one mill on the taxable property in the municipality, county, or district. Any new tax or an increase in the mill levy under this section shall comply with the voter approval requirements under section 20 of article X of the state constitution.

(2) The governing body of a municipality with a population of less than one hundred

thousand, the board of directors of a fire protection district, the board of county commissioners, or the board of a county improvement district may contribute the proceeds of any other tax that the municipality, county, or district is authorized to collect to the municipality's, county's, or district's fund.

**31-30-1111. Contribution to fund.** (1) In addition to any tax revenues contributed under section 31-30-1110, the fund also consists of any:

(a) Moneys given to the board or fund by a person for the use and purpose for which the fund is created. The board may take any money, personal property, or real estate, or interest therein by gift, grant, devise, or bequest as trustees for the use and purpose for which the fund is created;

(b) Moneys, fees, rewards, or emoluments of any nature and description that are paid or given to the fund; and

(c) Moneys provided by the state under section 31-30-1112.

(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.

**31-30-1112. State contributions - intent.**

(1) (a) Repealed.

(b) On and after July 1, 2004, the state treasurer shall transfer moneys to the department of local affairs for distribution as provided in this section to assist in funding volunteer firefighter pension plans. The department of local affairs shall distribute moneys for funding volunteer firefighter pension plans affiliated with the fire and police pension association pursuant to section 31-31-705 directly to the fire and police pension association as the administrator of the plan. The association shall credit the transferred moneys to the assets of the plan for which they are transferred.

(2) (a) State contributions to any municipality or district must equal ninety percent of all amounts contributed by the municipality or district under section 31-30-1110 in the previous year, but, notwithstanding any other provision of this part 11, the state contribution shall not exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection.

(b) A municipality or district that was contributing an amount necessary to pay volunteer firefighter pensions in excess of three hundred dollars per month shall receive state contributions under paragraph (a) of this subsection (2) in an amount not to exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection but based upon the greater of:

(I) The contribution that was actuarially required to pay a pension of three hundred dollars per month in the previous year, as determined by the municipality or district; or

(II) The highest actual contribution received by the municipality or district during the calendar year 1998, 1999, 2000, or 2001, irrespective of whether the state contribution was authorized by law at the time it was made. In the event of a consolidation or merger of two or more municipalities or districts, the sum of the highest actual contribution received by each consolidating or merging municipality or district during the calendar year 1998, 1999, 2000, or 2001 shall be the state contribution of the surviving consolidated or merged entity for the purposes of this subparagraph (II).

(c) and (c.5) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(d) The board in any municipality or district shall not increase benefits above the

following amounts unless the increase is approved by the governing body of the municipality or district and an actuarial review indicates a higher payment is actuarially sound:

- (I) For volunteer firefighter pensions, three hundred dollars per month;
- (II) For a short-term disability monthly annuity pursuant to section 31-30-1121, one hundred fifty dollars per month;
- (III) For a retirement pension pursuant to section 31-30-1123, two hundred dollars per month;
- (IV) For survivor benefits pursuant to section 31-30-1127, one hundred fifty dollars per month; or
- (V) For funeral benefits pursuant to section 31-30-1129, one hundred dollars.

(e) In no event shall a municipality or district receive less than one thousand dollars if the municipality or district contribution to its fund is equal to or greater than one-half mill on the previous net valuation for assessment of the municipality or district.

(f) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(g) The moneys necessary to make the state's contribution under this section shall be derived from the proceeds of the tax imposed by section 10-3-209, C.R.S., as follows:

(I) (A) Repealed.

(B) As of July 1, 2004, the department of local affairs shall be responsible for disbursing the state contribution to each municipality and district. On or before October 31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer the amount necessary to provide contributions equal to the contributions made by the state to each municipality and district during the calendar year 1979 to the department for disbursement to the fund of each municipality or district.

(II) (A) Repealed.

(B) To the extent that the state's contribution under this section exceeds contributions made by the state during the calendar year 1979, the state treasurer shall transfer the excess amounts from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department of local affairs on or before October 31, 2004, and on or before October 31 of each year thereafter, for disbursement to the municipality or district's funds.

(C) Moneys transferred under this subparagraph (II) shall be separate from and in addition to moneys transferred under section 31-30.5-307 (2) and do not revert to the general fund but are available for the purposes provided in this section.

(h) (I) Repealed.

(II) As of July 1, 2004, the executive director of the department of local affairs or the director's designee shall be responsible for providing the accidental death and disability insurance policy for volunteer firefighters as provided in sections 31-30-1134 and 31-31-202 (4)(d). In addition to any other transfers required by this section, on or before October 31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department such moneys as may be necessary to pay for the accidental death and disability insurance policy for volunteer firefighters and the administrative costs of providing such policy.

(i) Moneys transferred pursuant to this section shall be included for information purposes in the general appropriation bill or in supplemental appropriation bills to comply with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(j) It is the intent of the general assembly to continually fund volunteer firefighter pension plans.

(3) (a) The department of local affairs shall work with the municipalities and the districts

to develop a procedure by which municipalities and districts apply to receive state assistance moneys distributed pursuant to this section. The application procedure must ensure that the department can verify the amount of money to which each municipality and district is entitled before the department transfers funds to the municipalities and districts each year.

(b) The department of local affairs shall work with the joint budget committee to develop a procedure that allows any municipality or district to apply for a late disbursement of moneys in the event that such municipality or district made a good faith effort, but was unable to comply with the application procedure created pursuant to paragraph (a) of this subsection (3) due to a delay in preparing a financial statement or completing a required audit or actuarial study.

(4) (a) The department of local affairs may impose a nonrefundable application fee in an amount to be determined by the department on any municipality or district that applies to the department for state assistance moneys distributed pursuant to this section. The application fee may be on a sliding scale based on the amount of state assistance moneys distributed to each fund pursuant to this section in the previous year.

(b) All revenue collected by the department of local affairs from the fee imposed pursuant to paragraph (a) of this subsection (4) shall be transmitted to the state treasurer who shall credit the revenue to the volunteer fire department application fund, which fund is hereby created in the state treasury. The moneys in the fund shall be continuously appropriated to the department for the purpose of covering the direct costs of administering the distribution of the state contribution moneys pursuant to this section .

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

(6) Repealed.

**31-30-1113. Fund investments.** (1) The board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in interest-bearing obligations of the United States, in interest-bearing bonds of this state, in general obligation bonds of municipalities, whether organized under general law or article XX of the state constitution, or in any depository stated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. By written resolution, the board may appoint one or more persons to act as a custodian or custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of the fund in any state or national bank or any state or federally chartered savings and loan association in this state. The appointed persons shall give surety bonds, and the board shall determine the bonds' amounts, form, and purposes. These securities and evidences of investment shall be deposited with the treasurer of the municipality or district.

(2) Upon the board's direction, the treasurer of a municipality or district may invest part of the fund available for investment, with or without one or more other volunteer firefighter pension funds, in a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as a trustee. The trustee's investment of fund moneys is governed by article 1.1 of title 15, C.R.S.

(3) Notwithstanding subsection (1) of this section, the board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in one or more of the following:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or



(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

(4) The board may give preference to the investments described in subsection (3) of this section if such investments are consistent with sound investment policy.

**31-30-1114. Fund investment in insurance.** (1) Except as provided in subsection (2) of this section and with the concurrence of sixty-five percent of the fire department members voting thereon and sixty-five percent of the retired fire department members voting thereon, the board may:

(a) Insure the fire department members under the following insurance policies issued by companies authorized to do business in this state:

(I) Individual, group, or blanket life, endowment, or annuity insurance;

(II) Variable annuity insurance; or

(III) Disability or liability insurance; and

(b) Spend any part of the fund to pay premiums on these policies.

(2) The board shall not spend fund moneys to purchase insurance if the expenditure would impair the pension fund's ability to:

(a) Pay annuities to a fire department member, surviving spouse, or dependent parent or child receiving annuities; or

(b) Meet the future requirements of pensions, benefits, and awards under the plan.

(3) The board must be the beneficiary of any insurance policies, and the proceeds of the insurance policies shall be paid to the board as an addition to the fund.

**31-30-1115. Warrants.** (1) Officers of the municipality or district who are designated by law to draw warrants on the treasurer of the municipality or district shall draw warrants thereon upon orders by the board, payable to the board's treasurer for moneys belonging to the fund.

(2) Except as provided in subsection (3) of this section, the board's treasurer shall pay moneys ordered to be paid from the fund to any person only upon warrants signed by the board's president and countersigned by the board's secretary. A warrant shall not be drawn except by the board's order that is duly entered in the records of the board's proceedings.

(3) Fund moneys in noninsured trust pension plans with a bank or trust company shall be paid by the trustee only upon the board's written order that is signed by the board's president, countersigned by the board's secretary, and duly entered in the records of the board's proceedings.

**31-30-1116. Treasurer - custodian - segregation of moneys.** (1) The board's treasurer and the custodian appointed by the board under section 31-30-1113 are the custodians of the fund and shall secure and safely keep books and accounts concerning the fund in the manner as the board may prescribe. The books and accounts are subject to inspection by the board, any board member, or any other interested person. Upon expiration of the treasurer's or custodian's term of office or appointment, the treasurer or custodian shall surrender and deliver to the successor all bonds, securities, and unexpended moneys or other property of the fund that the treasurer or custodian has possessed.

(2) A municipality or district that includes both paid and volunteer firefighters in their pension plans may consolidate the funds but must segregate the moneys for paid and volunteer firefighters on an equitable basis for accounting and actuarial purposes. The segregation shall be

considered in actuarial reports on the funds. In computing the portion of the fund attributed to volunteer firefighters, volunteer firefighters' benefits shall not be changed.

**31-30-1117. Exemption from levy.** (1) Except for an assignment for child support purposes as provided in sections 14-10-118 (1) and 14-14-107, as they existed prior to July 1, 1996, 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, no part of the fund, either before or after any order for distribution of the fund to a fire department member, retired fire department member, or beneficiary of the fund or the surviving spouse or guardian of any child of a deceased or disabled fire department member or of a deceased, disabled, or retired fire department member shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, protest, or proceeding of any nature whatsoever issued out of or by any court in this or any other state for the payment or satisfaction of all or part of any debt, damages, claim, demand, judgment, fine, or amercement of the municipality or district or of a fire department member, retired fire department member, or their surviving spouses, dependent children, or designated beneficiaries.

(2) Except as provided in section 31-30-1118, the fund must be kept, secured, and distributed for the purpose of issuing pensions and protecting the persons named in this part 11 and for no other purpose whatsoever; except that the board may annually spend moneys as it deems proper and necessary from the fund for necessary expenses connected with the fund.

**31-30-1118. Fund use - other purposes.** (1) If the governing body of a municipality or district finds by resolution that no person is eligible or can become eligible for payment of a fund benefit, it may authorize contributions of all fund moneys for any fire-related purpose and, if no fire-related purpose exists, for any purpose as determined by the governing body of the municipality or district.

(2) At least sixty days before adoption of this resolution, the governing body of the municipality or district shall publish one notice in a newspaper with general circulation within the municipality or district and shall provide a copy of the published notice to the board of directors of the fire and police pension association. The notice must state that the intent of the governing body is to use the money in the fund for the purposes permitted in subsection (1) of this section and that persons who believe they are or may be entitled to benefit payments from the fund have fifty days from the date of the notice in which to file a written objection with the governing body regarding its proposed use of the fund. If a written objection is received, the governing body shall hold a public hearing before adoption of the resolution. Before the hearing, the governing body shall publish notice of the time and place of the hearing and send written notice of the hearing by certified mail to each person who files a written objection.

(3) If a person establishes a claim to a benefit from the fund within one year after adoption of this resolution, the municipality or district shall repay to the fund any money paid from the fund under this section, and no such additional payments shall be made from the fund.

**31-30-1119. Board report - municipality.** The board shall make a report to the governing body of the municipality on the condition of the fund. The board shall submit the report to the governing body before the last meeting in February and the last meeting in August of each year.

**31-30-1120. Maximum benefit amount. (Repealed)**

**31-30-1121. Disability pension - rules - hearing.** (1) If a volunteer firefighter is injured while in the line of duty as a volunteer firefighter, the board shall pay to the volunteer firefighter:

(a) A short-term disability monthly annuity for not more than one year in an amount it determines is proper and equitable, considering the financial condition of the fund, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater; or

(b) A long-term disability monthly annuity for a disability that deprives the volunteer firefighter of an earning capacity and that extends beyond one year in an amount it determines is proper and necessary but not more than the amount paid by the board pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater. Any increase in the benefits in a municipality under this paragraph (b) shall be approved by the municipality's governing body.

(2) Disability-pension applicants shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. The board shall pay from the fund the expenses of the physician chosen by the board.

(3) The board shall adopt rules it deems proper concerning the examination of persons who are receiving disability benefits under this section to determine periodically the fitness of these persons. A person who is receiving benefits under this section and who is either fifty years of age or has completed twenty years of active duty in the fire department before the date disability benefits under this section are first provided shall not be reexamined. A person receiving benefits under this section shall not be examined before one year after the date disability benefits under this section are first provided and not more often than annually after this date.

(4) The board shall terminate the disability benefits under this section of a person who the board finds has recovered sufficiently from the disability that resulted in the receipt of these benefits, is under the age of fifty years, and has served less than twenty years of active duty. A person whose benefits are terminated under this subsection (4) may file a written protest within thirty days after the termination date stating the objection to the termination and requesting a hearing. The decision of the board is suspended pending a hearing on the protest. At the hearing, the member may appear and be represented by counsel.

**31-30-1122. Retirement pension.** (1) The board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county improvement district may pay a retirement pension to a volunteer firefighter who has twenty years of active service and who is over the age of fifty years. The retirement pension shall be an amount determined by the board of not more than one hundred dollars per month, unless an actuarial review indicates a higher payment is actuarially sound; except that any such amount determined by the board of a municipality shall be made with the prior consent of the municipality's governing body. Pensions that make payments in excess of three hundred dollars per month are subject to the state contribution limitation specified in section 31-30-1112 (2)(b). Except as provided in section 31-30-1132, a volunteer firefighter shall not receive a retirement pension for service in a fire department while the firefighter is an active member of that department. A volunteer firefighter shall maintain a minimum training participation in the fire department of thirty-six hours each year to qualify for retirement benefits. A volunteer firefighter who has served twenty years and who has not reached the age of fifty years may be granted a leave of absence and retain all rights to a retirement pension and is entitled to the retirement pension when the firefighter is fifty years of age.

(2) Notwithstanding subsection (1) of this section, the board may pay a retirement pension to a volunteer firefighter who has less than twenty years of active service if the

municipality's or district's fund is actuarially sound. The board shall determine the period of active service necessary to qualify for this retirement pension, but in no event shall such period be less than ten years of active service. The board shall not pay this retirement pension until the volunteer firefighter is fifty years of age. The amount of this retirement pension shall be determined by prorating the amount of the retirement pension under subsection (1) of this section based on the volunteer firefighter's years of service.

(3) Whenever the board increases the retirement pension benefit payable pursuant to subsection (1) of this section, such increase may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (1) of this section at the time of such increase. The applicable pro rata share of any such increase, based upon the number of years of service, may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (2) of this section at the time of such increase. Whenever the board elects to apply any retirement pension increase permitted under this subsection (3), the board shall apply such increase to the retirement pension of all retired volunteer firefighters in a fire department who are eligible for such increase under this subsection (3). Any actuarial review required under subsection (1) of this section shall include the cost of any retirement pension increase permitted under this subsection (3).

**31-30-1123. Retirement pension - sources of payment.** The retirement pension of a volunteer firefighter who has earned twenty years of active service as a volunteer firefighter for any one municipality or district shall be paid from the fund of that municipality or district, and no other fund shall pay a pension to that volunteer firefighter. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter after June 2, 1977, by serving more than one municipality or district shall be paid from the fund of each municipality or district for which the volunteer firefighter served at least five years. The amount paid by each fund for each year of service with the particular municipality or district shall equal one-twentieth of the retirement pension being paid by that fund on the day the volunteer firefighter left the service of the particular municipality or district. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter by serving more than one municipality or district shall be paid only by the municipality or district last served by that volunteer firefighter if any part of the twenty years of service was earned on or before June 2, 1977. In no event shall a volunteer firefighter receive a total retirement benefit from all volunteer firefighter pension funds exceeding the maximum amount paid by the board from such funds pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater.

**31-30-1124. Compliance - insufficient moneys.** (1) The board may require information, including proof of years of service, and establish procedures as it deems necessary to ensure compliance with the requirements and limitations of sections 31-30-1122 and 31-30-1123.

(2) If at any time money or other property in the fund is insufficient to pay the full amount per month to which each volunteer firefighter receiving a pension under this part 11 and other beneficiary of the fund is entitled, an equal percentage of the monthly payment shall be made to those volunteer firefighters and other beneficiaries until the fund is replenished in an amount that permits payment in full to those volunteer firefighters and other beneficiaries.

**31-30-1125. Supplemental retirement pension.** (1) In addition to the monthly retirement pension provided by section 31-30-1122, the board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county

improvement district may pay a supplemental monthly retirement pension to a volunteer firefighter who is fifty years of age and who has been in active service more than twenty years if:

(a) An actuarial review indicates a supplemental monthly pension payment is actuarially sound; and

(b) Sixty-five percent of the total number of fire department members and retired fire department members give prior approval.

(2) The supplemental monthly pension payment shall not exceed five percent of the monthly pension payment provided by section 31-30-1122 multiplied by the number of years of active service in excess of twenty years, up to a maximum of ten years; except that the total of the monthly retirement pension payment provided by section 31-30-1122 and the supplemental monthly pension payment shall not exceed an amount that is actuarially sound.

**31-30-1126. Survivor benefit.** (1) Except as otherwise provided in subsection (3) of this section, upon the death of a retired fire department member or a volunteer firefighter who, regardless of age, has served the requisite number of years for retirement under section 31-30-1122 and who leaves a surviving spouse, the board may pay an annuity of not more than fifty percent of the current pension payment for a retired fire department member if the fund is actuarially sound. If the volunteer firefighter had less than twenty years of active service, the annuity to the surviving spouse shall be prorated based upon the number of years of service.

(2) This annuity to the surviving spouse shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity. A surviving spouse shall not receive both an annuity under section 31-30-1127 and an annuity under this section.

(3) The benefits under this section do not apply if the optional survivor benefits under section 31-30-1128 are provided.

(4) The benefits under this section may be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

**31-30-1127. Survivor benefit - death from injuries in the line of duty.** (1) Except as otherwise provided in subsection (4) of this section, if a fire department member dies from injuries received while in the line of duty as a volunteer firefighter and leaves a surviving spouse, the board shall pay the surviving spouse a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The annuity shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(2) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse as provided in subsection (1) of this section but there is a surviving child of the deceased volunteer firefighter under eighteen years of age, the board shall pay a monthly annuity either in an amount the board deems proper or necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The board shall pay this annuity to the guardian of the child on behalf of the child. The annuity shall cease when the child is eighteen years of age.

(3) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse or child as provided in subsections (1) and (2) of this section but there is a surviving dependent parent of the deceased volunteer firefighter, the board shall pay the dependent parent

a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The annuity shall cease if the dependent parent remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(4) The benefits under this section:

(a) Are in addition to the educational benefits under section 23-3.3-205, C.R.S.;

(b) Do not apply if the optional survivor benefits under section 31-30-1128 are provided;

and

(c) May be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

**31-30-1128. Optional survivor benefits.** (1) Notwithstanding the provisions of sections 31-30-1126 and 31-30-1127 relating to payment of annuities in the event of the death of a volunteer firefighter in active service, the board in any municipality, with the prior consent of the governing body of such municipality, fire protection district, or county improvement district having a volunteer fire department may provide to the active members of the volunteer fire department the option of having the survivor benefits offered by this section in lieu of the purchase of individual, group, or blanket life, endowment, or annuity or variable annuity insurance pursuant to section 31-30-1114 (I)(a)(I) and (I)(a)(II) and in lieu of the survivor benefits provided to active volunteer firefighters pursuant to sections 31-30-1126 and 31-30-1127 if the following conditions are met:

(a) Sixty-five percent of the active and retired volunteer firefighters of the affected volunteer fire department consent in writing to the option provided by this section;

(b) An actuarial review by an independent actuary indicates the option provided by this section is actuarially sound and will not impair the ability of pension funds to pay the annuities to a beneficiary or to pay pensions; and

(c) If a municipality intends to provide the option provided by this section, the governing body of the municipality consents to the option.

(2) The governing body of a municipality or the board of a fire protection district or county improvement district having a volunteer fire department that intends to provide the option provided by this section shall determine whether the survivor benefits are allowed only if the volunteer firefighter dies while on duty and shall determine the benefit amount equal to up to one hundred percent of the amount of the pension the volunteer firefighter would have been entitled to under this part 11 if the volunteer firefighter had retired immediately before the volunteer firefighter's death. If survivor benefits are provided pursuant to subsection (1) of this section to the members of a volunteer fire department and if a volunteer firefighter who is a member of such fire department dies on duty or, if authorized by the governing body or board, off duty, a spouse, dependent child, or dependent parent of the volunteer firefighter or, lacking such dependents, any other beneficiary who is a natural person and who has been designated by the volunteer firefighter shall receive a monthly annuity in the amount determined pursuant to this subsection (2).

(3) If survivor benefits are provided pursuant to subsection (1) of this section, the board shall pay the annuity authorized by this section to the designated beneficiary or to the legal guardian of the designated beneficiary who is a child under the age of eighteen as follows:

(a) Until the death of the beneficiary;

(b) If the beneficiary is a child under the age of eighteen, until the death of the child or

until the child is eighteen years of age;

(c) If the beneficiary is a full-time student in an educational or vocational institution, until the beneficiary is twenty-three years of age;

(d) If the beneficiary is the surviving spouse, until the surviving spouse remarries; or

(e) Until the proceeds of the insurance policies provided in subsection (4) of this section and the accrued interest on such insurance proceeds are exhausted.

(4) To pay the costs of the option provided pursuant to this section, the board shall insure members of the volunteer fire department by insurance policies of individual, group, or blanket life, endowment, or annuity insurance or variable annuity insurance. The pension fund must be the beneficiary of these insurance policies, and the proceeds of these insurance policies shall be paid to the board as an addition to the fund. Payment of the premiums on these policies shall be paid from the existing pension fund assets, from additional local contributions made to the existing pension fund for payment of the premiums, or both; except that, notwithstanding the provisions of section 31-30-1112 concerning the amount of state contributions to the pension fund, additional state contributions shall not be made to the existing pension fund assets for payment of the premiums on these policies or as a result of additional local contributions made to the existing pension fund for payment of the premiums.

(5) If survivor benefits are provided pursuant to subsection (1) of this section and if a volunteer firefighter terminates active duty before retirement, the board may allow the firefighter to purchase any insurance policy that was purchased pursuant to subsection (4) of this section at a price equal to the cash value of the policy. If the firefighter does not purchase the policy, the board shall surrender the policy for its cash value. Moneys obtained by the board pursuant to this subsection (5) shall be deposited in the pension fund and used to pay the costs of the survivor benefits provided pursuant to this section.

(6) The survivor benefits provided pursuant to subsection (1) of this section may be terminated at any time by either:

(a) A vote to terminate by the governing body of the municipality or the board of the fire protection district or county improvement district having a volunteer fire department;

(b) A vote to terminate approved by sixty-five percent of the members of the volunteer fire department.

**31-30-1129. Funeral benefit.** When an active volunteer firefighter or retired fire department member dies, the board shall pay a funeral benefit to assist in the proper burial of the deceased firefighter in an amount determined by the board of not more than twice the amount determined by the board under section 31-30-1122, but not less than one hundred dollars. The board shall pay this funeral benefit to any person who pays the necessary funeral expenses.

