

## **IC 36-8-8**

### **Chapter 8. 1977 Police Officers' and Firefighters' Pension and Disability Fund**

#### **IC 36-8-8-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The addition of section 20 of this chapter by P.L.223-1986 applies only to fund members who die after March 10, 1986.

(2) The amendments made to section 10 of this chapter by P.L.232-1997 apply only to members of the 1977 fund who initially:

(A) become fifty-five (55) years of age; or

(B) retire;

after June 30, 1997.

(3) The amendments made to section 16 of this chapter by P.L.28-2008 apply only to benefits payable with respect to a member of the 1977 police officers' and firefighters' pension and disability fund who dies after June 30, 2008.

(4) The amendments made to sections 12 and 13.5 of this chapter by P.L.32-2009 and by P.L.34-2009 apply to a member of the 1977 police officers' and firefighters' pension and disability fund who:

(A) after June 30, 2009, receives a benefit based on a determination that the member has a Class 1 or Class 2 impairment, regardless of whether the determination was made before, on, or after June 30, 2009; and

(B) before July 1, 2009, has not had the member's disability benefit recalculated under section 13.5 of this chapter (as the section read before amendment by P.L.32-2009 and by P.L.34-2009).

*As added by P.L.220-2011, SEC.671.*

#### **IC 36-8-8-1**

##### **Application of chapter**

Sec. 1. This chapter applies to:

(1) full-time police officers hired or rehired after April 30, 1977, in all municipalities, or who converted their benefits under IC 19-1-17.8-7 (repealed September 1, 1981);

(2) full-time fully paid firefighters hired or rehired after April 30, 1977, or who converted their benefits under IC 19-1-36.5-7 (repealed September 1, 1981);

(3) a police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996;

(4) a park ranger who:

(A) completed at least the number of weeks of training at the Indiana law enforcement academy or a comparable law enforcement academy in another state that were required at

the time the park ranger attended the Indiana law enforcement academy or the law enforcement academy in another state;

(B) graduated from the Indiana law enforcement academy or a comparable law enforcement academy in another state; and

(C) is employed by the parks department of a city having a population of more than one hundred ten thousand (110,000) but less than one hundred fifty thousand (150,000);

(5) a full-time fully paid firefighter who is covered by this chapter before the effective date of consolidation and becomes a member of the fire department of a consolidated city under IC 36-3-1-6.1, provided that the firefighter's service as a member of the fire department of a consolidated city is considered active service under this chapter;

(6) except as otherwise provided, a full-time fully paid firefighter who is hired or rehired after the effective date of the consolidation by a consolidated fire department established under IC 36-3-1-6.1;

(7) a full-time police officer who is covered by this chapter before the effective date of consolidation and becomes a member of the consolidated law enforcement department as part of the consolidation under IC 36-3-1-5.1, provided that the officer's service as a member of the consolidated law enforcement department is considered active service under this chapter; and

(8) except as otherwise provided, a full-time police officer who is hired or rehired after the effective date of the consolidation by a consolidated law enforcement department established under IC 36-3-1-5.1;

except as provided by section 7 of this chapter.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.3-1990, SEC.132; P.L.236-1996, SEC.4; P.L.43-1997, SEC.6; P.L.22-1998, SEC.16; P.L.246-2001, SEC.16; P.L.227-2005, SEC.46; P.L.119-2012, SEC.218.*

#### **IC 36-8-8-1.5**

##### **"Electronic funds transfer"**

Sec. 1.5. As used in this chapter, "electronic funds transfer" has the meaning set forth in IC 4-8.1-2-7(f).

