



January 21, 2010

**SENATE BILL 10-021 – AMENDMENTS ANALYSIS**

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

2 **SECTION 1.** 31-30-1102 (9), Colorado Revised Statutes, is  
3 amended to read:

4 **31-30-1102. Definitions.** As used in this part 11, unless the  
5 context otherwise requires:

6 (9) (a) "Volunteer firefighter" means a firefighter who renders  
7 service to a fire department in a municipality, county, or district, who  
8 does not receive compensation as a firefighter, and who is not classified  
9 as an employee for purposes of the federal "Fair Labor Standards Act of  
10 1938", as amended, based on payments, fees, or benefits that the  
11 firefighter receives. "Volunteer firefighter" may include other  
12 designations or titles given to firefighters provided that the firefighter  
13 meets all of the requirements for being a volunteer firefighter in this part  
14 11.

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

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

19 ~~(II) Salary lost as a consequence of actual firefighting duties~~  
20 ~~causing the absence of the volunteer firefighter from normal employment;~~

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

22 (IV) Participation in or receipt of benefits upon termination of  
23 volunteer services to any district or municipality provided as part of an

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1 internal revenue code qualified volunteer service award plan established

2 for the benefit of volunteer firefighters;  
3 (V) Payments from federal moneys, either through the district or  
4 municipality or to the volunteer firefighter directly, for participation in a  
5 temporary emergency incident;  
6 (VI) Nominal fees or benefits paid on a per-call basis or as part of  
7 an annual merit or recognition award program or other incentive award  
8 program.

**REASON FOR AMENDMENT: In its September 17, 2007 Non-Administrator Opinion letter (FLSA2007-3NA), the US Department of Labor Wage and Hour Division made it clear that reimbursement for actual lost salary is compensation and results in the loss of volunteer status:**

**The City reimburses volunteer firefighters \$550 for income lost from regular employment for taking time off to attend the two-week refresher training course at a Fire School. As you have explained the facts, the purpose of this payment is specifically to compensate the firefighters for their lost days of paid work. Thus, the payment would appear to fail the threshold issue of volunteerism because the firefighters would be receiving compensation for their services rendered. See 29 U.S.C. § 203(e)(4)(A); 29 C.F.R. § 553.101(a) (A volunteer must perform “hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered.”). Accordingly, this payment as described would likely create an employment relationship under the FLSA.**

**A Non-Administrator Opinion Letter does not carry the same weight as an opinion letter issued by the Administrator of the Wage and Hour Division; however, it likely reflects the position of the US Department of Labor and any court that may consider the issue.**

9 **SECTION 2.** 31-30-1105 (1) (c), Colorado Revised Statutes, is  
10 amended to read:  
11 **31-30-1105. Board - fire protection district.** (1) In a fire  
12 protection district, the board must consist of the following members:  
13 (c) Two fire department members elected by the fire department  
14 members TWO INDIVIDUALS ELECTED FROM ONE OR MORE OF THE  
15 FOLLOWING GROUPS TO THE EXTENT SUCH GROUPS EXIST AT THE TIME OF  
16 ELECTION: FIRE DEPARTMENT MEMBERS, RETIRED FIRE DEPARTMENT  
17 MEMBERS, OR RETIRED FIRE DEPARTMENT MEMBERS RETURNED TO ACTIVE  
18 SERVICE PURSUANT TO SECTION 31-30-1132. ALL MEMBERS IN EACH  
19 GROUP EXISTING AT THE TIME OF ELECTION SHALL BE GIVEN THE  
20 OPPORTUNITY TO VOTE FOR THE TWO INDIVIDUALS. THE TWO INDIVIDUALS  
21 SHALL SERVE for two-year terms; except that, at the initial election, one  
22 member INDIVIDUAL shall be elected for two years and one member  
23 INDIVIDUAL for one year. In all subsequent elections, these members

24 INDIVIDUALS shall be elected for two years.

**REASON FOR THE AMENDMENT:** Under the Special District Act, retired volunteer firefighters and active retirees (CRS §31-30-1132) may be elected to serve on the Fire District Board. Under the Pension Fund Act, the five Fire District Board members also serve on the Pension Board of Trustees. So, it is common for retired volunteer firefighters (and some active retirees) to serve on the Pension Board because they are Fire District Board members. It makes no sense for the Pension Fund Act to prohibit what the Special District Act allows for five of the seven Pension Board members.

25 **SECTION 3.** 31-30-1113 (2), Colorado Revised Statutes, is  
26 amended to read:

27 **31-30-1113. Fund investments.** (2) Upon the board's direction,

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the treasurer of a municipality or district may 1 invest part of the fund  
2 available for investment, with or without one or more other volunteer  
3 firefighter pension funds, in a noninsured trust pension plan with a bank  
4 or trust company authorized to exercise trust powers in this state as a  
5 trustee. The trustee's investment of fund moneys is governed by article  
6 1.1 of title 15, C.R.S. ~~but the trustee shall at all times hold fixed-income~~  
7 ~~obligations having a book value or cost of not less than sixty percent of~~  
8 ~~the total contributions made to the trust less the amounts paid out.~~

#### **REASONS FOR AMENDMENT:**

- (1) **The non-FPPA paid firefighter and volunteer firefighter pension funds are governed by the prudent investor statute set forth in Article 1.1 of Title 15, C.R.S. There is no logical reason why an additional investment restriction is imposed of a non-FPPA Volunteer Pension Fund.**
- (2) **The deleted language is hopelessly vague, as it does not establish the period for which the calculation is to be performed – 1 year? 5 years? The life of the Pension Fund?**
- (3) **The formula is fundamentally flawed because it fails to account for interest earnings. Financial institutions rightfully consider "contributions" to include only payments into the Pension Fund by the Fire District and State matching contributions, not interest earned on the money in the Pension Fund. This can – and in at least one circumstance has - lead to the absurd result that a well-funded Pension Fund may be forced to maintain all of its funds in fixed-assets because the amount of contributions over the life of the Pension Fund are less than the total amounts paid out, because a significant**

portion of the Pension Fund monies have been generated by interest earnings over the life of the Pension Fund.

- (4) A Pension Fund that is forced to hold all or almost all of its investments in fixed assets will have a lower assumed rate of return on investments for purposes of determining the Fire District's annual contribution to maintain the Pension Fund's actuarial soundness. In at least one instance, a Fire District has been forced to contribute approximately \$100,000 in additional funds to its Pension Fund to maintain the "actuarial soundness" of the Pension Fund as a direct result of the lower assumed rate of return on investments.

9                   **SECTION 4.** 31-30-1119, Colorado Revised Statutes, is amended  
10   to read:

11                   **31-30-1119. Board report - municipality.** The board shall make  
12   a report to the governing body of the municipality or the board of  
13   directors of its district, whichever is applicable, on the condition of the  
14   fund. The board shall submit the report to the governing body or board  
15   of directors before the last meeting in February and the last meeting in  
16   August of each year.

**REASON FOR AMENDMENT:** As discussed above, under the Pension Fund Act, the Board of Trustees of a Pension Fund within a Fire District is comprised of the five members of the Fire District Board. As such, the Fire District Board is as fully aware of the status of the Pension Fund as the Board of Trustees. The reports are meaningless and a waste of time.