**31-30-1130. Fire department dissolution.** (1) If a fire department dissolves and the services of volunteer firefighters or the fire department are discontinued:

(a) The benefits paid under this part 11 to volunteer firefighters or their surviving spouses, dependent parents, children, and other beneficiaries at the time of the dissolution shall continue;

(b) Assets of the fund shall be transferred with other assets of the fire department and shall be administered by the board of trustees of the successor pension fund;

(c) In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion;

(d) A volunteer firefighter who has accrued ten or more years of active service at the time of the dissolution shall be granted an annuity after the firefighter is fifty years of age. The

annuity shall be prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board at the time of the dissolution.

**31-30-1131. Volunteer firefighter - employment termination restricted.** (1) An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

(1.5) An employer shall not terminate an employee who is a volunteer firefighter and who leaves work to respond to an emergency summons, if:

(a) The employer does not deem the employee to be essential to the operation of the employer's daily enterprise;

(b) The employer has previously received written documentation from the fire chief of the employee's fire department notifying the employer of the employee's status as a volunteer firefighter;

(c) The emergency is within the response area of the employee's fire department and is of such magnitude that the emergency summons issued by the fire chief requires all firefighters to respond; and

(d) The chief of the employee's fire department provides the employer with a written statement verifying the time, date, and duration of the employee's response.

(2) An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter.

(3) Notwithstanding the provisions of this section, if a volunteer firefighter is called to an emergency pursuant to part 8 of article 33.5 of title 24, C.R.S., the provisions of section 24-33.5-825 or 24-33.5-826, C.R.S., shall control regarding the volunteer firefighters absence or leave from work. Under no circumstances shall a volunteer firefighter's leave exceed the amount allowed pursuant to section 24-33.5-825 or 24-33.5-826, C.R.S.

**31-30-1132. Retired firefighter - return to active service - benefits.** If the governing body of any municipality, fire protection district, or county improvement district, by resolution, determines that a fire department is in need of additional volunteer firefighters, a retired fire department member shall be eligible to serve as an active volunteer firefighter of such fire department. Any retired fire department member who, subsequent to retirement, serves as an active volunteer firefighter for a fire department pursuant to this section shall continue to receive pension benefits from the volunteer firefighter pension fund under this article during the period in which the person is an active volunteer firefighter of the fire department. During the period such person is receiving a pension and acting as an active volunteer firefighter pursuant to this section, such person shall not receive service credit for the purpose of increasing such pension.

**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 1986", as amended.

(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 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.

(3) A board may adopt any provision for a plan that is necessary to comply with the internal revenue code.

**31-30-1134. Statewide accidental death and disability insurance policy - department of local affairs.** (1) Beginning on July 1, 2004, the department of local affairs shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2)(h)(II) from the proceeds of the tax imposed by section 10-3-209, C.R.S.

(2) The department of local affairs shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(3) The department of local affairs shall secure an accidental death and disability insurance policy that offers the best benefits available for the amount of moneys transferred to the department pursuant to section 31-30-1112(2)(h)(II).

(4) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this section.

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

## PART 12 VOLUNTEER SERVICE AWARD ACT

**31-30-1201. Short title.** This part 12 shall be known and may be cited as the "Volunteer Service Award Act".

**31-30-1202. Definitions.** As used in this part 12, unless the context otherwise requires:

(1) "Bona fide volunteer" means a person who renders qualified services for an emergency service provider if the only compensation received by the person for performing the qualified services is in the form of:

(a) Reimbursement, or a reasonable allowance, for reasonable expenses incurred in the performance of such services; or

(b) Reasonable benefits, including length of service awards, and nominal fees for qualified services customarily paid by an eligible emergency service provider in connection with the performance of such services.

(2) "Emergency service provider" means a local government or an authority formed by two or more local governments that provides any of the following services:

(a) Fire fighting and prevention services;  
(b) Emergency medical services; or  
(c) Ambulance services through the use of volunteers.  
(3) "Qualified services" means fire fighting and prevention services, emergency medical services, and ambulance services.

(4) "Volunteer service award" means a benefit based on length of service that a volunteer may legally accrue pursuant to current rulings of the internal revenue service and that, while invested under a volunteer service award plan adopted pursuant to this part 12, is exempt from federal income taxes on both the emergency service provider's contribution and all interest, dividends, and capital gains until the ultimate distribution to the volunteer.

**31-30-1203. Volunteer service award plan.** (1) The governing body of any emergency service provider may adopt and amend or provide for the administration and amendment of a volunteer service award plan for bona fide volunteers.

(2) If the governing body of the emergency service provider chooses to adopt and amend or provide for the administration and amendment of a volunteer service award plan, the body shall adopt a plan document providing for the administration of the volunteer service award that is intended to comply with the provisions of section 457 (e)(11) of the federal "Internal Revenue Code of 1986", as amended. The emergency service provider shall be responsible for ensuring that such plan document is in compliance with applicable law. Participation by volunteers shall be subject to the requirements and limitations of said section 457 (e)(11) and the applicable regulations promulgated under said section 457.

(3) The governing body of the emergency service provider that adopts a volunteer service award program shall invest public moneys held to pay such awards as may be allowed pursuant to parts 6 and 7 of article 75 of title 24, C.R.S.

(4) The existence or enactment of any qualified length of service plan to recognize volunteer service that is in effect prior to March 26, 2007, is hereby authorized.

(5) Notwithstanding any provision in this part 12 to the contrary, nothing shall preclude an emergency service provider from adopting any other incentive programs to assist bona fide volunteers.

## PART 13 VOLUNTEER HEALTH INSURANCE ACT

**31-30-1301. Short title.** This part 13 shall be known and may be cited as the "Volunteer Health Insurance Act".

**31-30-1302. Definitions.** As used in this part 13, unless the context otherwise requires:

(I) "Bona fide volunteer":  
(a) Has the meaning set forth in section 31-30-1202; and  
(b) Means any volunteer member of a rescue unit as defined in section 25-3.5-103, C.R.S.

(2) "Carrier" means an entity that provides health coverage in this state, including a franchise insurance plan, a fraternal benefit society, a health maintenance organization, a nonprofit hospital and health service corporation, a sickness and accident insurance company, and any other entity providing a health insurance or health benefits plan or policy subject to the insurance laws and regulations of Colorado.

(3) "Emergency service provider" has the meaning set forth in section 29-11-101, C.R.S.

(4) "Group health insurance plan" means a group sickness and accident insurance plan as described in section 10-16-214, C.R.S.

(5) "Qualified services" means firefighting and fire prevention services, emergency medical services, ambulance services, and search and rescue services.

**31-30-1303. Group health insurance plan.** (1) The governing body of an emergency service provider may enter into insurance contracts with carriers to provide group health insurance plans for its bona fide volunteers. The cost of the plans, sources of funding, amount of contributions required from bona fide volunteers, coverage parameters, and eligibility requirements shall be negotiated by the governing body and the carrier. Nothing in this section shall be construed to preclude a governing body from participating in an insurance pool or from allowing its bona fide volunteers to participate in the group health insurance plan offered to the paid employees of the governing body.

(2) The administration and management of a group health insurance plan shall be the exclusive responsibility of the carriers of the plan.

(3) This section shall apply only to bona fide volunteers deemed to be active and in good standing by the emergency service provider.

## **ARTICLE 30.5**

### **Fire - Police - Old Hire Pension Plans**

#### **PART 1 GENERAL PROVISIONS**

- 31-30.5-101. Legislative declaration.
- 31-30.5-102. Definitions.
- 31-30.5-103. Applicability.

#### **PART2 ADMINISTRATION**

- 31-30.5-201. Funds created.
- 31-30.5-202. Board of trustees - firefighters' old hire pension fund.
- 31-30.5-203. Board of trustees - police officers' old hire pension fund.
- 31-30.5-204. Powers and duties of the board.
- 31-30.5-205. Attorneys to advise.
- 31-30.5-206. Warrants drawn.
- 31-30.5-207. Method of payment.
- 31-30.5-208. Fund not subject to levy.
- 31-30.5-209. Idle funds.

- 31-30.5-210. Plan amendment.

- 31-30.5-212. Qualification requirements - internal revenue code - definitions.
- 31-30.5-213. Dissolution of fire departments.

#### **PART3 FUNDING - STATE-ASSISTED PLANS**

- 31-30.5-301. Legislative declaration.
- 31-30.5-302. Definitions.
- 31-30.5-303. State assistance - limitation. (Repealed)
- 31-30.5-304. Limitation on existing funds - procedures.
- 31-30.5-305. No change in employer obligation.
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#### **PART4 FUNDING- NONSTATE ASSISTED PLANS**

- 31-30.5-211. Affiliation with the fire and

police pension association.

31-30.5-401. Sources of revenue for fund.

31-30.5-402. Municipalities under fifty

- thousand - limit of contributions to old hire police officers' pension plans.
- 31-30.5- 403. Employers under one hundred thousand - limit of contributions to old hire firefighter pension plans.
- 31-30.5-404. Plans affiliated with the fire and police pension association.

#### PARTS INVESTMENTS - INSURANCE

- 31-30.5-501. Old hire pension fund - investments.
- 31-30.5-502. Insurance - investment by banks and trust companies.
- 31-30.5-503. Alternative investment authority.

#### PART6 RETIREMENT BENEFITS

- 31-30.5-601. Police officers' old hire pension plans - municipalities under one hundred thousand in population.
- 31-30.5-602. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.
- 31-30.5-603. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.
- 31-30.5-604. Firefighters' old hire pension

plans - municipalities of at least one hundred thousand in population.

#### PART? DISABILITY AND SURVIVOR BENEFITS

- 31-30.5-701. Coverage.
- 31-30.5-702. Police officers' old hire pension plans - municipalities under one hundred thousand in population.
- 31-30.5-703. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.
- 31-30.5 -704. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.
- 31-30.5-705. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.

#### PART8 EXEMPT PLANS

- 31-30.5-801. Exempt alternative programs authorized.
- 31-30.5-802. Exempt money purchase plan option.
- 31-30.5-803. Investment authority.

#### PART 1 GENERAL PROVISIONS

**31-30.5-101. Legislative declaration.** (1) The general assembly finds and determines that police officers, in saving and protecting the lives and property of the citizens and residents of the state of Colorado, are performing state duties and are rendering services of special benefit to this state and that it is the province, right, and obligation of the state of Colorado to care for members of the police force who are entitled to retirement because of length of service or old age or because they have been injured or disabled in service and also to care for the spouses, dependent parents, and dependent children of such police officers.

(2) The general assembly further finds and determines that the establishment of firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare.

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

(1) "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.

(2) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district or county improvement district in this state offering fire protection service employing one or more members.

(3) "Fund" means the applicable firefighters or police officers' pension fund created in section 31-30.5-201.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the employee's employer. The term does not include clerical or other personnel whose services are auxiliary to police or fire protection.

**31-30.5-103. Applicability.** (1) (a) Except as provided in subsection (2) of this section, every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or before April 7, 1978.

(b) In addition to paragraph (a) of this subsection (1), every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or after April 8, 1978, but before January 1, 1980, if:

(I) The member has prior service as a firefighter or police officer in the state of Colorado;

(II) The current employer approved coverage under its old hire pension plan or any other local plan;

(III) The member contributed to the old hire pension fund of the current employer the amount of money that the member would have paid if all the member's prior service had been as an employee of the current employer, such makeup contribution to have been paid over a three-year period; and

(IV) The member requested such coverage, in writing, on or before December 31, 1981.

(2) The following members, otherwise eligible to participate in an old hire pension plan pursuant to subsection (1) of this section shall be exempt from participation:

(a) Members covered under an exempt pension plan established by part 8 of this article;

(b) Members who, pursuant to the affiliation of their old hire pension plan with the fire and police pension association as provided by section 31-31-70 I, elect to become covered under the provisions of the statewide defined benefit plan, established by article 31 of this title; and

(c) Members covered under the federal "Social Security Act", unless their employer also provides supplemental retirement benefits under an old hire pension plan.

(3) All members meeting the requirements of subsection (1) of this section, who are not otherwise excluded from an old hire pension plan coverage under subsection (2) of this section, shall be referred to in this article and article 31 of this title as "old hire members".

PART2  
ADMINISTRATION

**31-30.5-201. Funds created.** (1) There is created and established in each employer having fire department old hire members, a pension fund to be known as the "firefighters' old hire pension fund".

(2) There is created and established in each employer having police department old hire members, a pension fund to be known as the "police officers' old hire pension fund".

**31-30.5-202. Board of trustees - firefighters' old hire pension fund.** (1) The general supervision, management, and control of the firefighters' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, the board shall consist, except as provided in subsection (6) of this section, of the mayor, the municipal treasurer or finance officer, one other person appointed by the governing body of such municipality, and three active or retired old hire members of the fire department serving the municipality who shall be elected by the active and retired old hire members of the fire department. The terms of office on the board shall be: The mayor of the municipality, during tenure in office; the treasurer or finance officer, during tenure in office; the appointed citizen, to be designated by the governing body of the municipality at time of appointment; the three active or retired old hire members of the fire department, to be elected for terms of three years, but at the initial election to be conducted to elect old hire members of the fire department, one old hire member shall be elected for a three-year term, one old hire member for a two-year term, and one old hire member for a one-year term. Thereafter, such old hire members shall be elected for three-year terms. Said board shall elect from its number a president and secretary. The municipal treasurer or finance officer shall be ex officio treasurer of the board.

(3) (a) In any municipality having a population of at least one hundred thousand, the board shall be composed of the mayor, the manager of safety, the manager of revenue, the chief of the fire department, and the city auditor or such persons performing the duties of the above-named officers, and also two active or retired old hire members of the fire department to be selected as provided in paragraph (b) of this subsection (3).

(b) During the month of July in each year, the chief officer of the fire department shall conduct an election by secret ballot, at which election all active and retired old hire members of the fire department shall be eligible to vote, for the purpose of determining membership on the board. In the first election so held, two old hire members shall be elected, the member receiving the highest number of votes being elected for a term of two years and the member receiving the next highest number of votes being elected for a term of one year. Upon election, such members shall be certified as members of the board and shall take office on the August 1 following their election. In subsequent elections, only one old hire member shall be elected for a term of two years, and the member receiving the highest number of votes in each subsequent election shall be certified as a member of the board and shall take office on the August 1 following the member's election. In case any old hire member so elected to the board becomes unable or ineligible to serve on the board by reason of death, disability, or for any other cause, a special board election shall be held to fill the vacancy so created for the remainder of the unexpired term.

(c) The board shall select from their number a president and a secretary, and the manager of revenue, or the person performing the duties thereof, shall be ex officio treasurer of said board and custodian of all funds coming into its hands.

(4) In fire protection districts, except as provided in subsection (6) of this section, the board shall consist of the board of directors of the fire protection district, the treasurer of the board of the fire protection district to be treasurer of the fund, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: The president for the term of office, the treasurer for tenure in office, and two active or retired old hire members for two-year terms of office. Initial election of the old hire members of the fire department shall be conducted to elect one old hire member for two years and one old hire member for one year.

(5) In county improvement districts, the board shall consist of one member of the governing board of the county in which the district is located, the county treasurer or finance officer, three residents of the county obligated to pay real or personal property taxes, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: Members of the governing board, during their tenure in office; the county treasurer, during the treasurer's tenure in office; and the two active or retired old hire members of the fire department for two-year terms of office.

(6) Notwithstanding the provisions of subsections (2), (3), and (4) of this section, any municipality or fire protection district, with the concurrence of a majority of the active and retired old hire members voting thereon, may by ordinance or resolution create the board to administer the fund if the number of employer representatives on such board equals the number of member representatives on such board; except that, if fewer than two old hire members are available or willing to serve on such board, the number of employer representatives may exceed the number of member representatives.

(7) In case of any consolidation or merger of any municipality, fire protection district, or county improvement district with one or more municipalities, fire protection districts, or county improvement districts, the former trustees of the various firefighters' pension funds of such consolidated or merged political subdivisions shall, with due regard to equal representation, elect seven persons from their number to serve as trustees of the old hire firefighters' pension fund of said merged or consolidated fund, not more than three of whom shall be old hire members, and the former trustees not so elected to serve shall cease to hold office. The trustees of said consolidated fund shall elect from their number a president, secretary, and treasurer.

(8) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund and shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board or any member thereof or any other interested person. The treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of said fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

**31-30.5-203. Board of trustees - police officers' old hire pension fund.** (1) The general supervision, management, and control of the police officers' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, unless it is a home rule city or town that provides for the composition of the board by charter or ordinance, the board shall consist of the mayor, the municipal treasurer, the clerk, and one active old hire member of the police department who shall be elected by the active old hire members of the department; except that, if there are no active old hire members available or willing to serve



on such board, such board shall consist of the mayor, the municipal treasurer, and the clerk. Said board shall select from their number a president and a secretary. The municipal treasurer shall be ex officio treasurer of said board and custodian of all funds coming into the treasurer's hands.

(3) In any municipality having a population of at least one hundred thousand, the board shall consist of such persons or officials as may be designated by the charter and ordinances thereof.

(4) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund, shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board, any member thereof, or any other interested person. Said treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of the fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

**31-30.5-204. Powers and duties of the board.** (I) The board shall:

(a) Promulgate all necessary rules, not inconsistent with the provisions of this article, for managing and discharging its duties and for its own government and procedure in so doing and for the preservation and protection of the fund.

(b) Hear and decide all applications for relief, pensions, annuities, retirement, or other benefits under the provisions of this article. Action on such applications shall be final and conclusive; except that, when, in the opinion of the board, justice demands that said action should be reconsidered, the same may be reversed by said board.

(c) Keep and preserve a record of actions taken by the board and of all other matters properly before said board.

(d) Make an annual report to the governing body of the employer of the condition of the fund in August of each year.

(2) The board has power to compel witnesses to attend and testify before it upon all matters connected with the provisions of this article in the same manner as is or may be provided by law. The president of said board or any member thereof may administer oaths to such witnesses.

(3) The board has the power to draw on the fund for the payment of expenses attributable to the administration of the fund, the payment of benefits, and for the purpose of investing all or any part of the fund as permitted by part 5 of this article.

(4) The board may designate one or more financial institutions as custodian of the fund. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. 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.

(5) In municipalities that prescribe the composition of the board for the police officers' old hire pension fund by ordinance or charter, the board shall have such additional powers and duties as may be provided by the charter and ordinances of such municipalities.

**31-30.5-205. Attorneys to advise.** It is the duty of the attorneys for the employer to advise the boards on all matters pertaining to their duties and management of the fund when required to do so. Such attorneys shall represent and defend the boards as their attorneys in all suits or actions at law or in equity that may be brought against them and bring all suits and

actions in their behalf that may be required or determined upon by said boards. In the event of a conflict between a board and an employer, the board may obtain legal counsel to represent the board in any such action at the expense of the board.

**31-30.5-206. Warrants drawn.** It is the duty of such officers of the municipality, fire protection district, or county improvement district as are designated by law to draw warrants on the treasurer of said municipality, fire protection district, or county improvement district on orders by the board, to draw warrants thereon, payable to the treasurer of said board for all funds belonging to the fund.

**31-30.5-207. Method of payment.** All moneys ordered to be paid from the fund to any person shall be paid by the treasurer only upon the warrant signed by the president of said board and countersigned by the secretary thereof. No warrant shall be drawn except by order of the board after having been duly entered on the records of the proceedings of the board.

**31-30.5-208. 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, 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 fund, before or after its 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 employer or the beneficiary of the fund. Said fund shall be held and distributed for the purposes of this article and for no other purpose whatsoever.

**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 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 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.

(3) (a) At least sixty days before adoption of a resolution permitted by subsection (1) or (2) of this section, the governing body of the municipality or district shall publish one notice in a newspaper having general circulation within the municipality or district and shall provide a copy of such published notice to the board of directors of the state fire and police pension association established pursuant to section 31-31-201 (I). The notice shall state the intent of the governing body to use the money in the fund for the purposes permitted in this section. The notice shall state that persons who believe they are or may be entitled to benefit payments from the fund shall have fifty days from the date of the notice in which to file an objection, in writing, with the governing body regarding its proposed use of the fund. If any such written objection is received, the governing body shall hold a public hearing before adoption of any resolution under this section with prior published notice of the time and place of the hearing as well as written notice of such hearing mailed, by certified mail, to each person filing a written objection.

(b) If, within one year after adoption of a resolution pursuant to this section, any person establishes a claim to a benefit from the fund, the municipality or district shall repay to the fund any money expended from such fund pursuant to this section, and no such additional expenditures shall be made from the fund.

(4) (a) (I) Notwithstanding the provisions of subsections (1) and (2) of this section and subject to the provisions of paragraph (c) of this subsection (4), if no members are active participants in an employer's old hire pension plan established under this article, the governing body of the employer, by resolution, may authorize the use of the excess balance in the plan fund for the purposes permitted in subsections (I) and (2) of this section. If a governing body authorizes the use of the excess balance under this subsection (4), the employer shall maintain the plan fund at a level equal to at least two times the amount necessary to fund the benefit liabilities of any persons continuing to receive benefits from the plan fund.

(II) For purposes of this paragraph (a), "excess balance" means the amount in an old hire plan fund in excess of two times the amount necessary to fund the benefit liabilities of persons continuing to receive benefits from the plan fund, as determined by the plan's actuary. In determining the excess balance in an old hire plan fund, the actuary shall utilize the assumptions approved by the board of directors of the fire and police pension association pursuant to section 31-30.5-306 (2)(b).

(b) Notwithstanding the provisions of subsections (1) and (2) of this section and paragraph (a) of this subsection (4) and subject to the provisions of paragraph (c) of this subsection (4), if no members are active participants in an employer's old hire pension plan established under this article and the plan provides no rank escalation benefit to persons receiving benefits from the plan fund, the board, after disclosure to the affected retirees, is authorized to use the assets in the plan fund for the purpose of purchasing annuities in amounts sufficient to pay any required benefits, including nondiscretionary cost-of-living adjustments

required under the plan, to those persons who continue to receive benefits from the plan fund. If the board purchases annuities for such persons, the governing body of the employer, by resolution, may authorize the use of any additional funds that remain in the plan fund after purchasing such annuities for the purposes permitted in subsections (1) and (2) of this section. Annuities may be purchased pursuant to this paragraph (b) only from insurance companies rated at least A+ by the A.M. Best company or rated at least AA by Standard & Poors Corporation. If there is a default on the payment of benefits resulting from an annuity purchased under this paragraph (b), the employer remains liable to make any required benefit payments to persons for whom the annuities were purchased.

(c) Moneys in the plan fund in excess of the amount required to purchase annuities as provided in paragraph (b) of this subsection (4), if any, may be used to purchase additional benefits or may be treated as an excess balance as provided in paragraph (a) of this subsection (4).

**31-30.5-210. Plan amendment.** (1) No modification of any provision of an old hire pension plan established pursuant to this article may be made after December 1, 1978, except as may be authorized by subsection (2) of this section.

(2) Upon the request of an employer and with the approval of sixty-five percent of the active and retired old hire members, the board of directors of the fire and police pension association established pursuant to section 31-31-201 (1), shall permit the modification of any provision of an old hire pension plan established pursuant to this article, if the board determines that such modification will maintain or enhance the actuarial soundness, as defined in section 31-31-102 (1), of such fund. In addition, upon the request of an employer, the board shall permit the modification of any provision of an old hire pension plan necessary to comply with state or federal law. Such modification may be made without the approval of the active and retired old hire members. This subsection (2) shall not be construed to authorize the board to allow a modification of any such old hire plan so as to change the nature of the plan from a defined benefit plan to a money purchase plan or to adversely affect the pension benefits of active or retired old hire members.

**31-30.5-211. Affiliation with the fire and police pension association.** Any employer may elect affiliation with the fire and police pension association established by section 31-31-201 (1), relating to an old hire pension plan established pursuant to this article. The procedures for affiliation and other provisions governing the administration of an affiliated plan are set forth in section 31-31-701.