*As added by P.L.13-2011, SEC.15.*

#### **IC 36-8-8-2**

##### **"Employer"**

Sec. 2. As used in this chapter, "employer" means:

(1) a municipality that established a 1925 or 1953 fund or that participates in the 1977 fund under section 3 or 18 of this chapter;

(2) a unit that established a 1937 fund or that participates in the 1977 fund under section 3 or 18 of this chapter;

(3) a consolidated city that consolidated the fire departments of

units that:

(A) established a 1937 fund; or

(B) participated in the 1977 fund;

before the units' consolidation into the fire department of a consolidated city established by IC 36-3-1-6.1; or

(4) a consolidated city that establishes a consolidated law enforcement department under IC 36-3-1-5.1.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.227-2005, SEC.47.*

### **IC 36-8-8-2.1**

#### **"Local board"**

Sec. 2.1. (a) As used in this chapter, "local board" means the following:

(1) For a unit that established a 1925 fund for its police officers, the local board described in IC 36-8-6-2.

(2) For a unit that established a 1937 fund for its firefighters, the local board described in IC 36-8-7-3.

(3) For a consolidated city that established a 1953 fund for its police officers, the local board described in IC 36-8-7.5-2.

(4) For a unit, other than a consolidated city, that did not establish a 1925 fund for its police officers or a 1937 fund for its firefighters, the local board described in subsection (b) or (c).

(b) If a unit did not establish a 1925 fund for its police officers, a local board shall be composed in the same manner described in IC 36-8-6-2(b). However, if there is not a retired member of the department, no one shall be appointed to that position until such time as there is a retired member.

(c) If a unit did not establish a 1937 fund for its firefighters, a local board shall be composed in the same manner described in IC 36-8-7-3(b). However, if there is not a retired member of the department, no one shall be appointed to that position until such time as there is a retired member.

*As added by P.L.236-1996, SEC.5.*

### **IC 36-8-8-2.3**

#### **"System board"**

Sec. 2.3. As used in this chapter, "system board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

*As added by P.L.35-2012, SEC.113.*

### **IC 36-8-8-2.5**

#### **Qualification of 1977 fund under Internal Revenue Code**

Sec. 2.5. (a) As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The 1977 fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the 1977 fund. In order to meet those requirements, the 1977 fund is subject to the following provisions, notwithstanding any other provision of this chapter:

(1) The system board shall distribute the corpus and income of the 1977 fund to members and their beneficiaries in accordance with this chapter.

(2) No part of the corpus or income of the 1977 fund may be used or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under this chapter.

(4) If the 1977 fund is terminated, or if all contributions to the 1977 fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the 1977 fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the 1977 fund is subject to the following provisions:

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

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

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The system board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The trustee may not engage in a transaction prohibited by

Section 503(b) of the Internal Revenue Code.  
*As added by P.L.55-1989, SEC.61. Amended by P.L.35-2012, SEC.114.*

#### **IC 36-8-8-2.6**

##### **Administration of fund**

Sec. 2.6. The 1977 fund shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

*As added by P.L.4-1992, SEC.43.*

#### **IC 36-8-8-3**

##### **Participation by units**

Sec. 3. (a) If a town establishes a board of metropolitan police commissioners, or if a town becomes a city, the municipality shall participate in the 1977 fund. However, if a police officer or former marshal is a member of the public employees' retirement fund, the police officer or former marshal may continue as a member of that fund instead of the 1977 fund. Notwithstanding the age requirements under section 7(a) of this chapter, a police officer or former marshal employed by a municipality at the time the municipality enters the 1977 fund under this section shall be a member of the 1977 fund unless the police officer or former marshal elects to continue as a member of the public employees' retirement fund. A person may become a member of the 1977 fund under this subsection without meeting the age limitation under section 7(a) of this chapter only if the person satisfies:

- (1) any aptitude, physical agility, or physical and mental standards established by a local board under IC 36-8-3.2; and
- (2) the minimum standards that are:
  - (A) adopted by the system board under section 19 of this chapter; and
  - (B) in effect on the date the person becomes a member of the 1977 fund.

Credit for prior service of a person who becomes a member of the 1977 fund under this subsection shall be determined under section 18 or 18.1 of this chapter. No service credit beyond that allowed under section 18 or 18.1 of this chapter may be recognized under the 1977 fund.

(b) If a unit did not establish a 1937 fund for its firefighters, the unit may participate in the public employees' retirement fund or it may participate in the 1977 fund. If a unit established a 1937 fund for its firefighters, the unit is and shall remain a participant in the 1977 fund.