**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.

**31-30.5-213. Dissolution of fire departments.** In the event of dissolution, for any reason, of fire departments whereby the services of firefighters or fire departments are discontinued, the firefighters or their surviving spouses, dependent parents, and children receiving benefits at the time of such dissolution shall continue to receive such benefits in accordance with the provisions of this article. Assets of the pension funds shall be transferred with other assets of the department and shall be administered by the board of trustees of the successor pension fund. In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion. After attaining fifty years of age, any firefighter having accrued ten or more years of active service at the time of such dissolution shall be granted an annuity, prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board of trustees of such pension fund at the time of such dissolution.

### PART 3 FUNDING - STATE-ASSISTED PLANS

**31-30.5-301. Legislative declaration.** The general assembly finds and declares that the establishment of statewide actuarial standards regarding funded and unfunded liabilities of state-assisted old hire police officers' and firefighters' pension funds established pursuant to this article is a matter of statewide concern affected with a public interest, and the provisions of this part 3 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further declares that state moneys provided to municipalities, fire protection districts, and county improvement districts do not constitute an obligation of the state to participate in the costs of

pension plan benefits but are provided in recognition that said local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing state moneys to assist said local governments that state participation decrease annually, terminating at the earliest possible date.

**31-30.5-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Commission" means the pension review commission established pursuant to section 24-51.1-101.

(2) "Employee" means any old hire firefighter, except any volunteer firefighter, or old hire police officer employed by an employer who is eligible for the benefits provided pursuant to this article.

(3) "Employer" means any municipality, fire protection district, or county improvement district employing one or more employees.

(4) "Governing body" means the governing body of a municipality, fire protection district, or county improvement district.

(5) "State-assisted" means having received state moneys relating to accrued unfunded liability.

(6) "Volunteer firefighter" has the same meaning as provided in section 31-30-1102 (9).

**31-30.5-303. State assistance - limitation. (Repealed)**

31-30.5-304. Limitation on existing funds - procedures. (1) On and after January 1, 1982, every state-assisted old hire police officers' or firefighters' pension plan created pursuant to this article shall be financed in accordance with minimum funding standards prescribed in this part 3. Contributions made pursuant to this section include municipal, special district, and county improvement district contributions, the established employee contribution, and any state contribution.

(2) (a) Annual contributions to state-assisted old hire police officers' and firefighters' pension funds shall be made in an amount that is equal to or greater than the sum of the actuarially determined amount required to amortize the unfunded accrued liabilities of such plan over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members plus the current service cost attributable to active members.

(b) In addition to the contributions required by paragraph (a) of this subsection (2), the employer shall annually pay any required dollar amount of contributions necessary to fund additional plan benefits adopted under section 31-30.5-210 (2), as established by supplemental actuarial studies on such funds.

(3) and (3.5) (Deleted by amendment, L. 2014.)

(4) A governing body providing a state-assisted old hire pension plan that is required to contribute an amount in 2014 that is less than the contribution required by subsection (2) of this section beginning in 2015 and that determines that the minimum annual rate of municipal, fire protection district, or county improvement district contributions provided in subsection (2) of this section would place an undue hardship on the taxpayers of such municipality, fire protection district, or county improvement district may adopt a resolution to that effect. Any municipality, fire protection district, or county improvement district that has adopted such resolution may make an annual contribution in the year 2015, in an amount that is not less than the amount that the municipality, fire protection district, or county improvement district is required to contribute in 2014. Beginning in 2016, such municipality, fire protection district, or county improvement

district shall make the full amount of the annual contribution required by subsection (2) of this section.

(5) (Deleted by amendment, L. 2014.)

(6) All municipalities, fire protection districts, and county improvement districts, including both paid firefighters and volunteer firefighters in their pension plans, shall segregate the pension funds for paid firefighters and volunteer firefighters on an equitable basis for accounting and actuarial purposes, and said segregation shall be considered in all actuarial reports applicable to such funds. In computing the portion of the fund attributable to volunteer firefighters, the benefits of such volunteer firefighters shall not be reduced or otherwise changed.

(7) (Deleted by amendment, L. 2014.)

(8) Every employee employed as a firefighter or police officer for the first time after April 7, 1978, is covered by the benefit provisions set forth in or authorized by article 31 of this title.

(9) Volunteer firefighters and volunteer firefighter pension funds are exempt from all provisions of this section except subsection (6) of this section.

(10) (Deleted by amendment, L. 2014.)

(11) Notwithstanding any other provision of law to the contrary, an assessment against any employee of any fire or police department to which this article applies may be in an amount not to exceed ten percent of the employee's monthly salary. Said amount shall be deducted and withheld from the monthly pay of each such employee so assessed and placed to the credit of said employee's pension fund in the same manner as provided by this article; except that in no case shall employer contributions be less than employee contributions.

(12) (Deleted by amendment, L. 2014.)

(13) The board of any state-assisted old hire pension plan may take, by gift, grant, devise or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created.

**31-30.5-305. No change in employer obligation.** It is the intention of the general assembly that the minimum funding standards established by this part 3 shall not enlarge nor diminish the obligation of municipalities and fire protection districts to their employees for pension benefits provided pursuant to this article.

**31-30.5-306. Actuarial studies. (1)** An actuarial study of each old hire police officers' and firefighters' pension fund administered by the association shall be conducted not later than July 1, 2014, and an updated actuarial study shall be conducted by the association every two years thereafter until the plan is terminated.

(2) (a) The association shall designate actuaries or firms of actuaries to supervise, conduct, or review actuarial studies required by this section.

(b) The fire and police pension association's board of directors shall specify the actuarial assumptions to be used in each such actuarial study.

(3) Costs of all such actuarial studies are an expense of the old hire plan and the fire and police pension association is authorized to pay for such costs as provided in section 31-31-302 (3).

(4) (Deleted by amendment, L. 2014.)

**31-30.5-307. State contribution.**

(1) (a) (Deleted by amendment, L. 2014.)

(b) (1) Each employer having rank escalation and having old hire members shall

determine for each such employee the percentage that such employee's years served as of January 1, 1980, bear to the total number of years required for retirement. At retirement, the retirement pension shall be divided into that percentage and the remainder. The portion of the retirement pension equal to that percentage earned as of January 1, 1980, shall be subject to rank escalation as provided under the old hire pension plan, and the remainder of the retirement pension shall be subject to the same adjustment as that determined by the fire and police pension association board of directors pursuant to section 31-31-407.

(II) An employer may elect to continue full rank escalation benefits for that portion of the retirement pension subject to the adjustment as provided in subparagraph (I) of this paragraph (b), but no state contribution shall be used to fund such continuation of rank escalation or any unfunded liabilities incurred as a result of such continuation of rank escalation.

(c) (Deleted by amendment, L. 2014.)

(d) Repealed.

(2) (a) Moneys transferred from the state treasurer as state assistance to the old hire plan members' benefit trust fund shall not revert to the general fund but are continuously available for the purposes provided in this part 3 and part 11 of article 30 of this title.

(b) No other transfers for state assistance to the old hire plans shall be made to the old hire plan members' benefit trust fund pursuant to this section.

(2.5) Repealed.

(3) to (6) (Deleted by amendment, L. 2014.)

#### PART 4

#### FUNDING - NONSTATE ASSISTED PLANS

**31-30.5-401. Sources of revenue for fund.** (1) Except for state-assisted old hire police officers' and firefighters' pension plans and those affiliated with the fire and police pension association pursuant to section 31-31-701, each old hire pension fund may consist of:

(a) All moneys that may be given to such board or fund by any person for the use and purpose for which such fund is created. Such board may take, by gift, grant, devise, or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created;

(b) All moneys, fees, rewards, or emoluments of every nature and description that may be paid or given to said fund;

(c) All moneys derived from employer and member contributions, as provided for in sections 31-30.5-402 and 31-30.5-403.

**31-30.5-402. Municipalities under fifty thousand - limit of contributions to old hire police officers' pension plans.** (1) There is granted to municipalities in this state having less than fifty thousand population the power to pay from the general funds of their respective municipalities into the old hire police officers' pension fund of their respective municipalities such sum monthly as shall not exceed five percent of the monthly salaries of the total active old hire members in the police department of their respective municipalities.

(2) In such municipalities as make contributions from general funds into the old hire police officers' pension fund of their respective municipalities pursuant to subsection (1) of this section, the active old hire members of such police department shall contribute monthly, from their respective monthly salaries, into the municipality's old hire police officers' pension fund identical percentages of their respective monthly salaries so that the contribution of the active old hire members of the police department as a whole matches the contribution of the



municipality.

**31-30.5-403. Employers under one hundred thousand - limit of contributions to old hire firefighter pension plans.** (1) There may be levied and set apart by the governing body of each municipality having a population of less than one hundred thousand, by the board of directors of each fire protection district, or by the board of a county improvement district, a tax for the year 1969 and each year thereafter of not more than one mill on the taxable property in such municipality, fire protection district, or county improvement district, the proceeds thereof to be credited to the old hire firefighters' pension fund of each such municipality, fire protection district, or county improvement district.

(2) Any municipality, fire protection district, or county improvement district having less than one hundred thousand population and having a paid fire department shall levy an assessment on the active old hire members in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section, or the proper governing body shall appropriate said sum out of the general revenues of the municipality, fire protection district, or county improvement district.

(3) Any municipality having less than one hundred thousand population and having a paid and volunteer fire department or any fire protection district or county improvement district having a paid and volunteer fire department shall assess the paid old hire members of such department in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section. Said sum shall be segregated by the municipal treasurer, the treasurer of the district board of directors, or the treasurer of the county improvement district, as the case may be, and shall be used for the payment of pensions to the paid old hire members of said departments and their surviving spouses and orphans, as otherwise provided for in this article, but, so long as there are volunteer members in said department, the present old hire pension fund, if derived from state allocations, shall continue to be maintained for the benefit of all members of said department, paid old hire members and volunteers alike, under such rules as the board determines to be equitable.

(4) A paid firefighter is any firefighter whose main source of income is derived from service on a fire department. All other firefighters who render service to a fire department are volunteer firefighters.

(5) If the total moneys allocated to an old hire firefighters' pension fund by a municipality, fire protection district, or county improvement district are, in the opinion of the board of such municipality, fire protection district, or county improvement district, inadequate to sustain a proper fund for retirement or for the other purposes of the fund under this article, such board may consolidate its old hire fund with the old hire fund of another municipality, fire protection district, or county improvement district, and such consolidated funds shall thereafter be administered as a single fund. Such consolidation of funds may be made under such conditions and in conformity with such terms as are mutually agreed to by the boards of the consolidating single funds, consistent with the provisions of this article.

**31-30.5-404. Plans affiliated with the fire and police pension association.** Notwithstanding any provision of this part 4 to the contrary, an employer that affiliates its old hire police officers' or firefighters' pension fund with the fire and police pension association

pursuant to section 31-31-701 and that is not receiving state contributions under part 3 of this article shall annually contribute an amount approved by the board of directors of the association, upon the advice of its actuary, sufficient to pay the normal cost plus amortize the unfunded past service liability attributed to old hire members, over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

## PARTS INVESTMENTS - INSURANCE

**31-30.5-501. Old hire pension fund - investments.** It is lawful for the board of trustees of the old hire firefighters' pension fund and the board of trustees of the old hire police officers' pension fund in any municipality or district in this state to invest such respective pension funds, or any part thereof, in the name of the treasurer of such municipality or in the name of a custodian or custodians appointed by the board, as provided for in this section, in interest-bearing obligations of the United States, in interest-bearing bonds of the state of Colorado, or in general obligation bonds of cities, whether organized under general law or article XX of the state constitution, or in any depository enumerated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. The board of trustees, by written resolution, may appoint one or more persons to act as custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of such funds in any state or national bank or any state or federally chartered savings and loan association in Colorado. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. All such securities and evidences of investment shall be deposited with the treasurer of such municipality.

**31-30.5-502. Insurance investment by banks and trust companies.**  
(1) Notwithstanding any restrictions on investments of old hire police officers' or firefighters' pension funds contained in any laws of this state, it is lawful for the board of trustees of any such pension fund, with the consent in writing of a majority of the active old hire members of the police department or fire department for the benefit of which the pension fund is maintained, to:

(a) Insure the old hire members of any such police department or fire department by the purchase of policies of individual, group, or blanket life, endowment, disability, or annuity insurance, or variable annuity insurance in and from companies authorized to do business in Colorado and to expend any portion of such pension fund for the purpose of paying the premiums on any such insurance policies; or

(b) Establish a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as trustee, invested by the trustee pursuant to the provisions of part 3 of article 1 of title 15, C.R.S.; but the trustee shall at all times hold fixed income obligations having a book value or cost of not less than sixty percent of the total contributions made to the trust less the amounts paid out.

(2) If any old hire member of such police department, fire department, or association is receiving any pension, benefit, or award made prior to April 9, 1965, by such board of trustees, no such part of said fund shall be expended for purchasing said insurance as will impair the ability of said fund to meet the requirements of such pensions, benefits, and awards. The board of trustees of the old hire pension fund shall be the beneficiary of any such insurance policies, and the proceeds thereof shall be paid to the board of trustees as an addition to the old hire pension fund.

**31-30.5-503. Alternative investment authority.** Notwithstanding any other provision of this part 5, moneys of old hire pension plans that are not affiliated with the fire and police pension association under section 31-31-701 may be managed and invested by the trustees of such plans pursuant to 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. Such investments shall be audited at least biennially.

PART 6  
RETIREMENT BENEFITS

**31-30.5-601. Police officers' old hire pension plans - municipalities under one hundred thousand in population.** (1) In municipalities having a population of less than one hundred thousand and making contributions from general funds into the police officers' old hire pension fund of their respective municipalities, any old hire member of such police department who has reached the age of fifty-five years and who has served for a period of twenty years in any such department in the state of Colorado or who in the alternative has completed twenty-five years in any such department in the state of Colorado, regardless of age, is entitled to a monthly pension equal to one-half the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. Such payment shall be made regardless of income or earnings that the said retired old hire member receives from any source.

(2) In municipalities having a population of less than one hundred thousand and not making contributions into their respective police officers' old hire pension fund, any old hire member of the police department who has reached the age of sixty years and who has served for a period of twenty years in any such department in the state of Colorado is entitled to a monthly pension equal to one-half of the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. If, thereafter, such member accepts a salaried position paying a salary of sixty dollars or more per month, the payment of the member's pension shall be suspended during the period the member holds such position.

**31-30.5-602. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.** In municipalities, fire protection districts, and county improvement districts having a population of less than one hundred thousand, any old hire member who has reached the age of fifty years and who has served for a period of twenty years of active service in any such department in this state is entitled to a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Any old hire member of a paid fire department of a municipality, fire protection district, or county improvement district, who has served prior time in a volunteer fire department in any municipality, fire protection district, or county improvement district in this state, in the event the member becomes a paid member, may be credited service time at their discretion, at the rate of one year of paid service for each four complete years of volunteer time; except that they shall not receive both a pension under part 11 of article 30 of this title and a service credit under this section.

**31-30.5-603. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.** In municipalities having a population of at least one hundred thousand, any old hire member of the police department who has attained the age of sixty years is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before retirement. Any old hire member of the police department of such municipality having served twenty-five years or more in such police department, other than an old hire member who has arrived at the age of sixty years and retired, is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before the time of retirement.

**31-30.5-604. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.** (1) In municipalities having a population of at least one hundred thousand, any old hire member of the fire department who has served at least twenty-five years of active duty and has attained the age of fifty years shall be retired within thirty days after making application for retirement, except during periods of national emergency, and such person shall be paid a monthly pension equal to one-half the amount of the monthly salary said person received as a member of said department as of the date of application for retirement. For so long as the old hire member is in retirement, there shall be added to the amount of the member's pension one-half of any increase in salary and longevity or additional pay based on length of service granted to the rank formerly occupied by the member in the department.

(2) (a) When, for any reason, the rank or grade within a fire department is abolished or ceases to exist and a retired old hire member of such department, on or after April 30, 1963, is in receipt of a pension or annuity from the fund by reason of retirement in such classification, grade, or rank, such member shall receive the member's regular pension payment for the grade or rank occupied at the time of the member's retirement. In addition, such member of a fire department shall receive additional benefits as follows: The fraction which such member's regular pension payment for the grade or rank occupied at the time of the member's retirement bears to the regular pension payment for the next higher rank at such time shall be computed; and such member shall receive one-half of any increase in salary and longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed; but if the next higher and next lower ranks or grades of the department receive equal money increases, such member shall receive one-half of any increase without multiplication of the fraction above computed. An old hire member of such department who, on July 1, 1969, is in receipt of a pension or annuity from the fund, by reason of retirement in a rank or grade which has been abolished or has ceased to exist, shall have the member's benefits as above described recomputed, and any additional moneys to which the member is entitled shall be paid to the member as if this provision were in effect at the date of the member's application for retirement.

(b) The provisions of this subsection (2) shall apply alike to all those who retired under this section and to those who retire under the provisions of section 31-30.5-705.

## PART 7 DISABILITY AND SURVIVOR BENEFITS

**31-30.5-701. Coverage.** The provisions of this part 7 governing the benefits payable in the event of the death or disability of an active old hire member shall apply with respect to any

such member who dies or becomes disabled prior to January 1, 1980. The provisions of this part 7 governing the benefits payable in the event of the death of a retired old hire member shall apply regardless of the date of death.

**31-30.5-702. Police officers' old hire pension plans - municipalities under one hundred thousand in population.** (1) If an old hire member of any police department in a municipality having a population of less than one hundred thousand, while in the performance of the member's duty or by reason of service in such department, becomes physically or mentally disabled and such disability is deemed to be of a temporary nature, the board of trustees shall retire the individual with a disability and shall authorize the payment to such individual, monthly, of an amount from the pension fund equal to the monthly compensation paid any such member as salary at the date of such disability, not to exceed a period of one year. For the purpose of determining the physical or mental disability of any such member, the board of trustees may personally examine the member or may appoint one or more physicians or surgeons to make an examination of the member and report their findings to the board, which report may be taken into consideration in determining whether the member has a physical or mental disability.

(2) After any old hire member of any police department in a municipality having a population of less than one hundred thousand has been retired temporarily by reason of any disability, the board of trustees has the right at any time to cause such retired member to be brought before it and again examined by competent physicians or surgeons and has the right to examine other witnesses for the purpose of discovering whether such disability yet continues and whether such retired member should be continued on the pension roll, not to exceed a period of one year, or reinstated in the service of the police department, except in case of dismissal or resignation. Such retired member is entitled to notice and to be present at the hearing of any such evidence and may be represented by counsel. The retired member shall be permitted to propound any question pertinent or relevant to such matter and shall also have the right to introduce evidence on the member's own behalf. All witnesses so produced shall be examined under oath, and any member of such board of trustees is authorized to administer such oath to such witnesses. The decision of such board shall be final.

(3) If any old hire member or officer of any police department in a municipality having a population of less than one hundred thousand becomes mentally or physically disabled so as to render necessary the member's retirement from service in such department, said board of trustees shall retire such member from service in such department, and the member shall receive from the pension fund an amount equal to one-half of the monthly salary received by the member at the time the member becomes so disabled. Except as provided in subsection (4) of this section, when any old hire member of such police department or retired old hire member dies and leaves a surviving spouse or dependent parent or children under the age of sixteen years, surviving, the board of trustees shall authorize the payment monthly from the pension fund of the sum of thirty dollars to such surviving spouse or dependent parent and six dollars to each such minor child until the child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(4) In those municipalities making contributions from general funds into the old hire police officers' pension plan pursuant to section 31-30.5-402, the benefits payable in the event an old hire member of such police department or retired member dies and leaves a dependent surviving spouse or dependent parent or children under the age of sixteen years shall be an amount equal to one-fourth the monthly salary received by the member of the department at the

time the member died to such surviving spouse or dependent parent and an amount equal to one-eighth of the monthly salary received by the member of the department at the time the member died to each minor child until such child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(5) If at any time there is not sufficient money or other property in said pension fund to pay to each beneficiary the full amount per month to which such beneficiary is entitled, an equal percentage of such monthly payment shall be made to each, until such fund is so replenished as to warrant payment in full to each of such beneficiaries.

**31-30.5-703. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.** (1) (a) Any old hire member of a paid fire department in a municipality, fire protection district, or county improvement district, having less than one hundred thousand in population who becomes mentally or physically disabled while on active duty during regular assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five or more years as a member of said department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall submit competent evidence substantiating the member's claim that the member has contracted said disease while on duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(b) In cases where a special position or assignment can or may be assigned to such old hire member, the member may be assigned to such special position or assignment. Any such retirement shall be for the period of the disability and no longer and shall be governed by the provisions of paragraphs (c) to (e) of this subsection (1).

(c) Effective July 1, 1969, said old hire member shall be paid a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Said pension shall continue to be paid as long as the member is in retirement.

(d) All applicants for disability pensions shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of the old hire pension fund.

(e) The board shall establish such rules as it deems proper for the purpose of reexamination of all old hire members who are retired for disability to determine from time to time the fitness of such members to return to active duty in said department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty years of active duty before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than once a year thereafter. In the event it is found by said board that any member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty years of active duty, shall be removed from the retired list and ordered to report to the chief officer of said fire department within thirty days for assignment to active duty.

During said period of thirty days, such member may file a written protest in which the member shall state any objection to the member's removal from the retired list. The decision of said board shall be suspended pending a hearing on said protest, at which hearing such member shall have the right to appear and to be represented by counsel. During the period that any member is retired for disability by said board, such member, if under the age of fifty years and having served less than twenty years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), if an old hire member of the fire department becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, starting twelve months from such disability and for the remaining period of such disability, a monthly benefit equal to five percent of the amount set forth in paragraph (c) of this subsection (1), multiplied by the number of years the member has been in active service with said fire department; but any such benefit under this subsection (1) shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations, and reexamination as set forth in paragraph (e) of this subsection (1), shall be applicable to all cases arising under this paragraph (f).

(II) Any person who became an old hire member of a fire department prior to July 1, 1971, shall be entitled to the benefits set forth in subparagraph (I) of this paragraph (f) as of the date of the onset of such disability and shall not be subject to the twelve-month delay provision.

(2) If any old hire member of a fire department in a municipality, fire protection district, or county improvement district having a population of less than one hundred thousand dies from any cause, whether on duty or not or while on the retired list, leaving a surviving spouse or dependent parent, such surviving spouse or dependent parent shall be awarded a monthly annuity equal to one-third of the monthly salary of a first-grade firefighter at the time of the member's death or retirement so long as the surviving spouse or dependent parent remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said surviving spouse on the pension roll or authorizing the granting of a pension. No pension shall be paid to the dependent parent of a deceased old hire member who leaves a surviving spouse or dependent children.

(3) In addition to the annuity set forth in subsection (2) of this section, the board shall also order the payment to such surviving spouse or the legally appointed guardian of each dependent child of such deceased old hire member of said fire department of a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen years. If such surviving spouse dies or there is no surviving spouse, as limited and described in subsection (2) of this section, but there are surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (2) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian for said children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first grade, of said department. No annuity shall be paid to the dependent parent of a deceased member who leaves a child or children under eighteen years of age.

(4) When any active or retired old hire member dies, the board shall appropriate from the old hire pension fund the sum of one hundred dollars, as a death benefit, to be paid to the surviving spouse or family of the deceased, but, if there is no surviving spouse or family, said

sum shall be paid to such other person as the board of said fund designates.

**31-30.5-704. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.** (1) If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, becomes temporarily totally disabled, physically or mentally, for service by reason of service in such department, the board shall order the payment to such disabled member, monthly during such disability but not to exceed one year, from the old hire pension fund, a sum equal to the monthly compensation allowed such member as salary at the date of the member's disability if such member is paid no salary as such member. If any old hire member of the police department, while in the performance of the member's duty, becomes mentally or physically permanently disabled by reason of service in such department so as to render necessary the member's retirement from service in such department, the board shall retire such disabled member from service in such department. No such retirement on account of disability shall occur unless said member has contracted said disability while in the service of said police department.