(c) A unit that:

- (1) has not established a pension fund for its firefighters; or
- (2) is participating in the public employees' retirement fund under subsection (b);

may participate in the 1977 fund upon approval by the fiscal body, notwithstanding IC 5-10.3-6-8. A unit that participates in the 1977

fund under this subsection must comply with section 21 of this chapter. However, if a firefighter is a member of the public employees' retirement fund, the firefighter may continue as a member of that fund instead of the 1977 fund.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.313-1989, SEC.1; P.L.213-1995, SEC.6; P.L.236-1996, SEC.6; P.L.101-1998, SEC.1; P.L.195-1999, SEC.32; P.L.35-2012, SEC.115.*

#### **IC 36-8-8-4**

##### **Fund established; managed by system board**

Sec. 4. (a) There is established a police officers' and firefighters' pension and disability fund to be known as the 1977 fund. The 1977 fund consists of fund member and employer contributions, plus the earnings on them, to be used to make benefit payments to fund members and their survivors in the amounts and under the conditions specified in this chapter.

(b) The system board shall administer the 1977 fund, which may be commingled for investment purposes with other funds administered by the Indiana public retirement system. All actuarial data shall be computed on the total membership of the fund, and the cost of participation is the same for all employers in the fund. The fund member and employer contributions shall be recorded separately for each employer.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.201-1984, SEC.1; P.L.342-1985, SEC.5; P.L.119-2000, SEC.8; P.L.23-2011, SEC.27; P.L.35-2012, SEC.116.*

#### **IC 36-8-8-5**

##### **System board; powers and duties; appeals; personnel; confidentiality of fund records**

Sec. 5. (a) The system board shall:

- (1) determine eligibility for and make payments of benefits, except as provided in section 12 of this chapter;
- (2) in accordance with the powers and duties granted it in IC 5-10.3-5-3 through IC 5-10.3-5-6, IC 5-10.5-4, and IC 5-10.5-5, administer the 1977 fund;
- (3) provide by rule for the implementation of this chapter; and
- (4) authorize deposits.

(b) A determination by the system board may be appealed under the procedures in IC 4-21.5.

(c) The powers and duties of the director appointed by the system board, the actuary of the system board, and the attorney general, with respect to the 1977 fund, are those specified in IC 5-10.3-3, IC 5-10.3-4, and IC 5-10.5.

(d) The system board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter.

(e) The 1977 fund records of individual members and membership information are confidential, except for the name and years of service of a 1977 fund member.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.5-1988,*

*SEC.219; P.L.5-1990, SEC.21; P.L.94-2004, SEC.8; P.L.99-2010, SEC.11; P.L.35-2012, SEC.117.*

### **IC 36-8-8-6**

#### **Employer contributions**

Sec. 6. (a) Each employer shall annually on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, or an alternate date established by the rules of the system board, pay into the 1977 fund an amount determined by the system board:

- (1) for administration expenses; and
- (2) sufficient to maintain level cost funding during the period of employment on an actuarial basis for members hired after April 30, 1977.

(b) After December 31, 2011, each employer shall submit the payments required by subsection (a) by electronic funds transfer.

(c) If an employer fails to make the payments required by subsection (a) or fails to send the fund members' contributions required by section 8(a) of this chapter, the amount payable, on request of the system board, may be withheld by the auditor of state from money payable to the employer and transferred to the fund. In the alternative, the amount payable may be recovered in the circuit or superior court of the county in which the employer is located, in an action by the state on the relation of the system board, prosecuted by the attorney general.

*As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1982, P.L.33, SEC.39; P.L.13-2011, SEC.16; P.L.35-2012, SEC.118.*

### **IC 36-8-8-7**

#### **Membership in fund; employment with second employer that participates in fund**

*Revisor's Note: See IC 1-1-3.5-8 concerning the effective date of this section as amended by P.L.119-2012, SEC.1.*

Sec. 7. (a) Except as provided in subsections (d), (e), (f), (g), (h), (k), (l), and (m):

- (1) a police officer; or
- (2) a firefighter;

who is less than thirty-six (36) years of age and who passes the baseline statewide physical and mental examinations required under section 19 of this chapter shall be a member of the 1977 fund and is not a member of the 1925 fund, the 1937 fund, or the 1953 fund.

(b) A police officer or firefighter with service before May 1, 1977, who is hired or rehired after April 30, 1977, may receive credit under this chapter for service as a police officer or firefighter prior to entry into the 1977 fund if the employer who rehires the police officer or firefighter chooses to contribute to the 1977 fund the amount necessary to amortize the police officer's or firefighter's prior service liability over a period of not more than forty (40) years, the amount and the period to be determined by the system board. If the employer chooses to make the contributions, the police officer or firefighter is

entitled to receive credit for the police officer's or firefighter's prior years of service without making contributions to the 1977 fund for that prior service. In no event may a police officer or firefighter receive credit for prior years of service if the police officer or firefighter is receiving a benefit or is entitled to receive a benefit in the future from any other public pension plan with respect to the prior years of service.

(c) Except as provided in section 18 of this chapter, a police officer or firefighter is entitled to credit for all years of service after April 30, 1977, with the police or fire department of an employer covered by this chapter.

(d) A police officer or firefighter with twenty (20) years of service does not become a member of the 1977 fund and is not covered by this chapter, if the police officer or firefighter:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981); and
- (3) is rehired after April 30, 1977, by the same employer.

(e) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the police officer or firefighter:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) was rehired after April 30, 1977, but before February 1, 1979; and
- (4) was made, before February 1, 1979, a member of a 1925, 1937, or 1953 fund.

(f) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the police officer or firefighter:

- (1) was hired by the police or fire department of a unit before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) is rehired by the police or fire department of another unit after December 31, 1981; and
- (4) is made, by the fiscal body of the other unit after December 31, 1981, a member of a 1925, 1937, or 1953 fund of the other unit.

If the police officer or firefighter is made a member of a 1925, 1937, or 1953 fund, the police officer or firefighter is entitled to receive credit for all the police officer's or firefighter's years of service, including years before January 1, 1982.

(g) As used in this subsection, "emergency medical services" and "emergency medical technician" have the meanings set forth in IC 16-18-2-110 and IC 16-18-2-112. A firefighter who:

- (1) is employed by a unit that is participating in the 1977 fund;
- (2) was employed as an emergency medical technician by a political subdivision wholly or partially within the department's



jurisdiction;

(3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and

(4) ceased employment with the political subdivision and was hired by the unit's fire department due to the reorganization of emergency medical services within the department's jurisdiction;

shall participate in the 1977 fund. A firefighter who participates in the 1977 fund under this subsection is subject to sections 18 and 21 of this chapter.

(h) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the individual was appointed as:

(1) a fire chief under a waiver under IC 36-8-4-6(c); or

(2) a police chief under a waiver under IC 36-8-4-6.5(c);

unless the executive of the unit requests that the 1977 fund accept the individual in the 1977 fund and the individual previously was a member of the 1977 fund.

(i) A police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996, is a member of the 1977 fund.

(j) A park ranger who:

(1) completed at least the number of weeks of training at the Indiana law enforcement academy or a comparable law enforcement academy in another state that were required at the time the park ranger attended the Indiana law enforcement academy or the law enforcement academy in another state;

(2) graduated from the Indiana law enforcement academy or a comparable law enforcement academy in another state; and

(3) is employed by the parks department of a city having a population of more than one hundred ten thousand (110,000) but less than one hundred fifty thousand (150,000);

is a member of the fund.

(k) Notwithstanding any other provision of this chapter, a police officer or firefighter:

(1) who is a member of the 1977 fund before a consolidation under IC 36-3-1-5.1 or IC 36-3-1-6.1;

(2) whose employer is consolidated into the consolidated law enforcement department or the fire department of a consolidated city under IC 36-3-1-5.1 or IC 36-3-1-6.1; and

(3) who, after the consolidation, becomes an employee of the consolidated law enforcement department or the consolidated fire department under IC 36-3-1-5.1 or IC 36-3-1-6.1;

is a member of the 1977 fund without meeting the requirements under sections 19 and 21 of this chapter.