(2) Upon retirement the board shall order the payment to such disabled member from the old hire pension fund a sum equal to one-half the monthly compensation allowed to such the member as salary at the date of the member's retirement. If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, is killed, dies as a result of an injury received in the line of duty or of any disease contracted by reason of the member's occupation, dies from any cause whatever as the result of the member's services in said department, or dies while in the service or on the retired list from any cause and leaves a surviving spouse or a dependent child under sixteen years surviving or, if unmarried, leaves a dependent parent surviving, the board shall direct the payment from the fund, monthly, to such surviving spouse, while unmarried, of thirty dollars, and for each child, while unmarried, until the child reaches the age of sixteen years, six dollars, and to the dependent parent, if such member was unmarried, thirty dollars. The pension to the dependent parent or both shall be paid as follows: If the father is dead, the mother shall receive the entire thirty dollars, and if the mother is dead, the father shall receive the entire thirty dollars, and if both are living, each shall receive fifteen dollars.

**31-30.5-705. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.** (1) Any old hire member of a fire department in a municipality having a population of at least one hundred thousand, who becomes mentally or physically disabled while on active duty during regularly assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five years or more as a member of the department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall be presumed, unless said presumption is overcome by competent evidence, to have contracted said disease while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(2) In cases where a special position or assignment can or may be assigned to such member, the member may be assigned to such special position or assignment. Any such retirement shall be for the period of the disability, and no longer, and shall be governed by the provisions of subsections (3), (4), and (5) of this section.

(3) The old hire member shall be paid a monthly pension equal to one-half the amount of



the member's monthly salary as of the date of the member's retirement plus one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in the department. The member, after retirement, shall continue to accrue longevity, and the member's length of service shall continue to extend in the same manner and with the same limitations as if the member were still active and not retired. Said pension shall continue to be paid as long as the member is in retirement.

(4) All applicants for disability pensions shall be examined by one or more physicians selected for the purpose by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of said fund.

(5) The board shall establish such general rules as it deems proper for the purpose of reexamination of all old hire members who have been retired for disability to determine from time to time the fitness of such members to return to active duty in the department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty-five years of active duty in the department before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than once a year thereafter. In the event it is found by the board that any old hire member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty-five years of active duty, shall be removed from the retired list and ordered to report to the chief officer of the fire department within thirty days for assignment to active duty. During said period of thirty days such member may file a written protest in which the member shall state any objection that the member may have to the member's removal from the retired list. The decision of the board shall be suspended pending a hearing on said protest, at that hearing the member shall have a right to appear and to be represented by counsel. During the period that any member is ordered retired for disability by the board, such member, if under the age of fifty years and having served less than twenty-five years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(6) In any case where an old hire member of the fire department in a municipality having a population of at least one hundred thousand becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, during the period of such disability and no longer, a monthly benefit equal to five percent of the amount set forth in subsection (3) of this section multiplied by the number of years the member has been in active service with the fire department; except that any such benefit under this section shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations and reexaminations, as set forth in subsections (4) and (5) of this section, shall be applicable to all cases arising under this subsection (6).

(7) If any old hire member of a fire department in a municipality having a population of at least one hundred thousand dies from any cause while in the service or while on the retired list, leaving a surviving spouse, such surviving spouse shall be awarded a monthly annuity equal to one-third of the monthly salary of such member at the time of the member's death or retirement plus one-third of any increase in salary and longevity or additional pay based on length of service granted to firefighters of the rank or comparable successor rank that the member held in the department on the date of the member's death or retirement so long as such

surviving spouse remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said spouse on the pension roll or authorizing the granting of a pension. This section shall apply alike to surviving spouses of firefighters and retired firefighters who die after April 11, 1947, and to surviving spouses of firefighters and retired firefighters who were dead on said date, it being the intent of the general assembly to provide an annuity for all surviving spouses of firefighters, which annuity shall increase or decrease proportionately to any increase or decrease in the current rate of pay of firefighters.

(8) The board shall also order the payment to such surviving spouse or the legally appointed guardian of each child of such deceased old hire member of the fire department a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen years. If such surviving spouse dies or there is no surviving spouse as limited and described but such deceased old hire member leaves surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (7) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian of the children for the children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first-grade, of said department.

(9) When an active or retired firefighter dies without necessary funeral expenses, the board shall appropriate from the fund a sum not exceeding one hundred dollars to the surviving spouse or family or other person paying said expenses for the purpose of assisting the proper burial of said deceased old hire member.

## PART 8 EXEMPT PLANS

**31-30.5-801. Exempt alternative programs authorized.** (1) Notwithstanding any other provision of this article or the provisions of article 31 of this title that specifically refer to exempt plans, any municipality, fire protection district, or county improvement district, prior to January 1, 1980, may establish an alternative police officers' or firefighters' pension benefit program or combination pension and insurance benefit program for police officers or firefighters that, if found by an actuarial study to be actuarially sound, shall be exempt from all provisions of parts 3 to 7 of this article. Such program and any amendments thereto must be approved in an election held or vote called for that purpose by at least sixty-five percent of the total votes cast by all police officers or firefighters actively employed by the municipality, fire protection district, or county improvement district and all former old hire members who have earned pension rights or benefits under this article at the time the program is adopted or amended. No amendment of an exempt alternative program may be adopted that would adversely affect the accrued pension benefits of former old hire members. Once established, such exempt alternative program shall cover all police officers or firefighters employed by the municipality, fire protection district, or county improvement district, regardless of the date of hire. Any municipality, fire protection district, or county improvement district having established an exempt alternative program pursuant to this section shall be entitled to receive its appropriate share of state contributions to local police officers' or firefighters' pension funds and shall file any reports required to receive such state contributions. The date limitation of January 1, 1980, established in this subsection (1) shall not be construed as limiting the ability of an employer to establish an exempt money purchase plan in accordance with the provisions of subsection (2) of this section and section 31-30.5-802.

(2) (a) Not later than January 1, 1983, any employer that covered its firefighters or police officers hired on or after April 8, 1978, under the statewide defined benefit plan established in part 4 of article 31 of this title, may withdraw from that plan upon establishment of a money purchase plan, in accordance with the requirements governing exempt alternative programs under subsection (1) of this section.

(b) Such money purchase plan shall include all firefighters or police officers hired on or after April 8, 1978, and may include all old hire firefighter or police officer members, at the option of the employer.

(c) The money purchase plan shall be approved by sixty-five percent of all firefighters or police officers hired on or after April 8, 1978. In order for old hire firefighter or police officer members to be included in such plan, pursuant to paragraph (b) of this subsection (2), sixty-five percent of those members shall approve the plan.

(d) Any employer desiring to withdraw pursuant to the provisions of this section shall file a resolution with the fire and police pension association stating such intent. The resolution shall also state a requested effective date for withdrawal.

(e) The withdrawal shall be effective on the requested effective date or on the first day of the month following certification by the fire and police pension association of the approval of the members, whichever occurs later.

**31-30.5-802. Exempt money purchase plan option.** (1) Any employer that has not elected to affiliate with the fire and police pension association relating to an old hire plan established pursuant to this article may offer to the active old hire members of such plan the option of converting to a money purchase plan.

(2) Such option shall be available on an individual basis such that any member desiring to remain in the current defined benefit plan may do so.

(3) The money purchase plan offered may be a new plan established by the employer or an existing plan maintained for the benefit of other members employed in the same department.

(4) Any such money purchase plan shall be exempt from all provisions of parts 3 to 7 of this article.

(5) The option may be offered only if approved by at least sixty-five percent of all active old hire members. If approved, a deadline shall be set for electing between the current plan and the money purchase plan. Prior to said deadline, the employer shall provide to each active old hire member a disclosure statement describing the differences between the current plan and the money purchase plan and a statement as to the minimum beginning account balance for such employee in the event of conversion to a money purchase plan.

(6) If any active old hire member elects to remain in the current plan, the employer shall continue to fund such plan on an actuarially sound basis with any unfunded liability being amortized over a period not to exceed twenty years after January 1, 1989.

(7) Within ninety days after the election is made by each active old hire member, the employer shall make the final determination as to whether to adopt such option and shall be under no obligation to do so. In the event that the employer determines that the option will not be adopted at that time, the employer may reoffer the option at a later date in accordance with the provisions contained in this section.

(8) No such option may be adopted which, in its application, would adversely affect the pension benefits of retired old hire members.

(9) Nothing in this section shall be construed to prohibit an election by an employer to affiliate its local plan with the fire and police pension association after said employer has adopted a money purchase plan option pursuant to this section. Any such affiliation shall be

governed by the provisions of section 31-31-701.

**31-30.5-803. Investment authority.** (1) Except as provided in subsection (2) of this section, moneys of exempt alternative plans that are not affiliated with the fire and police pension association under section 31-31-706 may be managed and invested by the trustees of such plans pursuant to 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. Such investments shall be audited at least biennially.

(2) (a) (Deleted by amendment, L. 97, p. 10, § 2, effective March 13, 1997.)

(b) The trustees of an exempt alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

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

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

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

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

## **ARTICLE31**

### **Fire - Police - New Hire Pension Plans**

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#### PART 1

#### GENERAL PROVISIONS

**31-31-101. Legislative declaration.** The general assembly hereby declares that the establishment of police officers' and firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare, that the ability of pension funds to pay earned benefits to present and future members is a necessary corollary to the establishment of pension plans, and that statewide pension plans establishing pension benefits that can be fully funded with local moneys will permit the continuation of pension plans for police officers and firefighters in this state. In addition, the general assembly declares that any pension plan must be actuarially sound in order to assure the security of the pension system and that this article is enacted to provide for the stability and security of police officers' and firefighters' pension plans in this state. The general assembly further declares that state moneys provided to municipalities, fire protection districts, and county improvement districts do not constitute a continuing obligation of the state to participate in the ongoing normal costs of pension plan benefits, except for state funding of death and disability benefits as specified in this article, but are provided in recognition that the local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing



state moneys to assist the local governments that

state participation decrease annually, terminating at the earliest possible date.

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

(1) "Actuarially sound" means a police officers' or firefighters' pension fund determined by the board to be receiving or scheduled to receive employer and member contributions in each fiscal year equal to the annual contributions actuarially determined to be necessary to pay the annual current service cost of pension benefits attributable to active employees and to pay the annual contribution necessary to amortize any unfunded accrued liability over a period not to exceed forty years. The actuarial cost method to be utilized shall be the entry age-normal cost method. The date from which unfunded liabilities shall be amortized shall be determined pursuant to part 3 of article 30.5 of this title.

(2) "Board" means the board of directors established as the governing body of the fire and police pension association as provided in section 31-31-201 (2).

(3) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district, fire authority, or county improvement district in this state offering fire protection service employing one or more members.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, fire authority, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the member's employer. "Member" also includes an active employee who works less than sixteen hundred hours per year but otherwise qualifies as a member and whose employer elects to treat all such other similar employees as members. The term does not include clerical or other personnel whose services are auxiliary to police protection, or any volunteer firefighter, as such term is defined in section 31-30-1102 (9). For the purpose of participation in the statewide defined benefit plan pursuant to part 4 of this article or the statewide money purchase plan pursuant to part 5 of this article, but not for the purpose of participation in the statewide death and disability plan pursuant to part 8 of this article, the term may include clerical or other personnel employed by a fire protection district, fire authority, or county improvement district, whose services are auxiliary to fire protection. For the purpose of eligibility for disability or survivor benefits, "member" includes any employee on an authorized leave of absence.

(5) "Money purchase plan" or "money purchase pension plan" means a retirement plan under which:

- (a) The employer has a fixed obligation to make an annual contribution to the plan;
- (b) The plan provides for an individual account for each member; and
- (c) The member's benefits are based solely on the amount contributed to the member's account and any income, expenses, gains, and losses allocated to the member's account.

(6) "Retired member" means any member who is retired, disabled, or eligible for a benefit as provided in section 31-31-404 (2).

## PART 2 ADMINISTRATION

**31-31-201. Association - creation - board - organization - tax exemption.** (1) There is hereby created an independent public body corporate and politic to be known as the fire and police pension association. The association is constituted as a public instrumentality, and its exercise of the powers conferred by this article and article 30.5 of this title shall be deemed to be

the performance of an essential public function. The association shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(1.5) The general assembly hereby finds and declares that the fire and police pension association is a political subdivision of the state and that property owned, used, and occupied by the association is intended to be exempt from property tax as property of the state under section 4 of article X of the state constitution. Accordingly, for property tax years commencing on or after January 1, 2007, all real property owned, used, and occupied by the association and personal property owned and used by the association shall be exempt from the levy and collection of property tax.

(2) (a) The governing body of the association shall be a board of directors consisting of nine members appointed by the governor and confirmed by the senate as follows:

(I) Two members who shall represent Colorado municipal employers;

(II) One member who shall represent full-time paid firefighters;

(III) One member who shall represent full-time paid police officers;

(IV) One member who shall be a retired firefighter who, upon completion of the member's term, shall be replaced by a retired police officer. Thereafter, the appointments of retired officers shall alternate between a retired firefighter and a retired police officer for each successive six-year term.

(V) One member of a board of directors of a special district or the full-time paid professional manager of a special district who shall represent special districts having volunteer firefighters;

(VI) One member from the state's financial or business community with experience in investments;

(VII) One member from the state's financial or business community with experience in insurance disability claims; and

(VIII) One member of the state's financial or business community experienced in personnel or corporate administration in corporations of over two hundred employees.

(b) Members shall be appointed for terms of four years; except that a member appointed pursuant to subparagraph (IV) of paragraph (a) of this subsection (2) shall serve for a term of six years.

(c) Vacancy in any position shall be filled in the same manner as the original appointment was made. Appointments may be made without confirmation of the senate when the senate is not in session, but such appointments shall be confirmed within thirty days of the next meeting of the senate in regular session or they shall be void.

(d) The governor may remove any member of the board for cause.

(3) (a) The members of the board shall serve without compensation but shall be reimbursed for any necessary expenditures and shall suffer no loss of salary or wages through service on such board.

(b) The board shall elect a chair and a vice-chair, shall appoint an executive director and such other employees as may be necessary, and shall fix the compensation for the appointees. The board shall have the authority to retain actuaries, investment counselors, private legal counsel, and other consultants as deemed necessary. The fees of such persons shall be considered expenses of the association.

(4) Neither the members of the board nor any person authorized by the board to act in an official capacity shall be held personally liable for any act undertaken pursuant to the provisions of this article and article 30.5 of this title.

**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 (1); and

(II) Alternative pension plans having defined benefits in whole or in part established pursuant to section 31-31-601 (1). Based upon such standards, the board shall require biennial actuarial reviews of such plans with the cost of the reviews to be paid by employers having established such plans.

(b) Establish standards for benefit projections for money purchase plans;

(c) Establish criteria for the determination of disability to administer the provisions of section 31-31-803;

(d) Promulgate rules relating to standards for disclosure of all ramifications of and procedures for obtaining the member approval provided for in section 31-31-601 (1);

(e) Administer or provide for the administration and, in accordance with the provisions of 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;

(f) Repealed.

(g) Review or initiate proposed legislation affecting or related to the provisions of this article and article 30.5 of this title;

(h) Provide for disbursements from the fire and police members' benefit investment fund created by section 31- 31-301 (I) 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.

(i) Make such modifications to the minimum annual rates of contribution certified to municipalities, fire protection districts, and county improvement districts as may be justified by actuarial studies approved by the board, subject to the requirements of section 31-30.5-304. In addition, the board shall supervise the establishment of such minimum annual rates of contribution for any nonexempt municipalities, fire protection districts, or county improvement districts that, for any reason, did not receive such minimum annual rate of contribution. Such establishment and modification of minimum annual rates of contribution shall be conducted substantially in the manner provided by procedural regulations promulgated by the board.

U) Promulgate such rules as may be necessary to implement the provisions of this article and article 30.5 of this title;

(k) Approve or deny applications for coverage under the statewide money purchase plan pursuant to section 31-31-501.

(2) (a) The board has the sole power to determine eligibility for retirement for disability, whether total or occupational, for any police officer or firefighter in this state whether or not such member is covered by the provisions of this article, except for the following:

(I) Those police officers and firefighters having social security coverage and not affiliated as to disability; and

(II) Those police officers and firefighters whose employers have established exempt alternative pension plans, including exempt alternative defined benefit plans that are administered on an actuarially sound basis, based upon assumptions and methodology adopted by the board for statewide use, on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title, unless such plans have elected to become covered under the statewide death and disability plan pursuant to section 31-31-802(1).

(b) Except as provided in this subsection (2), the final power to determine disability status is vested in the board, but each employer shall determine whether positions are available for disabled members and shall make such appointments to such positions as it deems necessary.

(3) Under the direction of the board, each employer, including employers not covered by or specifically exempted from the statewide defined benefit plan in accordance with the provisions of section 31-31-40I (1), shall furnish such information and shall keep such records as the board may require for the discharge of its duties.

(4) (a) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2)(h)(II) from proceeds of the tax imposed by section 10-3-209, C.R.S.

(b) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(c) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this subsection (4).

(d) On and after July 1, 2004, the responsibility to provide a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments shall be the responsibility of the department of local affairs pursuant to section 31-30-1134.

(5) (a) The board, in the performance of its duties under this article, shall have the power of subpoena over persons, and books, papers, records, and other things, and such power shall be enforceable by the courts; except that no subpoena shall be issued until the subpoena has been approved by a vote of the board.

(b) The chair of the board, or any other member of the board designated by the chair, shall have the power to administer oaths, in the performance of the duties of the board under this article.

(5.5) The board may release the names and addresses of retirees of a plan affiliated with the fire and police pension association pursuant to part 7 of this article to the local pension board of the affiliated plan if:

(a) The local pension board has filed a written request in the manner prescribed by the association; and

(b) The local pension board has provided the board with written assurances that the information requested will be used only for pension-related purposes.

(6) The board shall have such other powers and duties as are specifically granted pursuant to this article and parts 1 to 7 of article 30.5 of this title.

(7) The board may promulgate rules for the assessment of interest, including the waiver of interest for good cause, on unpaid contributions to statewide plans. Interest shall accrue at the rate of one-half of one percent per month.

(8) The board may assess the reasonable actuarial, audit, and operational costs incurred by the association related to compliance with regulatory requirements which are attributable to employers with members participating in plans administered by the association. Alternatively, the board may find such costs to be de minimis and pay the costs from the plan assets.

**31-31-203. Fund not subject to levy.** Except for assignments 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 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 14-10-1 I 3 (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 31-31-204 (4), 31-31-502, 31-31-701 (6), 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.

**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.

(2.5) Notwithstanding section 31-31-408 or 31-31-1102 (5) or the terms of an agreement entered into pursuant to section 31-31-706 (2), the board may modify or amend the plan provisions contained in part 4 of this article or a plan document or rules of a plan within the defined benefit system as the board deems prudent and necessary to administer benefits under the plan consistently and uniformly across the defined benefit system in a manner that does not result in an actuarial cost to the plan. Such modifications or amendments may include changes to the options for the distribution of benefits. This subsection (2.5) shall not be construed to authorize modification to the amount of a normal benefit.

(3) **Qualification requirements - internal revenue code - definitions.** (a) As used in this subsection (3), "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(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.

(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.

(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.

### PART 3 FIRE AND POLICE MEMBERS' BENEFIT FUND

**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 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) 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 death and disability plan established in part 8 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.

(2) and (3) (Deleted by amendment, L. 2006, p. 186, § 11, effective March 31, 2006.)

(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) Repealed.
  - (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.

**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.

(b) (I) If the board invests fund moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the board whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the board and because of such agreement the investment firm:

(A) Had received compensation for investment services banking within the most recent twelve months; or

(B) May receive compensation for investment banking services within the next three consecutive months.

(II) For the purposes of this paragraph (b), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(2) 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.

(3) Disbursements from the fund shall be made, subject to the approval of the board, only for payment of the expenses of the association, refunds to the members, benefits, and investment purposes.

(4) and (5) (Deleted by amendment, L. 97, p. 11, § 3, 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) The board shall submit an annual audit of the fund to the general assembly and the annual audit of the fund and annual actuarial study, with assumptions, to each employer. Each employer shall make the audit and study available for review by its members. Nothing in this subsection (7) shall be construed as diminishing the obligation of the board to provide any documentation required by the state auditor to carry out his or her responsibilities pursuant to section 2-3-103 (1), C.R.S., regarding state moneys held by the fire and police pension association.

(8) (a) As used in this subsection (8):

(I) "Association" means the fire and police pension association.

(II) "Investment" means the utilization of money or other assets in the expectation of future returns in the form of income or capital gain.

(III) "Investment fiduciary" means a person who or entity that exercises any discretionary authority or control over an investment of the association or renders investment advice for the association for a fee or other direct or indirect compensation.

(IV) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources and includes information the release of which might cause an investment vehicle, an investment manager, a general partner, a fund sponsor, or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, lists of co-investors and their level of investment, portions of lists of current or projected investment opportunities that would cause competitive harm, product and market data, rent rolls, leases, other types of proprietary information, or documents and information that investors are legally required to maintain as confidential as a condition of performing due diligence or participating in an investment.

(V) "Investment vehicle" means an entity in which an investment fiduciary has made or considered an investment on behalf of the association. Investment vehicles include but are not limited to sponsored funds, limited partnerships, and limited liability companies.

(VI) "Public record" means all or part of a writing, as defined in section 24-72-202 (6), C.R.S.

(b) Subject to paragraph (c) of this subsection (8), a public record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the association that relates to investment information pertaining to an investment vehicle in which the investment fiduciary has invested or has considered an investment or that relates to investment information whether prepared by or for the investment fiduciary is exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(c) If a public record described in paragraph (b) of this subsection (8) is an agreement or instrument to which the association is a party, only those parts of the public record that contain investment information, as defined in subparagraph (IV) of paragraph (a) of this subsection (8), are exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(d) At least annually the board shall publish and make available to the public a report of its investments that includes the following:

(I) The name of each investment vehicle in which the association invested during the reporting period;

(II) The aggregate amount of money invested by the association in investment vehicles during the reporting period; and

(III) The rate of return realized during the reporting period on the investments of the association in investment vehicles.

**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.

#### PART 4 STATEWIDE DEFINED BENEFIT PLAN

**31-31-401. Applicability of plan.** (1) Every employer in this state shall provide the pension benefits of the statewide defined benefit plan established by this part 4 for members hired on or after April 8, 1978, except for the following:

(a) Any employer that began covering members under the federal "Social Security Act"

on or before August 11, 2005, and any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, that chooses to cover members hired after August 11, 2005, under the federal "Social Security Act";

(b) Any employer that covers members under an exempt plan established pursuant to part 8 of article 30.5 of this title;

(c) Any employer that has withdrawn its members from the statewide defined benefit plan pursuant to part 6 of this article and established a locally administered and financed alternative pension plan;

(d) Any employer that has withdrawn its members from the statewide defined benefit plan for the purpose of covering them under the statewide money purchase plan established pursuant to part 5 of this article; and

(e) Any employer that covers a member hired on or after April 8, 1978, but before January 1, 1980, under an old hire pension plan as permitted by section 31-30.5-103 (I).

(2) Nothing in this part 4 shall affect retirement pensions or disability or survivor benefits of members hired prior to April 8, 1978, who retired, were disabled, or died prior to January 1, 1980.

(3) Where an employer results from a merger, a consolidation, or an exclusion or dissolution proceeding between or among one or more employers, including a new governmental entity created by intergovernmental agreement between or among one or more employers, all members transferred to or employed by such resulting employer shall, for the purposes of this article 31 and article 30.5 of this title 31, have those rights and obligations they had prior to the merger, consolidation, exclusion, dissolution, or intergovernmental agreement. In the event of a transfer of members, provision shall be made in such agreement or proceeding for allocation and transfer of plan assets, and, in the event of the transfer of members of a defined benefit plan, provision shall be made in such agreement or proceeding for discharging plan liabilities and funding in order to maintain or enhance the actuarial soundness of the remaining and resulting plans. If the resulting employer had no members prior to the merger, consolidation, exclusion, or dissolution, it may continue as its plan any plan of a transferring employer, authorized by this article, for its members hired after the effective date of the agreement or proceeding or the resulting employer shall belong to the statewide defined benefit plan. The board may authorize the resulting employer to consolidate preexisting retirement plans and any retirement plan attributable solely to the resulting employer into one or more plans if the plans to be consolidated are identical, the benefits are equal for all members covered under the retirement provisions of the plans, and no member suffers a reduction of benefits or an increase in member contributions due to such plan consolidation. Any member employed by a predecessor department who participated in a money purchase plan prior to the merger, consolidation, exclusion, or dissolution and who participates in the statewide defined benefit plan after the merger, consolidation, exclusion, or dissolution shall pay the continuing uniform rate of contribution established by the board pursuant to section 31-31-110 I (7).

(4)(a) A department chief hired on or after April 8, 1978, shall be exempted from the statewide defined benefit plan, upon the execution of a written agreement between the department chief and the chief's employer that provides for the department chief's participation in social security or in a federal insurance contribution act replacement plan as allowed under the federal internal revenue code, and the submission of notice to the association. A department chief may satisfy the federal insurance contribution act replacement plan requirement by participating in an employer sponsored plan, the statewide money purchase plan, or the statewide hybrid plan. The transfer of member and employer contributions between the statewide defined benefit plan and the statewide money purchase plan shall be consistent with the provisions of

section 31-31-501.

(b) For purposes of this subsection (4), a "department chief" means the senior command officer of any fire or police department of any employer, by whatever title known, including but not limited to chief, administrator, or director.

(c) A department chief exempted pursuant to paragraph (a) of this subsection (4) may maintain coverage for disability and survivor benefits under part 8 of this article if the department chief participates in the statewide money purchase plan, the statewide hybrid plan, or a local money purchase plan that is qualified under section 401(a) of the federal internal revenue code and that has a contribution rate of not less than sixteen percent.

(5) A member normally serving less than one thousand six hundred hours in any calendar year shall be exempted from the statewide defined benefit plan and shall be covered under the statewide money purchase plan.

(6) If an employer that is otherwise required to enroll its members under the plan fails to properly enroll such members, neither the fire and police pension association nor the defined benefit system trust fund is obligated or liable for any purpose to any person or employer arising from such failure.

**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 defined benefit system trust fund eight percent of salary paid or such higher member contribution rate established pursuant to section 31-31-408 (1.5)(a). The payment shall be made by the employer by deduction from the salary paid such member. Each employer shall pick up the member 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 member contributions directly to the retirement association, instead of paying such amounts to members, and such contributions shall be paid from the same funds that are used in paying salaries to the members. Such contributions, although designated as member contributions, shall be paid by the employer in lieu of contributions by members. Members may not elect to choose to receive such contributions directly instead of having them paid by the employer to the pension plan. Member contributions so picked up shall be treated for all purposes of this article, other than federal tax, in the same manner as member 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 ten days following the date of payment of salary to the member. All such payments shall be credited to the 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 defined benefit system trust fund eight percent of the salary paid to such member, and such payment shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the defined benefit system trust fund.

(3) The general assembly declares that the rates of member 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 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 member and employer contributions as may be deemed feasible and advisable so long as the employer contribution rate is at least equal to the member contribution rate. If the member contribution rate has been increased pursuant to section 31-31-408 (1.5)(a), the requirement that the employer contribution rate be at least equal to the member contribution rate shall not apply, but in such circumstance, any increase to the employer contribution rate shall be at least equal to the increase in the member contribution rate and any decrease in the member contribution rate shall be at least equal to the decrease in the employer contribution rate.

(4) The payments required by this section are subject to interest if not submitted when due. Payments are due no later than ten days following the date of payment of salary to the member.

(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.

**31-31-403. Normal retirement - statewide defined benefit plan.** (1) (a) Any member covered by the statewide defined benefit plan who has completed at least twenty-five years of active service and has attained the age of fifty-five years shall be eligible for a normal retirement pension subject to adjustment pursuant to paragraph (b) of this subsection (1). The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary multiplied by the member's years of service, not to exceed twenty-five.

(b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under this section and the cost of a normal retirement pension beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408 (1.5)(a). If the board cannot so determine, it shall order that the normal retirement pension commence such number of months as are actuarially supportable, from one to sixty, after age fifty-five for members who have completed at least twenty-five years of active service and are otherwise eligible in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A pension commenced after age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age of retirement to be eligible for any normal retirement benefit shall be age sixty except for persons receiving a benefit at the time of the court's decision.

(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 or such higher member contribution rate established pursuant to section 31-31-408 (1.5)(a), the board shall not increase such employer or member contributions unless :

(I) The board has terminated the benefit described in section 31-31-405; and

(II) The board has transferred all funds in the stabilization reserve account to the actuarial account as required by 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 31-31-405 to provide the benefit described in 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 31-31-405.

(c) Nothing in this subsection (2) shall be construed to require the reduction of benefits below the level sustainable by the higher member contribution rate established pursuant to section 31-31-408 (1.5)(a).

(3) Any member retiring and eligible for a normal retirement pension as provided by subsection (1) of this section may elect to defer receipt of such pension until attaining the age of sixty-five years. In the case of such election, the annual deferred retirement pension shall be the actuarial equivalent of the normal retirement pension.

(4) Any member covered by the statewide defined benefit plan who has completed at least thirty years of active service or has attained the age of fifty years and who is not receiving benefits pursuant to section 31-31-803 may elect to retire from active service and shall be eligible for an early retirement pension. The annual early retirement pension for a member shall be the benefit, as determined by the board, that the member would have received at normal retirement reduced on an actuarial equivalent basis to reflect the early receipt of the benefit.

(5) (a) A member eligible for a normal, deferred, or early retirement pension may elect to receive one of the following pension options in lieu of a pension computed in accordance with subsection (I), (3), or (4) of this section:

(I) Option 1. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life;

(III) Option 3. A reduced pension payable jointly to the member and the member's designated beneficiary and, upon the death of either, one-half of such reduced pension to be paid to the survivor for life.

(b) A member shall be considered to have elected option I and retired on the day before the member's death if the member is eligible for a normal or early retirement pension and dies:

(I) Before making an election as provided in paragraph (a) of this subsection (5);

(II) Before the first pension payment has been deposited or otherwise negotiated or sixty days from the date of issuance of such check, whichever occurs first; and

(III) Is survived by a spouse, a dependent child, or a designated beneficiary.

(c) (I) After an election has been made of any of the options provided in paragraph (a) of this subsection (5) and the first pension payment has been deposited or otherwise negotiated by the member, or sixty days from date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as the result of dissolution of marriage, marriage, remarriage, or in the event of the death of a beneficiary. In such case, the

member may designate a new beneficiary; except that, in cases of dissolution of marriage, this provision shall only apply to any final dissolution of marriage decree of a member entered on or after July 1, 1990.

(II) Notwithstanding subparagraph (I) of this paragraph (c), an unmarried member who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as the result of marriage or remarriage may elect one of the options provided in paragraph (a) of this subsection (5) within one hundred eighty days of the date of the marriage or remarriage or January 1, 2008, whichever date is later. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or remarriage and prior to the member's death.

(d) The joint pension benefits provided by this subsection (5) shall be calculated as the actuarial equivalent of the normal or early retirement pension otherwise payable as provided in subsections (1), (3), and (4) of this section. In the event of a change in beneficiary designation pursuant to paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits based upon the member's initial beneficiary designation, if any. In the event of a change in option elected pursuant to subparagraph (II) of paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits payable to the member immediately prior to the change in option.

(6) If the total amount of pension benefits paid as provided in this section is less than the amount of the member's accumulated contributions at the time of death, the difference shall be paid to:

(a) The member's estate if no pension payment was made pursuant to subsection (5) of this section; or

(b) The survivor's estate if pension payments were made pursuant to subsection (5) of this section.

(7) All service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by this section if the service for each employer was rendered while the employer covered its members under the statewide defined benefit plan established by this part 4. The service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by the statewide defined benefit plan established by this part 4 if the service for any employer was rendered while the employer did not cover its members under the statewide defined benefit plan established by this part 4 only on the basis of agreements made with the board.

(8) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a)(9), as amended, and the regulations promulgated pursuant to section 401 (a)(9).

**31-31-404. Return or transfer of contributions - vested retirement.** (1) (a) Any member covered by the statewide defined benefit plan established by this part 4 and terminating service may elect to have the member's accumulated contributions refunded in a lump sum and shall sign a statement to be filed with the member's employer evidencing such election and

acknowledging that the member has no right to benefits provided by this article. A member shall only be eligible for a refund, from the association, of the contributions paid by the member to the association and any of the member's contributions that have been transferred to the association by an affiliating employer. Nothing in this subsection (1) shall prevent a member from obtaining a refund to which the member may be entitled from a nonaffiliating employer pursuant to policies established by the employer prior to December 1, 1978. In addition to receiving accumulated contributions, the member shall also receive, as interest, five percent of the member's total accumulated contributions. The contributions refunded pursuant to this subsection (1) shall not include contributions other than those required to be made by the member, and the return of contributions shall be made within one hundred twenty days.

(b) If the member who terminated service subsequently returns to service as an active member with an employer that covers its members under the statewide defined benefit plan, the member's prior service credit shall be restored when the member returns the member's refunded contributions, with interest accrued from the date of refund to the date of return, according to the terms and conditions established by the board. If the member fails to return such contributions and interest, the member shall be treated as a new member, and the member's prior service shall not be recognized in determining pension eligibility or pension benefits.

(2) (a) In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least five years of credited service may leave the contributions with the fund. When the inactive member attains age fifty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary multiplied by years, not to exceed twenty-five, of active service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of the member's benefit payments, the fire and police pension association shall refund the inactive member's contributions to the member's estate, and no vested benefits shall be payable to the inactive member's survivors or beneficiaries.

(b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under section 31-31-403 and the cost of vested benefits beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408 (1.5)(a). If the board cannot so determine, it shall order that the vested benefits commence such number of months as are actuarially supportable, from one to one hundred twenty, after age fifty-five for eligible members in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A vested benefit commenced before age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age to be eligible for a vested benefit shall be age sixty-five except for persons receiving a benefit at the time of the court's decision.

(3) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section



401 (a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a)(9), as amended, and the regulations promulgated pursuant to section 401 (a)(9).

**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.

(3) For accounting purposes only, the stabilization reserve account created by 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. Members covered on a supplemental basis pursuant to section 31-31-704.5 shall be eligible for individual separate retirement accounts.

(4) Such amount as may be allocated to the stabilization reserve account pursuant to 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 subsection (1) of this section.

(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.

(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 subsections (1) and (2) of this section. Reductions in a member's separate retirement account pursuant to this 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.

**31-31-406 . Separate retirement accounts - administration.** (1) Any member having a separate retirement account who terminates service and at the time of termination has less than five years of credited service or who terminates service and at the time of termination has more than five years of credited service but elects a refund of contributions as provided under section

31-31-404 (I )(a) shall forfeit the entire balance in the member's separate retirement account to the actuarial account.

(2) (a) Any member having a separate retirement account who is retired for disability shall receive the entire balance in the member's separate retirement account in accordance with the member's selection of one of the payment options permitted by subsection (3) of this section or pursuant to rules promulgated by the board that allow members who are eligible to receive retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a)(9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a)(9), as amended, and the regulations promulgated pursuant to section 401 (a)(9). If the member subsequently returns to work pursuant to section 31-31-805 (2) and had been receiving periodic payments from the member's separate retirement account, such payments shall cease and any remaining balance shall remain in the member's separate retirement account, subject to subsequent distribution in accordance with this section.

(b) If any member having a separate retirement account dies prior to termination, the entire balance in the member's separate retirement account shall be payable to the member's surviving spouse or dependent children in accordance with their selection of one of the payment options permitted by subsection (3) of this section.

(3) Any member retiring pursuant to the provisions of section 31-31-403 or 31-31-404 (2) may elect to receive the balance in the member's separate retirement account in accordance with one of the following payment options:

(a) Option 1: In a lump sum;

(b) Option 2: In periodic installments of a specified and substantially equal amount, payable monthly over a period not to exceed the joint life expectancy of the member and the member's spouse. This maximum period shall be determined under the applicable actuarial tables then being used by the association at the time the initial monthly installment payment becomes payable.

(c) Option 3: In an annuity. The member may choose an annuity payable to the member for life or may choose any of the joint and survivor options permitted by section 31-31-403 (S)(a).

(4) A member may elect to commence payment of the amount in the member's separate retirement account at any time after the member terminates service but in no event later than the commencement of the member's retirement benefits under section 31-31-403 or 31-31-404 (2). A member will continue to accrue earnings on the amount in the member's separate retirement account until such time as the account is exhausted.

(5) The restoration of a member's service credit pursuant to section 31-31-404 (l)(b) shall not entitle the member to reinstatement of any previously forfeited balance in the member's separate retirement account.

(6) If a member terminates service with less than five years of credited service and does not elect a refund of accumulated contributions, the amount in the member's separate retirement account shall not be forfeited but shall continue to be subject to the earnings and reduction provisions of section 31-31-405, and, upon the member's return to active service with an employer covering its members under the normal retirement provisions of this part 4, the member shall be credited with any amount which has accrued in the member's separate retirement account.

(7) The balance in a member's separate retirement account, the member's accumulated contributions to the account, and the earnings on the account shall be paid to the member's estate if the member:

(a) Dies while in active service;

- (b) Has more than five years of credited service;
- (c) Does not leave a surviving spouse, dependent child, or designated beneficiary; and
- (d) Is not eligible for the normal retirement pension described in section 31-31-403 at the time of death.

**31-31-407. Adjustment of benefits.** (1) The benefits payable under the statewide defined benefit plan established by this part 4 may be redetermined effective October 1 each year. If such benefits are redetermined, such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. Any redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(2) and (3) (Deleted by amendment, L. 2008, p. 13, § 1, effective August 5, 2008.)

(4) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other defined benefits established by this part 4.

(5) (a) Effective October 1, 2008, and each year thereafter, any redetermination of benefits made pursuant to subsection (1) of this section shall be determined by the board in its discretion as a fiduciary of the statewide defined benefit plan after considering the funding level of the plan, the cost of such increase, whether the increase creates an adverse actuarial impact on the plan's ability to fund future benefits, and any other factors the board deems appropriate. The redetermined benefits shall not exceed the greater of:

(I) One hundred three percent of the benefits paid for the prior twelve-month period; or

(II) The benefits paid during the prior twelve-month period multiplied by a fraction using the consumer price index for the immediately preceding calendar year as the numerator and the consumer price index for the calendar year prior to the immediately preceding calendar year as the denominator.

(b) As used in subparagraph (II) of paragraph (a) of this subsection (5), the term "consumer price index" means the national consumer price index for urban wage earners and clerical workers prepared by the United States department of labor.

**31-31-408. Modification of state plan by the board.** (1) Notwithstanding any other provision of this part 4, and in addition to the authority granted in part 2 of this article, the board may modify the pension benefits and the age and service requirements for pension benefits set forth in this part 4 with respect to the members of the statewide defined benefit plan if:

(a) The board determines that such modification will maintain or enhance the actuarial soundness, as specified in section 31-31-102 (1), of the plan;

(b) The modification does not require an increase in the employer and member contribution rates established as of January 1, 1980, pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section;

(c) The modification does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(d) The modification is approved by sixty-five percent of the active members of the plan who vote in the election proposing the modification;

(e) The modification is approved by more than fifty percent of the employers having active members covered by the plan who vote in the election proposing the modification, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes; and

(f) The modification does not adversely affect the pension benefits of retired members.

(1.5) (a) Notwithstanding any other provision of this part 4, the board may increase the member contribution rate above the rate established pursuant to section 31-31-402 with respect to the members of the statewide defined benefit plan if the increase:

(I) Does not require an increase in the employer contribution rate established pursuant to section 31-31-402;

(II) Does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(III) Is approved by sixty -five percent of the active members of the plan who vote in the election proposing an increase in the member contribution rate; and

(IV) Is approved by more than fifty percent of the employers having active members covered by the plan who vote in the election proposing an increase in the member contribution rate, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes.

(b) The increase in the member contribution rate established pursuant to paragraph (a) of this subsection (1.5) shall be paid from a member's salary and otherwise be treated in the same manner specified in section 31-31-402 (I) for other member contributions for purposes of the federal "Internal Revenue Code of 1986", as amended. The increase in the member contribution rate shall not be subject to negotiation for payment by the employer.

(c) The board may eliminate an increase in the member contribution rate established pursuant to paragraph (a) of this subsection (1.5) so long as the requirements for an increase set forth in said paragraph (a) are met.

(2) In no event shall the board adopt a modification that reduces the statewide defined benefit plan's normal retirement age below that permitted by section 31-31-403 (I)(b).

(3) The board shall adopt rules setting forth the procedures for the member elections required by paragraph (d) of subsection (1) and subparagraph (III) of paragraph (a) of subsection (1.5) of this section. Each employer having members in the statewide defined benefit plan shall comply with the procedures established by the board and shall certify the results of any member election to the board as prescribed by the board's rules.

(4) A written copy of the language of any modifications to the statewide defined benefit plan or an increase in the member contribution rate adopted by the board pursuant to this section shall be kept and maintained by the board at its offices and be made available for copying and inspection by any interested party.

(5) If at any time the cost of any modification adopted by the board pursuant to subsection (1) of this section would require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section, the board shall revoke the modification as it applies to active members of the plan. The board may reinstitute the modification at a later date, in its discretion, if reinstituting the modification would not require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section.

### **31-31-409. Qualification requirements - internal revenue code. (Repealed)**

**31-31-410. Purchased or rolled-over service credit.** (1) A member may be granted service credit upon the qualified transfer of funds from an eligible pension plan for other public employment within the United States not covered by the plan, as may be allowed under rules

adopted by the board, subject to all of the following conditions:

- (a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;
- (b) The member provides documentation that the benefits in the eligible plan were earned based on public employment; and
- (c) The member transfers funds to the fire and police pension association at the time and in the manner prescribed by the board. The board shall award service credit to the member in an amount calculated by the board on an actuarially equivalent basis.

(1.5) A member may purchase service credit for other public employment within the United States not covered by the plan, as may be allowed under rules adopted by the board, subject to all of the following conditions:

- (a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;
- (b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received;
- (c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law; and
- (d) The member pays or transfers funds from an eligible account to the fire and police pension association, at the time and in the manner prescribed by the board, to pay for the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(2) A member may purchase up to five years of service credit for periods of active duty in the uniformed services of the United States, subject to all of the following conditions:

- (a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan;
- (b) The member provides documentation of the dates of service in the uniformed services of the United States and that the member was honorably discharged from such service;
- (c) The member provides certification from the employer that the service is not intervening service covered by the federal "Uniformed Services Employment and Reemployment Rights Act of 1994", chapter 43 of title 38, U.S.C., as amended;
- (d) The member verifies that the member will not receive a benefit from any retirement plan covering such service and that the service credit to be purchased has not vested with that plan, except to the extent otherwise required by federal law; and
- (e) The member pays to the fire and police pension association, at the time and in the manner prescribed by the board, the cost of the service credit purchased, such cost to be calculated by the board on an actuarially equivalent basis.

(2.4) A member may be granted up to five years of service credit upon the qualified transfer of funds from an eligible pension plan, for employment with any private employer in the United States, as may be allowed under the rules adopted by the board, subject to all of the following conditions:

- (a) The member has at least five years of continuous service credit with the same employer covered by the statewide defined benefit plan;
- (b) The member transfers funds to the fire and police pension association at the time and in the manner prescribed by the board. The board shall award service credit to the member in an amount calculated by the board on an actuarially equivalent basis.
- (c) A member may be awarded or purchase service credit pursuant to this subsection (2.4) and subsection (2.5) of this section in an amount that, when combined, does not exceed five years.

(2.5) A member may purchase up to five years of service credit for employment with any private employer in the United States, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least five years of continuous service credit with the same employer covered by the statewide defined benefit plan;

(b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received;

(c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law; and

(d) The member pays or transfers funds from an eligible account to the fire and police pension association, at the time and in the manner prescribed by the board, to pay for the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(3) (Deleted by amendment, L.2015.)

**31-31-411. Return to work by participating member after retirement - rules.** (1) The board may, in its discretion, adopt rules suspending the benefits of a member who participates in the defined benefit system, separates from service, elects a retirement, and subsequently returns to work with an employer who participates in the defined benefit system. Such rules shall indicate whether the member shall earn additional service credit as determined by the plan in which the subsequent employer participates and whether the benefit distribution shall resume at such time as the member subsequently separates from service.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules that allow a member who has reached normal retirement age and who has separated from service, elected a retirement under the defined benefit system, and subsequently returned to work with an employer who provides benefits under the defined benefit system to:

(a) Continue receiving distribution of the member's retirement benefits; and

(b) Earn additional retirement benefits in an alternate money purchase plan.

(3) Prior to the adoption of any rules promulgated pursuant to subsection (2) of this section, the board shall make a finding that such rules are in compliance with section 31-31-204 (3), and that there will be no adverse actuarial impact to the defined benefit system as a result of the implementation of such rules.

## PARTS STATEWIDE MONEY PURCHASE PLAN

**31-31-501. Withdrawal into statewide money purchase plan.** (1) Any employer may withdraw from its participation in the statewide defined benefit plan established by part 4 of this article for the sole purpose of electing participation in the statewide money purchase plan created pursuant to the authority granted in section 31-31-502.

(2) (a) The employer may initiate withdrawal from the statewide defined benefit plan by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (2) no less than nine months prior to the effective date of withdrawal unless a shorter waiting period is approved by the board. The effective date of withdrawal shall be the first day of the month immediately following the month in which the waiting period expires.

(b) The employer's withdrawal resolution shall be adopted by the governing body of the employer and shall state the employer's intent to withdraw from participation in the statewide defined benefit plan for the purpose of electing participation in the statewide money purchase

plan.

(c) Any withdrawal shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the statewide defined benefit plan at the time of the election and who vote in the election proposing the withdrawal.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval provided for in paragraph (c) of this subsection (2).

(e) All withdrawals from the statewide defined benefit plan shall comply with the requirements set forth in this section, and, except as otherwise provided in this section, all withdrawals meeting such requirements shall be approved by the board. Withdrawal requests that do not meet the requirements of this section shall not be approved by the board.

(3) The rights of benefit recipients and the vested rights of inactive members shall not be impaired or reduced in any manner as a result of the withdrawal of an employer as provided in this section.

(4) (a) (I) The board shall determine the amount of reserves required as of the effective date of withdrawal to maintain current benefits payable by the association to benefit recipients and to preserve the vested rights of inactive members. The amount of reserves shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the statewide defined benefit plan. Any such actuarial report shall also certify that the employer's withdrawal shall not have an adverse financial impact on the actuarial soundness of the new hire benefits account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal will not have an adverse financial impact on the actuarial soundness of the new hire benefits account, the board shall transfer such employer's share of the employer contribution reserve in the new hire benefits account, as determined by the actuary, and all member contributions for the employer's active members to a short-term investment account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal shall have an adverse financial impact on the actuarial soundness of the new hire benefits account, the employer shall not be permitted to withdraw.

(II) At least sixty days prior to the effective date of the withdrawal, the actuarial reports shall be updated and appropriate adjustments made to the amount of reserves transferred by the board to the short-term investment account on behalf of the employer if an update is required pursuant to rules adopted by the board. Within thirty days after the receipt of such updated reports, the withdrawal may be terminated by either:

(A) The employer filing with the board a subsequent resolution revoking the employer's resolution of intent to withdraw; or

(B) More than thirty-five percent of the employer's active members who are eligible to vote filing with the board ballots indicating that they no longer wish to withdraw.