(l) Notwithstanding any other provision of this chapter, if:

(1) before a consolidation under IC 8-22-3-11.6, a police officer or firefighter provides law enforcement services or fire protection services for an entity in a consolidated city;

(2) the provision of those services is consolidated into the law enforcement department or fire department of a consolidated city; and

(3) after the consolidation, the police officer or firefighter becomes an employee of the consolidated law enforcement department or the consolidated fire department under IC 8-22-3-11.6;

the police officer or firefighter is a member of the 1977 fund without meeting the requirements under sections 19 and 21 of this chapter.

(m) A police officer or firefighter who is a member of the 1977 fund under subsection (k) or (l) may not be:

(1) retired for purposes of section 10 of this chapter; or

(2) disabled for purposes of section 12 of this chapter;

solely because of a change in employer under the consolidation.

(n) Notwithstanding any other provision of this chapter and subject to subsection (o), a police officer or firefighter who:

(1) is an active member of the 1977 fund with an employer that participates in the 1977 fund;

(2) separates from that employer; and

(3) not later than one hundred eighty (180) days after the date of the separation described in subdivision (2), becomes employed as a full-time police officer or firefighter with a second employer that participates in the 1977 fund;

is a member of the 1977 fund without meeting for a second time the age limitation under subsection (a) and the requirements under sections 19 and 21 of this chapter. A police officer or firefighter to whom this subsection applies is entitled to receive credit for all years of 1977 fund covered service as a police officer or firefighter with all employers that participate in the 1977 fund.

(o) The one hundred eighty (180) day limitation described in subsection (n)(3) does not apply to a member of the 1977 fund who is eligible for reinstatement under IC 36-8-4-11.

*As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.9; Acts 1982, P.L.33, SEC.40; P.L.365-1983, SEC.1; P.L.202-1984, SEC.1; P.L.38-1986, SEC.6; P.L.55-1987, SEC.5; P.L.3-1990, SEC.133; P.L.4-1990, SEC.18; P.L.4-1992, SEC.44; P.L.2-1993, SEC.204; P.L.213-1995, SEC.7; P.L.236-1996, SEC.7; P.L.43-1997, SEC.7; P.L.22-1998, SEC.17; P.L.246-2001, SEC.17; P.L.227-2005, SEC.48; P.L.1-2006, SEC.575; P.L.35-2012, SEC.119; P.L.119-2012, SEC.219; P.L.117-2013, SEC.1.*

## **IC 36-8-8-7.2**

### **Fire chief or police chief transfer of service credit to PERF**

Sec. 7.2. (a) This section applies to an individual:

(1) who becomes a member of the 1977 fund under section 7(h) of this chapter;

(2) whose appointment as a fire chief or police chief ends after June 30, 2007; and

(3) who is not eligible to receive a benefit from the 1977 fund at the end of the individual's appointment as a fire chief or

police chief.

(b) A fund member described in subsection (a) may elect:

(1) to receive the fund member's contributions to the 1977 fund under section 8 of this chapter; or

(2) to transfer the fund member's service credit earned as a fire chief or police chief to PERF under subsection (c).

(c) If a fund member makes the election described in subsection (b)(2), the system board shall:

(1) grant to the fund member service credit in PERF for all service earned as a fire chief or police chief in the 1977 fund; and

(2) transfer from the 1977 fund to PERF:

(A) the fund member's contributions made during the fund member's appointment as a fire chief or police chief to the 1977 fund; plus

(B) the present value of the unreduced benefit that would be payable to the transferring fund member upon retirement under section 10 of this chapter.

(d) The system board shall deposit the amounts transferred to PERF under subsection (c) as follows:

(1) The fund member's contributions to the 1977 fund shall be credited to the fund member's PERF annuity savings account.

(2) The present value of the unreduced benefit that would be payable to the transferring fund member upon retirement under section 10 of this chapter shall be credited to PERF's retirement allowance account.

(e) For a fund member who makes the election described in subsection (b)(2), all credit for service as a fire chief or police chief in the 1977 fund is waived.