(III) If a resolution or a sufficient number of ballots is timely filed with the board pursuant to subparagraph (II) of this paragraph (a), the withdrawal shall be terminated, and the board shall return to the new hire benefits account any amounts transferred to the short-term investment account pursuant to subparagraph (I) of this paragraph (a). If no resolution or an insufficient number of ballots is timely filed, the withdrawal shall proceed in accordance with the provisions of this section.

(IV) The board shall prescribe the form of the ballot to be submitted by members indicating that they no longer wish to withdraw and any other rules necessary for the implementation of this subsection (4).

(b) On the effective date of withdrawal, the actuarial reports prepared pursuant to the provisions of paragraph (a) of this subsection (4) shall be updated to finalize the amount of

reserves required for the purposes specified in paragraph (a) of this subsection (4).

(c) Expenses incurred by the board for the actuarial reports prepared as a result of an application for withdrawal shall be paid by the employer making such application.

(d) The board shall provide any information contained in such actuarial reports upon request of the employer making the application for withdrawal.

(5) (a) In the event that the amount of the reserves required pursuant to the provisions of subsection (4) of this section exceeds the amount of the employer's share of the employer contribution reserve in the new hire benefits account as calculated by the actuary, the employer shall make an additional payment no later than ten working days after the effective date of withdrawal in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.

(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.

(c) The payments required by this section are subject to interest if not submitted when due.

(6) (a) Members who are not vested under the statewide defined benefit plan and who are employed by an employer who has withdrawn from the statewide defined benefit plan shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(b) (I) Members who are vested under the statewide defined benefit plan and who are employed by an employer who has filed a resolution of intent to withdraw from the statewide defined benefit plan may elect that, if the withdrawal becomes effective, their contributions remain with the statewide defined benefit plan by giving written notice to the association no later than the date established for completion of the member election provided in paragraph (c) of subsection (2) of this section.

(II) Members who have made such an election shall become inactive statewide defined benefit plan members entitled to vested benefits upon termination and attainment of vested retirement age.

(III) Members who have made such an election shall not be entitled to withdraw any amounts from their separate retirement account until they have terminated their current employment.

(IV) If members who have made such an election die or become disabled prior to termination of employment, neither they nor their survivors shall be eligible for benefits under the statewide defined benefit plan, but rather they shall be limited to those benefits provided in sections 31-31-803, 31-31-807, and 31-31-807.5.

(c) Members who do not elect to leave their contributions with the statewide defined benefit plan pursuant to paragraph (b) of this subsection (6) shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(7) The provisions of section 31-31-404 (1)(b) that relate to the purchase of service credit forfeited by the refund of member contributions shall not apply to members who are employees of an employer that has withdrawn from the statewide defined benefit plan. Such



service credit forfeited by such withdrawal may be purchased pursuant to the provisions of section 31-31-403 (7).

**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 31-31-204 (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.

(b) The plan document created by the board pursuant to subsection (1) of this section shall govern the calculation and allocation of earnings and losses under the various investment alternatives which the board 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 the board's administration and management of the fund created pursuant to this section.

(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 provisions of section 31-31-303.

(3) Each member's member contributions transferred to the fund pursuant to section 31-31-501 (5)(b) shall be allocated to the member's separate account within the fund. In addition, each member's separate account will be credited with a portion of any excess employer reserve that is transferred to the fund, such amount to be calculated by multiplying the excess employer reserve times the proportion that the member's transferred member contributions bears to the total member contributions transferred.

(4) (a) Except as provided in paragraph (b) of this subsection (4), upon the effective date of an employer's withdrawal from the statewide defined benefit plan and election to participate in the statewide money purchase plan, each member covered by the statewide money purchase plan shall pay into the fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid such member. Except as provided in paragraph (b) of this subsection (4), for each such member, the employer shall pay into the fund eight percent of the salary paid to such member. All such payments shall be made by one voucher for the aggregate amount and shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the fund. Late payments are subject to the penalty set forth in section 31-31-402 (4).

(b) (I) Upon the request of an employer, the board shall permit a higher mandatory employer contribution rate, mandatory employee contribution rate, or both, than is set forth in subsection (4)(a) of this section if the board determines that:

(A) A local resolution or ordinance setting forth the higher mandatory contribution rate or rates was enacted and is in effect; and

(B) An employee election was conducted and the higher mandatory contribution rate or rates was approved by sixty-five percent of the employer's active members of the plan who vote

in the election proposing the higher rate.

(II) Any active member and any employer may make voluntary contributions to the plan by payroll deduction. Voluntary member contributions are not subject to the employer pickup provisions of section 414 (h) of the federal "Internal Revenue Code of 1986", as amended.

(III) In no event shall increased contributions resulting from a higher contribution rate or rates cause a member to exceed the limit on annual additions under the federal "Internal Revenue Code of 1986", as amended, as applicable to government plans.

(5) The board may amend the pension benefits provided under the statewide money purchase plan document created pursuant to subsection (1) of this section only upon the approval of at least sixty-five percent of the active members of the plan who vote in the election proposing the plan amendment and more than fifty percent of the employers who vote in the election proposing the plan amendment and who have active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes; and except that the board may amend the plan document, without further approval, as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer benefits under the plan.

(6) (a) Any employer who has established a local money purchase plan pursuant to part 6 of this article or article 30.5 may apply to the board to cover the members of its local money purchase plan under the statewide money purchase plan. An application may be initiated by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (6) no less than six months prior to the proposed effective date of coverage under the statewide money purchase plan, unless a shorter waiting period is approved by the board. The effective date of coverage shall be the first day of the month following the waiting period.

(b) The employer's resolution applying for coverage under the statewide money purchase plan shall be adopted by the governing body of the employer and shall state the employer's intent to cover the members of its local money purchase plan under the statewide money purchase plan.

(c) Any application for coverage under the statewide money purchase plan shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the local money purchase plan at the time of the application and who vote in the election proposing the coverage under the statewide money purchase plan.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval described in paragraph (c) of this subsection (6). The board shall also promulgate rules relating to standards for granting an employer's application for participation in the statewide money purchase plan and for the submission of information to the board by the employer.

(e) An application for coverage under the statewide money purchase plan shall not be complete until the employer certifies to the board that:

(I) The employer's local money purchase plan meets the qualification requirements of section 401 (a) of the "Internal Revenue Code of 1986" that are applicable to governmental plans;

(II) In connection with the employer's resolution pursuant to paragraph (b) of this subsection (6), the employer's governing body has adopted a resolution for complete or partial termination of the local money purchase plan in accordance with the terms of that plan and that:

(A) The termination resolution does not adversely affect the qualified status of the local money purchase plan; and

(B) The rights of all participants in the local money purchase plan who are affected by the termination to benefits accrued to the date of termination are nonforfeitable;

(III) All active and retired fire and police participants in the local money purchase plan

will become participants in the statewide money purchase plan;

(IV) As directed by the board, the employer will transfer or cause to be transferred to the statewide money purchase plan all assets of the local money purchase plan that are attributable to the accrued benefits of the transferred participants;

(V) All employer and employee contributions required to be made to the local money purchase plan as of the date of termination have been paid;

(VI) Participants in the local money purchase plan will not incur a reduction in their respective accrued benefits, determined as of the date of transfer, as a result of their transfer to the statewide money purchase plan; and

(VII) The employer agrees to participate in the statewide money purchase plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

## PART6

### WITHDRAWN LOCAL ALTERNATIVE PENSION PLAN

#### **31-31-601. Withdrawn local alternative pension plan - creation - administration.**

(1) (a) Any employer may withdraw from the statewide defined benefit plan, and any employer may subsequently reenter the statewide defined benefit plan, by filing with the board a resolution adopted by the employer pursuant to paragraph (c) of this subsection (1), no less than twelve months prior to the effective date of withdrawal or reentry unless a shorter waiting period is approved by the board. The effective date of withdrawal or reentry shall be January 1 of the year following the waiting period, but no withdrawal or reentry may become effective after January 1, 1985, except a withdrawal to establish a money purchase plan. No withdrawal to establish a money purchase plan may become effective after January 1, 1988, except as provided pursuant to section 31-31-501.

(b) An employer that withdraws from the statewide defined benefit plan prior to January 2, 1988, as provided in this subsection (1) shall establish and maintain a locally administered and financed alternative pension plan subject to the following:

(I) If the plan is a defined benefit plan, in whole or part, such plan shall be financed by contributions determined by the board on the basis of the entry age-normal cost method and shall include the payment required to amortize the unfunded accrued liability over forty years from January 1, 1979; and

(II) The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections 31-31-803, 31-31-807, and 31-31-807.5 in lieu of any other defined disability and preretirement death benefits.

(c) Any reentry of both the withdrawal and the alternative pension plan, together with any amendments thereto, shall be approved by at least sixty-five percent of all active members who vote in the election proposing the reentry, withdrawal, or amendment. No amendment of an alternative pension plan may be adopted that would adversely affect the pension benefits of retired members. Notwithstanding any other provision of this subsection (1), however, an alternative pension plan, with the approval of the employer and sixty-five percent of the active members of the plan who vote in the election proposing the amendment, may be amended so as to change the nature of the plan from a defined benefit plan to a money purchase plan or from a money purchase plan to a defined benefit plan.

(d) This subsection (1) shall not apply to any employer first established after January 1, 1980.

(2) (a) Within six months from the effective date of withdrawal, the association shall

refund to the employer all employer and member contributions in its custody, together with the net earnings of such funds. For the purposes of this subsection (2), "net earnings" means actual earnings, less actual administrative expenses and expenses connected with the withdrawal. The determination of net earnings shall be made by the board.

(b) The refunded moneys shall be used only as contributions to the alternative pension plan.

(c) Upon the effective date of withdrawal, the employer is liable for the payment of all benefits then vested under the provisions of section 31-31-403.

(d) The provisions of this subsection (2) apply to all employers whose withdrawals are effective on or after January 1, 1981.

**31-31-602. Withdrawn local alternative pension plans - investment authority.**

(1) Except as provided in subsection (2) of this section, any locally administered and financed alternative pension plan fund established pursuant to this part 6 may be managed and invested by the trustees of such plan pursuant to 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. Such investments shall be audited at least biennially.

(2) The trustees of a locally administered and financed alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

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

(b) The trustees shall allow the participant to change investments at least once each calendar quarter; and

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

**PART 7**

**AFFILIATION OF PLANS WITH THE ASSOCIATION**

**31-31-701. Affiliation by old hire pension plans.** (1) Any employer may elect affiliation with the association relating to an old hire fire or police pension plan that it has established pursuant to article 30.5 of this title by filing with the board a resolution approved as to form by the fire and police pension association and adopted by the employer. The effective date of affiliation must be mutually agreed upon by the employer and the association.

(2) (Deleted by amendment, L. 2014.)

(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 subsection (6) of this section. The amount of the transfer must equal 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 from the assets of the plan.

(4) An eligible employer may request of the board, prior to filing a resolution of affiliation, an estimate of the employer's contribution rate necessary to comply with the contribution requirements established by subsection (5) of this section.

(5) An employer that affiliates pursuant to this section shall annually contribute an amount approved by the board, upon advice of its actuary, to pay the normal cost plus amortize

the unfunded past service liability attributed to old hire members hired prior to April 8, 1978, over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

(6) There is hereby created the old hire plan members' benefit trust fund that consists 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.

(7) (a) The fire and police pension association has the following responsibilities for affiliated plans:

- (I) Investing the assets of the plan, including determining the allocation of assets;
- (II) Collecting and accounting for contributions to the plan;
- (III) Distributing benefits provided under the plan as directed by the employer or its agent and issuing tax forms and filing tax reports regarding distributions;
- (IV) Conducting actuarial valuations and audits of the plan as are required by statute or by regulatory bodies;
- (V) Maintaining records and reporting the investments, assets, and benefits of the plan as required by statute or by regulatory bodies;
- (VI) Authorizing the payment of expenses of the plan from the assets of the plan. Any expenses that are incurred by the association which are directly related to the association's administration of the plan shall be paid from that plan's assets. Any expenses that are incurred by the association which are attributable to more than one plan administered by the association shall be allocated to each plan on an equitable basis as determined by the association. The allocated expense shall be paid from the assets of each plan.

(VII) Taking such other actions as may be allowed or required by statute.

(b) The local old hire pension board has the following responsibilities for an affiliated plan:

- (I) Establishing eligibility for and the amount of benefits to be received by members and beneficiaries of the plan, including but not limited to determination of base salaries, years of service under the plan, marital status, and continuing eligibility of members and survivors;
- (II) Maintaining records of the terms and provisions of the plan, as they may be adopted and amended;
- (III) Making determinations regarding benefit or cost-of-living adjustments and rank escalation, if any;
- (IV) Periodically certifying information required by the association to administer the plan benefits; and
- (V) Electing options for the allocation of assets, if such options are provided by the association.

### **31-31-702. Affiliation by local money purchase plans. (Repealed)**

### **31-31-703. Money purchase plan benefit trust fund - creation - management. (Repealed)**

**31-31-704. Optional affiliation by social security employers. (1)** Prior to January 1, 2007, and notwithstanding the exemption provided in section 31-31-401 (1)(a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees whose duties are directly involved with the provision of law enforcement or fire protection, as certified by the county under the federal "Social Security Act", as amended, may have elected affiliation with the association, either as to coverage under the

statewide death and disability plan or as to retirement under the statewide defined benefit plan, or as to both, by filing with the board a resolution of the governing body of such employer, but any such affiliation shall either exclude past service credit or include past service credit funded by contribution levels established by the board.

(1.5) to (4) (Deleted by amendment, L. 2012.)

(5) Benefits provided pursuant to the statewide defined benefit and statewide death and disability plans established by this article to members of employers that have affiliated pursuant to this section prior to January 1, 2007, shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(6) to (10) (Deleted by amendment, L. 2012.)

**31-31-704.5. Entry into the social security supplemental plan.** (1) (a) Notwithstanding the exemption provided in section 31-31-401 (1)(a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees under the federal "Social Security Act", as amended, whose duties are directly involved with the provision of law enforcement or fire protection as certified by the county may elect coverage under the social security supplemental plan established pursuant to section 31-31-704.6 by filing a resolution of affiliation with the board pursuant to subsection (2) of this section. Election of coverage under the plan shall be irrevocable.

(b) A county electing to affiliate with the social security supplemental plan shall make such election through the county's governing board. For purposes of administering to counties affiliated pursuant to this section, any county electing to affiliate shall be included in the definition of "employer", as defined in section 31-31-102 (3), and any covered employee of such county shall be included in the definition of "member", as defined in section 31-31-102 (4).

(2) The employer's resolution applying for coverage under the social security supplemental plan shall first be adopted by the governing body of the employer and shall state the employer's intent to cover its members under the plan.

(3) Any application for coverage under the social security supplemental plan shall be approved by at least sixty-five percent of all active members employed by the employer at the time of the application who vote in the election proposing the coverage.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the social security supplemental plan and for the submission of information to the board by the employer. The rules shall contain a provision specifying that an employer that opts to participate in the plan shall not be permitted to opt out of the plan at any later date.

(5) An application for coverage under the social security supplemental plan filed by an employer shall include the employer's certification to the board:

(a) That all active fire and law enforcement employees as certified by the employer will become participants in the social security supplemental plan and the election to participate in the plan is irrevocable; and

(b) That the employer agrees to participate in the social security supplemental plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

(6) An employer that participates in the social security supplemental plan established pursuant to section 31-31-704.6, shall not be prohibited from participating in other governmental

pension or benefit plans to the extent allowed under the federal "Internal Revenue Code of 1986", as amended.

(7) Nothing contained in this section shall affect the ability of an employer to terminate social security coverage or affect the procedures for such termination.

**31-31-704.6. Social security supplemental plan - creation - management.** (1) The board is authorized to develop, maintain, and amend a social security supplemental plan document, as a component of the defined benefit system, that offers a defined benefit 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 31-31-704.5.

(2) (a) Contributions and earnings of the social security supplemental plan shall be held in trust as part of the defined benefit system trust fund.

(b) The social security supplemental 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 establishment and payment of contributions, the allocation of contributions towards funding the defined benefit, amendment of the plan, and such other matters as may be necessary to the board's administration and management of the plan.

(3) Upon the effective date of coverage under the social security supplemental plan, each member covered by the plan shall pay one-half of the member contribution rate established in part 4 of this article into the defined benefit plan trust fund. The payment shall be made by the employer by deduction from the salary paid to the member. For each member, the employer shall pay one-half of the employer contribution rate established in part 4 of this article into the defined benefit plan trust fund. 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 the payments are due no later than the tenth day of the month following the month the salary is paid to the member. The payments required by this section are subject to interest if not submitted when due.

(4) Each employer shall pay the employee contributions required for all salaries, and the contributions so paid 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 the code. The employer shall pay the employee contributions directly to the retirement association, instead of paying the amounts to employees, and the contributions shall be paid from the same funds that are used in paying salaries to the employees. The 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 the contributions directly instead of having them paid by the employer to the pension plan. Employee contributions so paid shall be treated for all purposes of this article, other than federal tax, in the same manner as employee contributions made before the date paid. 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.

(5) Benefits payable under the social security supplemental plan shall be equivalent to one half of the benefits paid under the statewide defined benefit plan.

**31-31-704.7. Participation in statewide death and disability plan.** (1) Any employer participating in the social security supplemental plan created pursuant to section 31-31-704.6 may also elect coverage under the statewide death and disability plan by filing with the board a resolution to that effect from the governing body of such employer.

(2) Any social security employer that offers coverage under the statewide death and disability plan must also participate in the social security supplemental retirement plan created pursuant to section 31-31-70 4.6. Coverage under the statewide death and disability plan for any social security employer not participating in the social security supplemental retirement plan may be terminated by the board on or after January 1, 2017.

**31- 31-705. Affiliation by volunteer pension plans.** (1) The board is authorized to make affiliation agreements with governing bodies that provide pension plans for volunteer firefighters to administer such plans and manage the funds of such plans for investment. The fire and police pension association may require periodic renewal of the agreement.

(2) The fire and police pension association has the following responsibilities in connection with a volunteer firefighter pension plan that has an agreement with the association pursuant to subsection (1) of this section:

- (a) Investing the assets of the plan, including determining the allocation of assets;
- (b) Collecting and accounting for contributions to the plan;
- (c) Distributing benefits provided under the plan as directed by the governing body or its agent and issuing tax forms and filing tax reports regarding distributions;
- (d) Conducting actuarial valuations and financial audits of the plan on at least a biannual basis or as required by regulatory bodies or by law;
- (e) Maintaining records and reporting the investments, assets, and benefits of the plan as required by statute or by regulatory bodies;
- (t) Authorizing the payment of expenses of the plan from the assets of the plan. Any expenses that are incurred by the fire and police pension association that are directly related to the association's administration of the plan shall be paid from that plan's assets. Any expenses incurred by the association that are attributable to more than one plan administered by the association shall be allocated to each plan on an equitable basis as determined by the association. The allocated expense shall be paid from the assets of each plan.
- (g) Taking such other actions as may be allowed or required by statute.

(3) The governing body of a volunteer pension plan or its local pension board has the following responsibilities when the plan is affiliated with the fire and police pension association pursuant to subsection (1) of this section:

- (a) Establishing eligibility for and the amount of benefits to be received by members and beneficiaries of the plan, including the determination of base benefits, years of service under the plan, marital status, and continuing eligibility of retirees and survivors;
- (b) Electing options for the allocation of assets, if such options are provided by the fire and police pension association;
- (c) Maintaining records of the terms and provisions of the plan as they may be adopted and amended;
- (d) Making determinations regarding benefit improvements, if any; and
- (e) Periodically certifying information required by the fire and police pension association to administer the plan benefits.

(4) A governing body that provides pension benefits for volunteer firefighters may terminate its affiliation with the fire and police pension association upon giving written notice to the association at least sixty days prior to the end of any quarter of a calendar year. The association may allow a shorter notice period. The association may terminate the affiliation of a volunteer plan upon sixty days written notice to the governing body for failure to fulfill its responsibilities to the plan or its failure to renew an affiliation agreement.



**31-31-706. Affiliation by exempt defined benefit pension plans.** (1) 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 manage such employer's exempt defined benefit pension plan fund for investment.

(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 defined benefit 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 defined benefit 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 defined benefit system. Notwithstanding any other requirement, an exempt defined benefit pension plan may be incorporated into the defined benefit system without the approval of the members of the exempt plan or the statewide plan.

(c) The board may require that employees hired by the local employer with the formerly exempt defined benefit pension plan after the date of incorporation pursuant to this subsection (2) be members of the statewide defined benefit plan pursuant to part 4 of this article.

**31-31-707. Multiple plan employers.** An employer with multiple plans may exercise its options of affiliation and withdrawal pursuant to this article on an individual plan basis.

**31-31-708. Optional affiliation by county sheriff.** Any county that does not cover, under the federal "Social Security Act", as amended, salaried employees whose duties are directly involved with the provision of law enforcement or fire protection as certified by the county may elect coverage under the statewide defined benefit plan established in part 4 of this article and the statewide death and disability plan established in part 8 of this article by filing a resolution of affiliation with the board. Election of coverage under the plan is irrevocable.

## PARTS

### DISABILITY AND SURVIVOR BENEFITS

**31-31-801. Definitions.** As used in this part 8, unless the context otherwise requires:

(1) "Assigned duties" means those specific tasks or jobs designated by the employer for a particular position within a job classification. The term does not include the duties of a member's rank or grade that the member is not actually required to regularly perform in the position which the member occupies.

(2) "Dependent child" means an unmarried child under the age of twenty-three and includes, if the board so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated that the child cannot provide for the child's own care. The term also includes a child who is conceived but unborn at the date of the member's death or the date of disability, whichever applies. Any applicable increase in benefits will occur upon birth.

(3) "Occupational disability" means a disability resulting in an incapacity to perform assigned duties and expected, with reasonable medical probability, to exist for at least one year.

(3.2) "Permanent occupational disability" means an occupational disability caused by a condition that is permanent or degenerative, and for which there is no prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(3.4) "Temporary occupational disability" means an occupational disability for which there is a prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(4) "Total disability" means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that may be expected to result in death or that has lasted or may be expected to last for a period of not less than twelve months.

**31-31-802. Coverage.** (1) Except as provided in section 31-31-803, any member hired before, on, or after April 7, 1978, is eligible for the benefits provided by this part 8, with the exception of the following:

(a) Any member whose employer covers them under the federal "Social Security Act" shall be exempt from the provisions of this part 8 except the provisions of section 31-31-202;

(b) Members whose employer had established an exempt defined benefit pension plan in accordance with part 8 of article 30.5 of this title, on January 1, 1980, unless an employer irrevocably elects not later than October 1, 1983, to be subject to the provisions of this part 8; and

(c) Members whose employer had established a money purchase plan on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title 31; except that members of a police or fire department of any such employer may elect, with the approval of sixty-five percent of all active members employed by the department who vote in the election proposing the coverage and with the consent of the members' employer, to be covered by the provisions of this part 8, but any member hired on or after the date determined by the board to be the effective date of affiliation for coverage under this part 8 shall be covered under said part and shall have no right of election. Upon election of such coverage, members shall complete a statewide standard health history form pursuant to section 31-31-810 (1)(c) and, for purposes of this part 8, shall be considered as if first employed as of the date the election is effective. The board shall establish procedures for obtaining the required member and employer approval for coverage under this part 8. Once a member has elected the coverage of this part 8, the member's election shall be irrevocable. No employer that elects coverage on or after July 1, 1996, under this part 8 pursuant to this subsection (1)(c) shall be permitted to withdraw from such coverage pursuant to subsection (2) of this section.

(d) Any member whose employer has affiliated with the public employees' retirement association for the purpose of administering retirement benefits for its members.

(2) (a) Any employer may withdraw the active members of its police or fire department from coverage under the disability and survivor benefit provisions of this part 8 in order to establish its own exempt disability and survivor benefit program. Such withdrawal must be approved by at least sixty-five percent of all active members employed by the department, but if the members do not so approve, the employer may request approval of the withdrawal by the board. The board shall approve the request only if the proposed alternative program will provide disability and survivor benefits which are at least the actuarial equivalent of benefits provided under this part 8, as determined by an actuary appointed by the board. In making its determination, the actuary shall follow the association's standards for actuarial equivalency and shall include a review of the income tax consequences of the benefits offered. The cost of an actuarial review shall be paid by the employer and the employer will provide the information

requested by the actuary. In the event the employer proposes the use of a private insurance company to provide the alternative program, the company shall have a minimum rating from a recognized rating agency as prescribed by rules of the board.

(b) An employer requesting to withdraw as provided in this subsection (2) must file a resolution of intent to withdraw with the board no later than December 31, 1999. No withdrawal will be permitted to take effect after December 31, 2001.

(c) An employer that withdraws pursuant to this subsection (2) shall establish and maintain a locally financed alternative disability and survivor benefit plan. Except for the one time payment specified in paragraph (e) of this subsection (2), the state shall not have any financial or other responsibility for a plan that has been withdrawn pursuant to this subsection (2).

(d) The board shall promulgate rules relating to the standards for disclosure of all ramifications of and procedures for obtaining the member approval of withdrawal provided for in paragraph (a) of this subsection (2).

(e) Within sixty days of the effective date of a withdrawal under this subsection (2), the association shall pay to the withdrawn employer its actuarially determined proportionate share of the state contribution made by the state treasurer on January 31, 1997, for funding of death and disability benefits pursuant to section 31-31-811 (3). The board shall promulgate rules for determining the calculation of a withdrawn employer's actuarially determined proportionate share of the state contribution. Such rules shall consider the number of members hired prior to January 1, 1997, who are being withdrawn, the number of members hired prior to January 1, 1997, who continue to be covered for death and disability benefits under this part 8, including those members and survivors already receiving benefits, and the cost of covering the withdrawn employer's members for the period prior to the withdrawal. Any money paid to a withdrawn employer pursuant to this paragraph (e) shall be applied to the funding of that employer's exempt disability and survivor benefit program created pursuant to paragraph (a) of this subsection (2).

(f) Once an employer has withdrawn under this subsection (2), reentry into the disability and survivor benefit plan provided by this part 8 shall be permitted only once, in accordance with procedures established by the board.

(3) If an employer that is otherwise required to enroll its members under the plan fails to properly enroll such members, neither the fire and police pension association nor the death and disability trust fund is obligated or liable for any purpose to any person or employer arising from such failure.

**31-31-803. Retirement for disability.** (1) (a) (I) Any member hired before, on, or after April 7, 1978, who becomes totally disabled, as defined in section 31-31-801 (4), shall be retired from active service for disability and shall be eligible to receive the disability benefit provided by this subsection (1) or section 31-31-806.5 if the member:

(A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(II) The normal annual disability benefit for total disability for a member who is retired pursuant to subparagraph (I) of this paragraph (a) shall be seventy percent of the annual base salary paid to the member immediately preceding retirement for disability.

(b) Notwithstanding subsection (5) of this section, a member eligible for the normal

annual disability benefit for total disability may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit provided under paragraph (a) of this subsection (1):

(I) Option 1. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced annual disability benefit payable to the member and, upon the member's death, one-half of such reduced annual disability benefit to be paid to the member's designated beneficiary for life; or

(III) Option 3. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's surviving spouse and dependent children, if any, until the death of the surviving spouse, the death of any adult dependent child found to be incapacitated by the board, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(c) A member shall be deemed to have elected option 3 specified in subparagraph (III) of paragraph (b) of this subsection (1) if the member is eligible for a benefit for total disability under this subsection (1), is survived by a spouse or dependent child, and dies before making an election allowed under paragraph (b) of this subsection (1).

(d) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 188, § 2, effective March 25, 2009.)

(2) (a) A member who becomes occupationally disabled, as defined in section 31-31-801 (3), and is awarded a disability retirement prior to October 1, 2002, shall be retired from active service for such time as the occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2) shall be thirty percent of the annual base salary paid to the member immediately preceding retirement for disability. The benefit shall be increased by:

(I) Ten percent of the annual base salary if such member had a spouse at the time of becoming occupationally disabled, for so long as such spouse survives and is married to such member or is legally entitled to maintenance from such member in an amount equal to or greater than the amount of the increase in the benefit authorized by this subparagraph (I). If the amount of maintenance is less than the amount of the increase in the benefit authorized by this subparagraph (I), the benefit shall be increased by an amount equal to the amount of the maintenance; except that, for any member who is receiving the benefit authorized by this subparagraph (I) and who becomes legally required to pay maintenance prior to June 1, 2001, the amount of the benefit shall be ten percent of the annual base salary.

(II) Ten percent of the annual base salary if such member has any dependent children.

(III) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 188, § 2, effective March 25, 2009.)

(2.1) (a) A member who becomes permanently occupationally disabled, as defined in section 31-31-801 (3.2), shall be retired from active service for such time as the permanent

occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2.1) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for a permanent occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2.1) shall be fifty percent of the annual base salary being paid to the member immediately preceding retirement for disability.

(2.2) (a) A member who becomes temporarily occupationally disabled, as defined in section 31-31-801 (3.4), shall be retired from active service for such time as the temporary occupational disability continues for a period up to five years from the date of original disablement and shall be eligible to receive the disability benefit provided by this subsection (2.2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for a temporary occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2.2) shall be forty percent of the annual base salary being paid to the member immediately preceding retirement for disability.

(c) A member found to have a temporary occupational disability shall be subject to reexamination at such times and in such manner as the board may direct. Based on the recommendations of the physician panel, the board may require treatment, counseling, or therapy necessary to rehabilitate the member for return to work. At the time of reexamination, a member with a temporary disability shall provide evidence of compliance with the requirements established by the board. Benefits may be terminated by the board if the member fails to make rehabilitation efforts or if sufficient evidence of compliance and continuing disability is not provided to the board by the disabled member.

(d) A member who remains disabled may apply for an upgrade to permanent occupational disability or to total disability no later than six months prior to the end of five years from the date of original disablement. A member may be upgraded to a permanent occupational disability upon a finding by the board that the member meets the definition contained in section 31-31-801 (3.2) or to a total disability upon a finding by the board that the member meets the definition contained in section 31-31-801 (4). After the five-year period, benefits shall cease unless the member has been upgraded to either permanent occupational disability or total disability.

(e) A member whose disability benefits cease and who is not restored to active service or a member who elects to terminate his or her disability benefits shall be entitled to:

(I) Any vested benefit earned through his or her years of service prior to becoming disabled, payable at normal retirement age; or

(II) A refund of the member's contributions if no benefit is vested.

(3) (a) Notwithstanding any other provision of this section, no benefits shall be payable for any disability resulting in whole or in part from:

(I) Addiction to a controlled substance, the use of which is prohibited in article 18 of title 18, C.R.S.;

(II) Engaging in any act for which the member has been convicted of a felony; or

(III) An intentionally self-inflicted injury.

(b) For purposes of this subsection (3), "addiction" shall have the same meaning as set forth in part 8 of article 43 of title 12, C.R.S., and "controlled substance" shall have the same meaning as set forth in part 2 of article 80 of title 27, C.R.S.

(4) (a) (I) The determination of disability, whether occupational or total or whether on-duty, shall be made by the board, and the board shall consider reports to be made by a panel of three physicians who shall be appointed by the board upon the recommendation of a medical advisor with whom the board shall contract to provide advisory services and any other evidence the board deems relevant. The board shall not make a determination of disability unless two of the three physicians examining the applicant agree that a disability exists, but the board shall not be bound by the physicians' determination that a disability exists.

(IT) The board may consider any relevant evidence, including medical evidence, in making its determination regarding the origin of an applicant's disability and may request that the three physicians appointed by the board to examine the applicant also provide an opinion as to whether the applicant's injury was received while performing official duties or whether the applicant's occupational disease arose out of and in the course of the applicant's employment.

(III) In all cases under this subsection (4), section 31-31-805, or section 31-31-806.5, the board:

(A) May appoint hearing officers who are experienced in disability matters to conduct hearings and make findings and recommendations to the board on any issue relating to an applicant's disability;

(B) May adopt rules to establish a process for the administrative approval of disability applications, including standards of review for the applications, without board review; and

(C) Shall take any final action that constitutes a denial of a disability application or a reduction of a benefit.

(b) The board shall have the authority to investigate claims for disability retirement benefits at the time of initial application for benefits or subsequent to an award of benefits in order to determine eligibility or continuing eligibility for such benefits. The board shall appoint such investigators and other personnel as may be necessary to carry out this function. No investigation of a member who has been awarded a disability retirement shall be pursued if more than five years has elapsed since the date of the award.

(c) If the board determines that an applicant for retirement for disability is not disabled and the applicant is on sick leave, disability leave, or other type of leave of absence, is serving in a temporary position pending the determination of an application, or has been terminated from employment by the employer on the basis of an alleged disability, the employer shall reinstate the applicant to active service in the same position the applicant held prior to the commencement of such leave, assignment to a temporary position, or termination. If the employer refuses to reinstate the applicant to the applicant's prior position, the employer shall thereafter pay benefits to the applicant as if the applicant had been determined occupationally disabled by the board. The employer shall continue to pay such benefits until the applicant is reinstated to the applicant's prior position or declines an offer of reinstatement.

(5) (a) Any member who is awarded a total disability pension or a permanent occupational disability pension under this section or section 31-31-806.5 shall be eligible to receive the applicable normal disability pension provided in this section or to make an election for a reduced pension in the manner provided in this section.

(b) (I) If, after making the election of a normal disability pension, an unmarried member who receives a single life annuity at the time benefits commence and whose marital status changes as the result of marriage or remarriage shall be eligible to change the member's original election to take a reduced pension in the same manner as the original election authorized in paragraph (a) of this subsection (5) within one hundred eighty days of the date of the marriage or remarriage or January 1, 2008, whichever date is later. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or remarriage and prior to the member's death.

(II) The newly elected pension shall be recalculated as the actuarial equivalent of the remainder of the original pension for which the member would otherwise have been eligible if the member had not changed the original election.

(6) (a) The benefits payable under the statewide death and disability plan established in this part 8 shall be redetermined effective October 1 each year, and such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. The annual redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(b) (I) For the redetermination of occupational disability benefits payable pursuant to subsections (2), (2.1), and (2.2) of this section and section 31-31-806.5, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(II) For the redetermination of total disability benefits payable pursuant to subsection (I) of this section and section 31-31-806.5, the amount of the benefit on the effective date of the benefit shall be increased by three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(c) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other benefits established by this part 8.

(7) (a) The benefits payable under this section or section 31-31-806.5 to any member who is awarded an occupational disability prior to October 1, 2002, a total disability, or who is permanently occupationally disabled and who is also eligible to receive payments from the member's separate retirement account pursuant to section 31-31-406 or a similar provision in a local pension plan shall be reduced by an amount that is the actuarial equivalent of the benefits such member is eligible to receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(b) The benefits payable under this section or section 31-31-806.5 to any member who is awarded a total disability or who is permanently occupationally disabled and who is also eligible to receive a defined benefit from a statewide or local pension plan shall be reduced by the amount of the defined benefit.

(8) (a) A member eligible for a permanent occupational disability benefit under subsection (2.1) of this section or a permanent occupational disability benefit under section 31-31-806.5 may elect to receive one of the following disability benefit options in lieu of such disability benefit:

(I) Option 1. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's

designated beneficiary for life;

(II) Option 2. A reduced annual disability benefit payable to the member and, upon the member's death, one-half of such reduced annual disability benefit to be paid to the member's designated beneficiary for life; or

(III) Option 3. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's surviving spouse and dependent children, if any, until the death of the surviving spouse, the death of any adult dependent child found to be incapacitated by the board, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(b) A member shall be deemed to have elected option 3 specified in subparagraph (III) of paragraph (a) of this subsection (8) if the member is awarded a permanent occupational disability benefit under subsection (2.1) of this section or an occupational disability benefit under section 31-31-806 .5, is survived by a spouse or dependent child, and dies before making an election allowed under paragraph (a) of this subsection (8).

(9) After an election has been made of any of the options provided in paragraph (b) of subsection (1) or paragraph (a) of subsection (8) of this section, the election shall be irrevocable when the first disability benefit payment has been deposited or otherwise negotiated by the member or sixty days after the date of issuance of the check, whichever occurs first. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as a result of dissolution of marriage, death of a beneficiary, marriage, or remarriage or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this subsection (9) shall only apply to any final dissolution of marriage decree of a member entered on or after July 1, 1990.

(10) The joint disability benefit provided in this section shall be calculated as the actuarial equivalent of the normal annual disability benefit otherwise payable as provided in this section. In the event of a change in the beneficiary designation pursuant to subsection (9) of this section, the joint disability benefit payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original disability benefit based upon the member's initial beneficiary designation, if any.

(11) Repealed.

(12) Notwithstanding any limitation provided under article 80 of title 13, C.R.S., or any other applicable limitation, any application for disability must be filed by the member no later than one hundred eighty days after the last day on the payroll under which disability coverage under this section is provided.

(13) Within the application for disability benefits, a member may irrevocably elect not to be considered for reinstatement in the event that such member becomes eligible. Any such election shall terminate any obligation for reinstatement by the employer.

(14) Within the application for disability benefits, the employer shall:

(a) Make a statement indicating the reason for the member's separation from employment; and

(b) State any additional basis for disability under the death and disability program which the employer believes exists and include any documentation of relevant medical evidence. In the event the member's disability ceases to exist and the member becomes eligible to be restored to active service pursuant to section 31-31-805 (2), the member may be considered for a continuing disability by the board with regard to the additional basis provided by the employer. The consideration shall be conducted as if the member had filed an original application; except that limitation periods under section 31-31-805 (2) shall accrue from the date of the original disablement. If the member fails to be examined with regard to the additional basis, the member



shall be entitled to neither reinstatement nor continuing disability benefits.

### **31-31-803.5. Supplemental disability benefit program. (Repealed)**

#### **31-31-804. Reduction of disability benefits - definitions.**

(1) (a) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 191, § 4, effective March 25, 2009.)

(b) Any disability benefit provided pursuant to section 31-31-803 shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(c) Any member receiving an occupational disability benefit pursuant to section 31-31-803 or 31-31-806.5 and a social security benefit attributable to the member's quarters of social security coverage derived from employment as a member shall file an annual report concerning any social security income. If such member knowingly fails to file such report or files a fraudulent report, the disability benefit shall be discontinued.

(2) The benefits payable under section 31-31-803 or 31-31-806.5 to any member who is occupationally disabled prior to October 1, 2002, is permanently occupationally disabled, or who is totally disabled and who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article or article 30.5 of this title, including any department chief, who at the time of the award of such benefits has been exempted from the statewide defined benefit plan as permitted by section 31-31-401 (4), shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31-402 (1) and (2) as is required for benefits under section 31-31-403.

**31-31-805. Change in disability status - reexamination.** (1) At any time that a total disability, including an on-duty disability pursuant to section 31-31-806.5 (1), ceases to exist, based upon periodic reexamination as may be required by the board or based upon other evidence of ability to engage in substantial gainful activity, a member retired for such disability shall be declared permanently occupationally disabled, and the benefits provided by section 31-31-803 (1) or 31-31-806.5 (1) shall be reduced to the level provided in section 31-31-803 (2.1). The five-year limitation on investigations contained in section 31-31-803 (4)(b) shall not be applicable to the enforcement of this subsection (1).

(2) (a) At any time that an occupational disability, including an on-duty disability pursuant to section 31-31-806.5 (2), ceases to exist, based upon periodic reexamination as may be required by the board, a member retired for such disability may be restored to active service, and the benefits provided by section 31-31-803 or 31-31-806.5 (2) shall be discontinued. The member shall be restored to active service by the member's former employer if a vacancy exists in the same position the member held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position that may not be the same or of equal base pay to the member's former position.

(b) In addition, if the position to which the member will be restored requires, as a matter of state law, that the member maintain any type of state certification, the employer need not restore the member to such position if the member does not have the necessary certification or the member's certification has otherwise lapsed, expired, or been revoked. The employer, however, must afford the member an opportunity to attain certification, recertification, or

reactivation of an existing certification and must hold open any position that the member has agreed to accept pursuant to this subsection (2) for a period not to exceed one year. The board is directed to evaluate the impact of this requirement on employers of association members. The one-year period may extend beyond the five-year limitation set forth in paragraph (f) of this subsection (2), as long as the opening occurs within the five-year period. Disability benefits will be continued during any period, not to exceed one year, that the member is attempting to attain certification, recertification, or reactivation.

(c) If, at the time of a board finding that a member's occupational disability has ceased to exist, there is no opening in the same position the member held prior to retirement or one of equal base pay and there is no opening in a position of lesser base pay that the member agrees to accept, the board may order the member to proceed with any necessary training in order to attain, reinstate, or reactivate any certification required for the position from which the member retired. Disability benefits shall be continued during the training period up to a maximum of one year.

(d) If the member refuses to take the steps necessary to attain certification, recertification, or reactivation as required by paragraphs (b) and (c) of this subsection (2), or if at the end of the one-year limitation on attaining certification, recertification, or reactivation the member has not attained the necessary certification, recertification, or reactivation, disability benefits shall be discontinued, and the employer shall be relieved of further obligations pursuant to this subsection (2).

(e) If a member refuses to accept the same or a position of equal base pay, the benefits provided by section 31-31-803 shall be discontinued, but a member shall not lose benefits if there is no such vacancy or if the member refuses to accept a position that is not the same or of equal base pay to the member's former position, or if the employer refuses to restore the member to active service, except as provided pursuant to paragraph (b) of this subsection (2).

(f) If at least two members of the three-member physician panel examining the member agree that an occupational disability ceases to exist, if the board determines that such disability ceases to exist, and if no appropriate vacancy is available at that time, the member shall have the first right of refusal to fill such a vacancy if it occurs within five years from the date of original disablement. In the event an occupational disability is based on a medical determination of mental impairment or disease, all three members of the physician panel must agree, and the board must determine, that the occupational disability ceases to exist before the member is granted such first right of refusal.

(g) At least thirty days prior to making its determination, the board shall provide written notice to the employer and member of the agreement of the appropriate number of physicians and of the opportunity for a hearing, upon request of the employer or member, before the board. If a hearing is requested, the board shall provide the employer with copies of the medical reports prepared by the physician panel with respect to any examination or reexamination of the member. Neither the employer, the agents of the employer, including any physician retained to review such reports, nor the association shall release such reports to any other person except as otherwise allowed pursuant to section 24-72-204 (3)(a)(I), C.R.S.

(h) If the member refuses a vacancy in the same position the member held prior to retirement or in a position of equal base pay to the member's former position, the benefits provided by section 31-31-803 shall be discontinued. Except as otherwise provided pursuant to this subsection (2), if the employer refuses to allow a member who exercises such first right of refusal to fill the vacancy, the employer shall thereafter pay the cost of the benefits provided by section 31-31-803.

(i) When a temporary occupational disability ceases to exist and the member is restored

to active service with the member's employer, a transfer will be made from the statewide death and disability plan to the member's normal retirement plan in the amount of the monthly employer and employee contributions being made to the member's pension plan at the time of disability but not more than sixteen percent of the monthly base salary that the member was being paid at the time of disability retirement, multiplied by the number of months the member received temporary occupational disability benefits. The member will receive service credit for such transfer. A restored member of a local plan which has a contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate, made up by an additional contribution from the employer.

(2.5) When a member on temporary occupational disability satisfies the age and service requirements for a normal retirement, including the time the member was on temporary occupational disability, a transfer shall be made from the statewide death and disability plan to the member's normal retirement plan in the amount of the monthly employer and employee contributions being made to the member's pension plan at the time of disability but not more than sixteen percent of the monthly base salary that the member was being paid at the time of disability retirement, multiplied by the number of months the member received temporary occupational disability benefits. A member of a statewide or local retirement plan that has a mandatory contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate made up by an additional contribution from the employer. The member shall then be granted a normal retirement under the member's normal retirement plan and the temporary occupational disability benefits under the statewide death and disability plan shall terminate.

(3) Within five years from the date of a board finding of occupational disability pursuant to subsection (1) of this section or from the date of original disablement pursuant to section 31-31-803 (2), (2.1), or (2.2), a member retired for such disability may be declared totally disabled based upon periodic reexamination as ordered by the board in its discretion. If the member is declared totally disabled, the benefits provided by section 31-31-803 (2), (2.1), or (2.2) shall be increased to the level provided in section 31-31-803(I).

**31-31-806. Disqualification upon reemployment.** If, subsequent to disability benefits being awarded to a member pursuant to the provisions of section 31-31-803 or 31-31-806.5, but prior to a decision of the board that an occupational disability ceases to exist pursuant to section 31-31-805 (2), a member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time salaried position that normally involves working at least one thousand six hundred hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection as determined by the board, the benefits provided pursuant to section 31-31-803 shall be discontinued. Any application for retirement for disability made by the member after such appointment or reinstatement shall be treated in all respects as a new application. The five-year limitation on investigations contained in section 31-31-803 (4)(b) shall not be applicable to the enforcement of this section.

**31-31-806.5. Disability benefits - on-duty.** (I) If the board determines that a member, who is otherwise eligible to apply for disability retirement benefits under section 31-31-803, is required to terminate the member's regular employment due to a total disability, as defined in section 31-31-801 (4), that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the

member is eligible for a disability benefit in an amount provided for in section 31-31-803 (1).

(2) If the board determines that a member who is otherwise eligible to apply for disability retirement benefits under section 31-31-803 is required to terminate the member's regular employment due to an occupational disability, a temporary occupational disability, or a permanent occupational disability that, regardless of the type of occupational disability, is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section 31-31-803.

(3) The board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of employment and that establish procedures for making such determination.

(4) (a) The board shall promulgate rules that specify the method of reviewing existing disability retirement awards to determine whether a member's total disability or occupational disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment and that establish procedures for making such determination, including the appointment of hearing officers to conduct hearings.

(b) The determinations made by the board pursuant to this subsection (4) shall be made solely on the basis of the medical evidence that was previously submitted in connection with the member's application for disability retirement benefits and other relevant evidence that is contemporaneous in time with the termination of the member's employment.

(c) Any decision made by the board to change a member's existing disability retirement award to an on-duty disability retirement benefit under this section shall operate on a prospective basis from the date of the board's decision.

**31-31-807. Death of member - survivor benefits.** (1) (a) If a member dies while in active service or while on temporary occupational disability under section 31-31-803 (2.2) and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1) shall be paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension plan established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) One of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately

preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(2) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service shall terminate upon the death of the surviving spouse or upon the death or termination of dependency of such dependent child, as defined in section 31-31-801 (2), as applicable.

(3) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse shall receive twenty-five percent of the monthly base salary and the child shall receive the balance of the benefit pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse shall receive twenty-five percent of the monthly base salary and the children shall receive the balance of the benefit pursuant to subparagraph (III) of paragraph (b) of subsection (1) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this subsection (3), the surviving spouse shall receive the benefit pursuant to subparagraph (I) of paragraph (b) of subsection (1) of this section.

(4) In the event that a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subparagraph (III), (IV), or (V) of paragraph (b) of subsection (1) of this section and the dependent children reside in separate households from each other, the benefit shall be divided equally among the children.

(5) Any surviving spouse or dependent child receiving benefits pursuant to subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section prior to January 1, 2002, shall receive any increased benefit established in subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section on January 1, 2002, as applicable.