*As added by P.L.180-2007, SEC.9. Amended by P.L.35-2012, SEC.120.*

### **IC 36-8-8-8**

#### **Employee contributions; lump sum withdrawal on termination of employment**

Sec. 8. (a) Each fund member shall contribute during the period of the fund member's employment or for thirty-two (32) years, whichever is shorter, an amount equal to six percent (6%) of the salary of a first class patrolman or firefighter. However, the employer may pay all or a part of the contribution for the member. The amount of the contribution, other than contributions paid on behalf of a member, shall be deducted each pay period from each fund member's salary by the disbursing officer of the employer. The employer shall send to the system board each year on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, or an alternate date established by the rules of the system board, a certified list of fund members and a warrant issued by the employer for the total amount deducted for fund members' contributions.

(b) After December 31, 2011, an employer shall submit:

(1) the list described in subsection (a) in a uniform format

through a secure connection over the Internet or through other electronic means specified by the system board; and

(2) the contributions paid by or on behalf of a member under subsection (a) by electronic funds transfer.

(c) Except as provided in section 7(n) or 7.2 of this chapter, if a fund member ends the fund member's employment other than by death or disability before the fund member completes twenty (20) years of active service, the system board shall return to the fund member in a lump sum the fund member's contributions plus interest at a rate specified by rule by the system board. If the fund member returns to service, the fund member is entitled to credit for the years of service for which the fund member's contributions were refunded if the fund member repays the amount refunded to the fund member in either a lump sum or a series of payments determined by the system board.

*As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.10; P.L.312-1989, SEC.4; P.L.180-2007, SEC.10; P.L.13-2011, SEC.17; P.L.16-2011, SEC.13; P.L.6-2012, SEC.251; P.L.35-2012, SEC.121; P.L.117-2013, SEC.2.*

### **IC 36-8-8-8.3**

#### **Purchase of military service credit**

Sec. 8.3. (a) This section applies to a fund member who, after June 30, 2009, completes service for which the 1977 fund gives credit.

(b) A fund member may purchase not more than two (2) years of service credit for the fund member's service on active duty in the armed services if the fund member meets the following conditions:

(1) The fund member has at least one (1) year of credited service in the fund.

(2) The fund member serves on active duty in the armed services of the United States for at least six (6) months.

(3) The fund member receives an honorable discharge from the armed services.

(4) Before the fund member retires, the fund member makes contributions to the fund as follows:

(A) Contributions that are equal to the product of the following:

(i) The salary of a first class patrolman or firefighter at the time the fund member actually makes a contribution for the service credit.

(ii) A rate, determined by the actuary of the 1977 fund, that is based on the age of the fund member at the time the fund member actually makes a contribution for service credit and that is computed to result in a contribution amount that approximates the actuarial present value of the retirement benefit attributable to the service credit purchased.

(iii) The number of years of service credit the fund member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary of the 1977 fund, for the period

from the fund member's initial membership in the 1977 fund to the date payment is made by the fund member.

(c) A fund member must have at least twenty (20) years of service before a fund member may receive a benefit based on a service credit purchased under this section. A fund member's years of service may not exceed thirty-two (32) years with the inclusion of the service credit purchased under this section.

(d) A fund member may not receive service credit under this section:

- (1) for service credit received under IC 36-8-5-7; or
- (2) if the military service for which the fund member requests credit also qualifies the fund member for a benefit in a military or another governmental retirement system.

(e) A fund member who:

- (1) terminates service before satisfying the eligibility requirements necessary to receive a retirement benefit payment from the 1977 fund; or
- (2) receives a retirement benefit for the same service from another retirement system, other than under the federal Social Security Act;

may withdraw the fund member's contributions made under this section plus accumulated interest after submitting to the fund a properly completed application for a refund.

(f) The following apply to the purchase of service credit under this section:

- (1) The system board may allow a fund member to make periodic payments of the contributions required for the purchase of the service credit. The system board shall determine the length of the period during which the payments must be made.
- (2) The system board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.
- (3) A fund member may not claim the service credit for purposes of determining eligibility or computing benefits unless the fund member has made all payments required for the purchase of the service credit.