(6) (a) The survivor benefits payable under the statewide death and disability plan established in this part 8 shall be redetermined effective October 1 each year, and such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. The annual redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(b) For the redetermination of survivor benefits payable pursuant to this section, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(c) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other benefits established by this part 8.

**31-31-807.5. Death of member - line-of-duty - survivor benefits.** (1) (a) If a member

dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in either paragraph (b) or (c) of this subsection (1) shall be paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) Except as otherwise provided in paragraph (c) of this subsection (1), one of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to each member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(c) For survivors who become eligible for survivor benefits on or after October 15, 2002, one of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) The monthly benefit when there is a surviving spouse, either with or without children, shall be seventy percent of the monthly base salary being paid to such member immediately preceding death.

(II) The monthly benefit when there is no surviving spouse but a surviving child or children shall be:

(A) Seventy percent of the monthly base salary being paid to such member immediately prior to death if the child or children were living in the member's home at the time of the member's death; or

(B) Forty percent of the monthly base salary being paid to such member immediately prior to death for one child and fifteen percent for each additional child; except that the total

benefit received shall not be greater than seventy percent of the monthly base salary if the child or children were not living in the member's home at the time of the member's death.

(1.5) (a) On or after October 1, 2001, if a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1.5) shall be paid if the member:

(I) Is eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement;

(II) Is eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(III) Has reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) One of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1.5) are satisfied and if the survivor benefit currently received pursuant to subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5) is less than seventy percent of the monthly base salary being paid to the member immediately preceding death:

(I) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is a surviving spouse, either with or without children, shall be the difference between seventy percent of the monthly base salary paid to such member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5).

(II) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is no surviving spouse but there is a surviving child or children shall be:

(A) If the child or children were living in the member's home at the time of the member's death, the difference between seventy percent of the monthly base salary being paid to such member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5); or

(B) If the child or children were not living in the member's home at the time of the member's death, the sum of forty percent of the monthly base salary being paid to such member immediately prior to death for the first child plus fifteen percent for each additional child, the total of which shall not be greater than seventy percent of the monthly base salary less the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5).

(2) The board shall promulgate rules that specify standards and establish procedures for determining whether a member's death is the direct and proximate result of a personal injury sustained while performing official duties or an occupational disease arising out of and in the course of a member's employment and, in the case of a line-of-duty death, whether any of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", as amended, are applicable. The procedures established by the board may include the appointment of hearing officers to conduct hearings and make findings and recommendations to the board on

any issue. The board may adopt rules to establish a process for the administrative approval of a death benefit application, including standards of review of applications, without board review. The board shall take any final action that constitutes a denial of a disability application or a reduction of a benefit.

(3) (a) The board shall promulgate rules that specify the method of reviewing existing survivor benefit awards to:

(I) Determine whether a member's death was the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment;

(II) Determine, in the case of line-of-duty deaths occurring after December 31, 1996, whether any of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", as amended, are applicable;

(III) Establish procedures for making such determinations, including the appointment of hearing officers to conduct hearings.

(b) The determinations made by the board pursuant to this subsection (3) shall be made on the basis of the medical evidence that was previously submitted in connection with the application for survivor benefits and other relevant nontestimonial evidence.

(c) Any decision made by the board to change an existing survivor benefit award to an on-duty survivor benefit under this subsection (3) shall operate on a prospective basis from the date of the board's decision.

(4) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service shall terminate upon the death of the surviving spouse or upon the death or termination of dependency of the dependent child, as defined in section 31-31-801 (2), as applicable.

(5) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse shall receive two-thirds of the benefit and the child shall receive the balance of the benefit pursuant to subsection (1) or (1.5) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse shall receive fifty percent of the benefit and the children shall receive the balance of the benefit pursuant to subsection (1) or (1.5) of this section .

(c) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this subsection (5), the surviving spouse shall receive the entire benefit pursuant to subsection (1) or (1.5) of this section.

(6) In the event that a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subsection (1) or (1.5) of this section and the dependent children reside in separate households from each other, the children's benefit shall be divided equally among the children.

(7) (Deleted by amendment, L. 2002, p. 183, § 12, effective October 1, 2002.)

(8) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment and otherwise qualifies for benefits under subsection (1.5) of this section, but falls within one or more of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, said survivors shall:

(a) Receive benefits as allowed under section 31-31-807; or

(b) Receive benefits as allowed under the member's normal retirement plan.



**31-31-808. Reduction of survivor benefits.** (1) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member, who at the time of the member's death was a member of a money purchase plan established under this article or article 30.5 of this title, including any department chief, who at the time of the chief's death had been exempted from the statewide defined benefit plan as permitted by section 31-31-401 (4), shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31-402(1) and (2) as are required for benefits under section 31-31-403.

(2) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from the member's separate retirement account pursuant to section 31-31-406 shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(3) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from a statewide or local Colorado fire or police defined benefit pension plan shall be reduced by the amount of the defined benefit payments to be received.

**31-31-809 . Termination of benefits.** Except as otherwise provided in section 31-31-807 (2), any benefit provided in accordance with this part 8 to a surviving spouse shall terminate upon the death of the surviving spouse. Any benefit provided in accordance with section 31-31-803 (2) to a surviving spouse of a member who was occupationally disabled shall terminate upon the remarriage of the surviving spouse. Except as otherwise provided in section 31-31-807 (2), any benefit provided in accordance with this part 8 to a dependent child shall terminate upon the death of the dependent child or the termination of dependency of the dependent child.

**31-31-810. Employer liability - statewide standard health history form. (1)** (a) The employer of a member shall be liable for the total payment of benefits awarded under this part 8 if the board determines that:

(I) The member's occupational or total disability existed at the commencement of employment by the employer, or the occupational or total disability is the proximate consequence or result of a medical condition that existed at the commencement of employment by the employer, and such employment commenced on or after September 1, 1989;

(II) The employment was not ordered by a court; and

(III) The employer failed to require the member to complete and file the health form required by subsection (1)(c) of this section.

(b) The board shall enforce a claim for repayment against the employer by either increasing the contribution of the employer under section 31-31-402 (2) or by the commencement and prosecution of a civil action. The choice of remedies shall be in the sole discretion of the board.

(c) (I) Every newly hired member shall complete a health history on the statewide standard health history form, described in subsection (1)(c)(III) of this section.

(II) Every employer shall require completion of the statewide standard health history

form by the newly hired member within thirty days of the first date of employment. The completed form shall be filed with the fire and police pension association within sixty days from commencement of employment if filed by the employer after completion.

(III) The board shall adopt, pursuant to the authority granted it by section 31-31-202 (1)U), a statewide standard health history form. The board may revise the form from time to time and may adopt an electronic format for completing and filing the form.

(IV) Any member who fraudulently conceals any material fact concerning health history when completing the form may be disqualified from receiving an award of disability benefits under this section if the board determines that the condition concealed by the member proximately caused the total or occupational disability.

(V) Any member shall be ineligible for disability benefits with respect to an occupational or total disability that is the proximate consequence or result of a pre-existing and permanent medical condition.

(2) (a) The employer of a deceased member shall be liable for the total payment of benefits awarded under this part 8 if the board determines that:

(I) The member was occupationally or totally disabled at the time of the commencement of employment by the employer, or had a medical condition at the time of the commencement of employment by the employer, and such employment commenced on or after September 1, 1989;

(II) Such preexisting disability or medical condition was the proximate cause of the death of the member;

(III) The employment was not ordered by a court; and

(IV) The employer failed to require the member to complete and file the health form required by subsection (1)(c) of this section.

(b) The board shall enforce a claim for repayment against the employer either by increasing the contribution of the employer under section 31-31-402 (2) or by the commencement and prosecution of a civil action. The choice of remedies shall be in the sole discretion of the board.

(c) (I) The surviving spouse and dependent children of a member, whose employer filed the statewide standard health history form pursuant to paragraph (c) of subsection (1) of this section, may be disqualified from receiving an award of survivor benefits under this section if the deceased member fraudulently concealed any material fact concerning the member's health history when completing the form, and the board determines that the condition concealed by the member proximately caused the death of the member.

(II) The surviving spouse and dependent children of any member shall be ineligible for an award of survivor benefits in the event the member's death is the proximate consequence or result of a pre-existing and permanent medical condition.

**31-31-811. State funding of death and disability benefits.** (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 disability and death benefits trust fund created by 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.

(2) (a) The board shall submit an annual actuarial valuation report regarding the benefit

liabilities accrued under this part 8 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.

(b) (I) In addition to the actuarial valuation report required by paragraph (a) of this subsection (2), the board shall submit an annual actuarial valuation report regarding the disability and survivor benefit plan established by this part 8 to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly. No later than January 1 of each year, commencing January 1, 1993, and continuing through January 1, 1996, the board shall certify the amount of the state contribution to be made pursuant to subsection (3) of this section based on the latest actuarial valuation report regarding the disability and survivor benefit plan. In order to effectuate any transfer of funds required by section 31-31-802 (2)(e), the actuarial valuation report regarding the disability and survivor benefit plan shall include, at least through the year 2005, members who have withdrawn from the plan pursuant to section 31-31-802 (2).

(II) Following the submittal of the annual actuarial valuation report dated January 1, 1995, and continuing through the submittal of the report dated January 1, 1999, the board shall submit biennial actuarial valuation reports for the purposes described in subsection (4) of this section.

(III) (A) By September 30, 2001, and by each September 30 thereafter, the board shall submit an annual actuarial valuation report dated January 1 of the year in which the report is submitted for the purposes described in subsection (4) of this section.

(B) The general assembly reviewed the reporting requirements to the general assembly in sub-subparagraph (A) of this subparagraph (III) during the 2008 regular session and continued the requirements.

(3) On the first day of each month of each fiscal year commencing July 1, 1993, the state treasurer shall transfer one-twelfth of the amount certified by the board for that fiscal year for state funding of death and disability benefits pursuant to subsection (2) of this section, which amount shall in no case exceed seven million five hundred thousand dollars for such fiscal year, to the fund created by section 31-31-301 (1)(a) for allocation to the death and disability account in the fund; except that no such transfer shall be made after December 31, 1996. On January 31, 1997, the state treasurer shall transfer thirty-nine million dollars for state funding of death and disability benefits pursuant to this subsection (3) for members hired before January 1, 1997, to the fund created by section 31-31-301 (1)(a) for allocation to the death and disability account in the fund. No transfer of any amounts shall be made after January 31, 1997, for state funding of death and disability benefits. Moneys in the fund created by section 31-31-301 (1)(a) shall not revert to the general fund but shall be continuously available for the purposes provided in this part 8.

(4) For each member hired on or after January 1, 1997, who is eligible for the death and disability coverage provided by this part 8, a contribution shall be made to the death and disability account in the fund for the years 1997 and 1998 in an amount not greater than two and four tenths percent of the member's salary. Thereafter, the board, based on an annual actuarial valuation, may adjust the contribution rate every two years, but in no event may the adjustment for any two-year period exceed one-tenth of one percent of the member's salary. Any employer and any local pension board or authority shall provide such information as may be required by the board in order to complete the annual actuarial valuations. The actuary appointed by the board may utilize either the entry age-normal cost method or the aggregate cost method for purposes of the study required by this subsection (4). Any unfunded accrued liability shall be funded over a period not to exceed thirty years. The actuarial study shall not include any

consideration of a cost of living adjustment to benefits awarded to members who are occupationally disabled . Payments shall be made by the employer and are due no later than ten days following the date of payment of salary to the member. The payments required by this section are subject to interest if not submitted when due. Any decision regarding whether the contribution required by this subsection (4) shall be assessed against the employer or the member, or shall in some manner be assessed jointly against the employer and the member, will be made at the local level utilizing the usual process for determining employee benefits. If it is not already part of the usual process for determining employee benefits, the employer shall confer with the employees or their representative prior to making a determination on how the contribution will be assessed.

**31-31-812. Military leave of absence.** (1) Authorized leave of absence shall include leave for military service as allowed by the board. The board shall adopt rules regarding authorized leave of absence for military service, including, but not limited to:

- (a) Limits on the length of the term of the leave of absence;
- (b) Assessment of costs for coverage during the leave of absence; and
- (c) Any other matter that the board deems necessary for coverage under the statewide death and disability plan.

(2) The benefits payable to the member, the surviving spouse of the member, and the dependent children of the member pursuant to this part 8 shall be reduced by an amount that is the actuarial equivalent of any military benefit received as a result of the death or disability of a member while on authorized leave for military service whether the benefits are paid on a periodic basis or in a lump sum.

**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.

**31-31-814. Suspension and termination of benefits for noncompliance.** If a member refuses to submit to a medical examination required by the fire and police pension association and authorized by this part 8, fails to provide information necessary for the association to assess eligibility or continuing eligibility for benefits, or obstructs the association from receiving such necessary information, all rights to collect or to begin or maintain any proceeding for the collection of benefits pursuant to this part 8 shall be suspended, and all rights to benefits that accrue and become payable during the period of such refusal or obstruction shall be barred. If the member continues to refuse to submit to the examination or to provide the additional information after direction by the board or its hearing officer or in any way obstructs the same, the board shall terminate the benefit.

**31-31-815. Amendment of plan provisions.** The board may amend the provisions for disability and survivor benefits under this part 8 as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer the benefits under the plan.

PART9  
SUPPLEMENTAL PROGRAMS

**31-31-901. Deferred compensation plan - definition.** (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 or a multi-employer 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 investment of the trust fund through the fire and police members' self-directed investment fund pursuant to section 31-31-301 (4).

(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.

(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 (I) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer.

**31-31- 902. Group health insurance plans.** (1) The board may enter into contracts with carriers to provide group health insurance plans for the following individuals if they are receiving a benefit from another plan administered by the association:

(a) A retired member;

- (b) A retired volunteer firefighter;
- (c) A surviving spouse;
- (d) A dependent child; and
- (e) A recipient of a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(2) The administration and management of the group health insurance plans shall be the exclusive responsibility of the respective carrier. The cost of the plan, coverage, and eligibility requirements shall be as negotiated in the contract between the association and the carrier.

(3) The association shall pay no premium subsidy for group health insurance authorized to be offered by this section. Premiums shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries.

(4) For purposes of this section, the term "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance or a nonprofit hospital service plan or a nonprofit medical service plan incorporated as a nonprofit corporation pursuant to article 40 of title 7, C.R.S., or a health maintenance organization established pursuant to parts 1 and 4 of article 16 of title 10, C.R.S.

**31-31-903. Group life insurance plans.** (1) (a) The board may enter into contracts with carriers to provide group life insurance coverage to active members of paid pension plans administered by the association and, if they are receiving a benefit from another plan administered by the association, to the following individuals:

- (I) A retired member;
- (II) A retired volunteer firefighter;
- (III) A surviving spouse;
- (IV) A dependent child; and
- (V) An individual who is receiving a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(b) For purposes of this section, "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance.

(2) The administration and management of the group life insurance plan shall be the exclusive responsibility of the carrier. The terms and conditions of coverage shall be as negotiated in the contract between the association and the carrier. The board may change the terms of or discontinue the coverage if the board determines that such action is in the best interests of the members. Participating members shall be notified sixty days prior to the effective date of any such change or discontinuance.

(3) The association shall pay no premium subsidy for group life insurance authorized to be offered by this section. Premiums shall be deducted from the salaries of participating active members and submitted to the association with the employer's monthly contribution reports or shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries. Participating members who receive neither salaries nor benefits may arrange alternative methods of premium payment with the association.

(4) The named beneficiary shall be the beneficiary of life insurance obtained pursuant to the provisions of this section, unless the member or a court order names a different beneficiary for life insurance purposes. Life insurance obtained pursuant to the provisions of this section may be assigned by the member.

**31-31-904. Statewide health care defined benefit plan - definitions.** (1) The board may develop, maintain, and amend a statewide health care defined benefit plan, including a plan

document, that complies with the qualification requirements specified under the internal revenue code, as applicable to governmental plans. The purpose of such plan shall be to provide a defined benefit to assist in paying for the costs of health care for each retired eligible member.

(2) The board may conduct an election of all eligible members for the purpose of determining whether the eligible members want to participate in the statewide health care defined benefit plan created pursuant to subsection (1) of this section. If sixty-five percent of all eligible members vote in favor of participating in the plan, all eligible members shall be required to participate in such plan, except as provided in subsection (3) of this section.

(3) The board shall certify the results of the election held pursuant to subsection (2) of this section, including the vote total for the eligible members of each employer. The board shall mail a copy of the certification to each employer within ten days after the certification. If less than a majority of an employer's eligible members vote in favor of participating in the statewide health care defined benefit plan, the employer, on behalf of its eligible members, may elect not to participate in the plan. Such election by the employer must be made within ninety days after the certification of the election results by the board.

(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 defined benefit system trust fund.

(5) The board shall administer the statewide health care defined benefit plan on an actuarially sound basis. Neither the state nor any employer shall be liable for any unfunded accrued liability of the plan.

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

(a) "Eligible member" means each member who participates in a statewide retirement plan administered by the board pursuant to this title.

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

## PART 10 POLICE OFFICERS' AND FIREFIGHTERS' PENSION REFORM COMMISSION

**31-31-1001. Police officers' and firefighters' pension reform commission - creation - duties. (Repealed)**

**31-31-1002. Volunteer firefighter pension plans study. (Repealed)**

## PART 11 ALTERNATIVES FOR MONEY PURCHASE PLAN MEMBERS

**31-31-1101. Entry into the fire and police pension association defined benefit system.**

(1) Any employer who has established a local money purchase plan pursuant to part 6 of this article 31 or article 30.5 of this title 31 or has withdrawn into the statewide money purchase plan pursuant to part 5 of this article 31 may apply to the board to require all new employees hired on or after a date certain who meet the definition of member as defined in section 31-31-102 (4) to participate as a group in the defined benefit system in either the statewide defined benefit plan established in part 4 of this article 31 or the statewide hybrid plan established in section 31-31-1102. An application may be initiated by filing with the board a

resolution adopted by the governing body of the employer in accordance with the terms, process, certifications, and schedule established by the board.

(1.5) An employer who has elected participation pursuant to subsection (1) of this section may also apply to cover some or all of the existing members of its money purchase plan under the defined benefit system. An application may be initiated by filing with the board a resolution adopted by the governing body of the employer in accordance with the requirements, terms, process, certifications, and schedule established by the board.

(2) (Deleted by amendment, L. 2018.)

(3) Except as otherwise provided in subsection (3.5) of this section, any application for coverage under the defined benefit system pursuant to subsection (1.5) of this section shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the money purchase plan at the time of the application and who vote in the election proposing the coverage.

(3.5) (a) In lieu of an election to obtain the approval by at least sixty-five percent of all active members who vote in the election proposing the coverage as required by subsection (3) of this section, and when the local plan allows for the individual self-direction of each member's account, the employer may offer each active local plan member the option to discontinue participation in the local money purchase plan and to participate in the defined benefit system. The offer shall be extended to all active local plan members employed by the employer at the time of the offer.

(b) Nothing contained in subsection (3.5)(a) of this section shall be construed to waive or invalidate the requirement for an election of members that may be required by a local plan document, trust agreement, or labor agreement.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section or for allowing active members to join the defined benefit system pursuant to subsection (3.5) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the defined benefit system and for the submission of information to the board by the employer. Such rules shall contain a provision specifying that an employer that opts to participate in the defined benefit system shall not be permitted to opt out of the elected plan at any later date.

(5) and (6) (Deleted by amendment, L. 2018.)

(7) The board shall determine a continuing uniform rate of contribution for all members who are active on the effective date of coverage to fund the benefits payable by the fire and police pension association under the statewide defined benefit plan. The continuing rate of contribution shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the plan. Any actuarial report shall also certify, in accordance with accepted actuarial principals, that the employers' coverage shall not have an adverse financial impact on the actuarial soundness of the plan. Continuing contributions for each member who is active on the effective date of coverage shall be made at the rate established on said date until the member's retirement or termination. The board may periodically adjust the rate prior to the election of coverage by an employer based on certified actuarial reports prepared by the actuary for the plan.

**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 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.

(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 plan 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 of the statewide hybrid plan the board shall be subject to the provisions of section 31-31-303.

(3) Each member's member and employer contributions transferred to the statewide hybrid plan pursuant to section 31-31-1101 shall be allocated to the member's separate account within the 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 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. The payments required by this section are subject to interest if not submitted when due.

(b) (I) Upon the request of an employer, the board shall permit a higher mandatory employer contribution rate, mandatory employee contribution rate, or both, than is set forth in subsection (4)(a) of this section if the board determines that:

(A) A local resolution or ordinance setting forth the higher mandatory contribution rate or rates was enacted and is in effect; and

(B) An employee election was conducted and the higher mandatory contribution rate or rates was approved by sixty-five percent of the employer's active members of the plan who vote in the election proposing the coverage.

(II) Any active member and any employer may make voluntary contributions to the statewide hybrid plan by payroll deduction. Voluntary member contributions are not subject to the employer pickup provisions of section 414 (h) of the federal "Internal Revenue Code of 1986", as amended.

(III) In no event shall increased contributions resulting from a higher contribution rate or rates cause a member to exceed the limit on annual additions under the federal "Internal Revenue Code of 1986", as amended, that are applicable to government plans.

(5) Except with respect to amendments necessary to comply with state and federal law, including amendments adopted pursuant to section 31-31-204 (2.5), or amendments necessary to maintain the actuarial soundness of the statewide hybrid plan, the board may amend the plan document created pursuant to subsection (1) of this section only upon the approval of at least sixty-five percent of the active members of the plan and more than fifty percent of the employers having active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes.

### **31-31-1103. Entry into the statewide defined benefit plan. (Repealed)**

## **PART 12 ENSURING PROPER PAYMENTS**

**31-31-1201. Review of award of benefits and benefit payments.** (1) At any time, the board may review an award of benefits or a benefit payment under any benefit plan in the defined benefit system, the statewide money purchase plan, or the statewide death and disability plan for the purpose of determining whether there has been fraud, an overpayment, an error, or a mistake.

(2) At any time, the board may review a benefit payment under any benefit plan or compensation plan other than the plans identified in subsection (1) of this section that the board administers for the purpose of determining whether there has been an overpayment, an error, or a mistake.

(3) Based upon a preponderance of the evidence from the review authorized by this section, the board:

(a) May determine that a benefit payment be terminated, diminished, maintained, or increased;

(b) May order a member or beneficiary to repay any overpayments made on or after five years prior to the date of the first notice of overpayment issued by the fire and police pension association; or

(c) Shall order the termination of benefits and the repayment of any past benefits paid to a member or beneficiary where the board finds that the benefits were granted based on false representations or a willful failure to disclose a material fact.

(4) The board shall adopt rules establishing procedures for the review of benefits and payments. The board may delegate the review pursuant to the rules. Any rules established by the board shall provide that a member or beneficiary shall have the opportunity to appeal any adverse action to the board for a final determination.

(5) Any appeal of a final determination by the board shall be in accordance with rule 106 (a)(4) of the Colorado rules of civil procedure.

**31-31-1202. Collection of overpaid benefits.** (1) The board shall institute practices and procedures as it deems necessary to collect money due a plan administered by the fire and police pension association as determined in section 31-31-1201, including but not limited to withholding subsequent benefit payments to which the member or beneficiary is or becomes entitled, applying the amount withheld as an offset against the amount due, and referring an account to a collection agency or attorney for collection. If, after due notice, any member or beneficiary defaults in any repayment of overpaid benefits, the amount due may be collected by civil action, which shall include the right of attachment in the name of the association. The board may allow installment payments of amounts due based on equitable considerations.

(2) Reasonable fees for collection, including attorney fees, as determined by the fire and police pension association, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee.

(3) A certified copy of any final determination of the board ordering the repayment of overpayments pursuant to this article may be filed with the clerk of the district court of any judicial district in this state at any time after the period provided for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The fire and police pension association shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the association's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the association.

**31-31-1203. False statement - felony.** If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 30, 30.5, and 31 of this title, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.