(g) To the extent permitted by the Internal Revenue Code and applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a rollover of a distribution from any of the following:

- (1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.
- (2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state under Section 457(b) of the Internal Revenue Code.
- (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a trustee to trustee transfer from any of the following:

- (1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

*As added by P.L.19-2009, SEC.1. Amended by P.L.35-2012, SEC.122.*

#### **IC 36-8-8-8.5**

##### **Purchase of service credit in certain Indiana public retirement funds**

Sec. 8.5. (a) This section applies to a fund member who, after June 30, 2010, completes service for which the 1977 fund gives credit.

(b) As used in this section, "public retirement fund" refers to any of the following, either singly or collectively:

- (1) The public employees' retirement fund (IC 5-10.3).
- (2) The Indiana state teachers' retirement fund (IC 5-10.4).
- (3) The state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement fund (IC 5-10-5.5).
- (4) The state police pension trust (IC 10-12).
- (5) A sheriff's pension trust (IC 36-8-10-12).

(c) Subject to this section, a fund member may purchase service credit for the fund member's prior service in a position covered by a public retirement fund.

(d) To purchase the service credit described in subsection (c), a fund member must meet the following requirements:

- (1) The fund member has at least one (1) year of creditable service in the 1977 fund.
- (2) The fund member has not attained vested status in and is not an active member in the public retirement fund from which the fund member is purchasing service credit.
- (3) Before the fund member retires, the fund member makes contributions to the 1977 fund as follows:

(A) Contributions that are equal to the product of the following:

- (i) The salary of a first class patrolman or firefighter at the time the fund member actually makes a contribution for the service credit.
- (ii) A rate, determined by the actuary for the 1977 fund, that is based on the age of the fund member at the time the fund member actually makes a contribution for the service credit and that is computed to result in a contribution amount that approximates the actuarial present value of the retirement benefit attributable to the service credit purchased.
- (iii) The number of years of service credit the fund

member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary for the 1977 fund, for the period from the fund member's initial membership in the 1977 fund to the date payment is made by the fund member.

(e) At the request of the fund member purchasing service credit under this section, the amount a fund member is required to contribute under subsection (d)(3) may be reduced by a trustee to trustee transfer from the public retirement fund in which the fund member has an account that contains amounts attributable to member contributions (plus any credited earnings) to the 1977 fund. The fund member may direct the transfer of an amount only to the extent necessary to fund the service purchase under subsection (d)(3). The fund member shall complete any forms required by the public retirement fund from which the fund member is requesting a transfer or the 1977 fund before the transfer is made.

(f) A fund member must have at least twenty (20) years of service in the 1977 fund before a fund member may receive a retirement benefit based on service credit purchased under this section. A fund member's years of service may not exceed thirty-two (32) years with the inclusion of the service credit purchased under this section.

(g) A fund member who:

- (1) terminates employment before satisfying the eligibility requirements necessary to receive a retirement benefit payment from the 1977 fund; or
- (2) receives a retirement benefit for the same service from another tax supported governmental retirement plan other than the federal Social Security Act;

may withdraw the fund member's contributions made under this section plus accumulated interest after submitting a properly completed application for a refund to the 1977 fund.

(h) The following apply to the purchase of service credit under this section:

- (1) The system board may allow a fund member to make periodic payments of the contributions required for the purchase of the service credit. The system board shall determine the length of the period during which the payments may be made.
- (2) The system board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.
- (3) A fund member may not claim the service credit for purposes of determining eligibility or computing benefits unless the fund member has made all payments required for the purchase of the service credit.

(i) To the extent permitted by the Internal Revenue Code and applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a rollover of a distribution from any of the following:

- (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code.

(j) To the extent permitted by the Internal Revenue Code and applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

(k) The fund member's employer may pay all or a part of the fund member's contributions required for the purchase of service credit under this section. In that event, the actuary shall determine the amortization, and subsections (g), (h)(1), (h)(3), and (i) do not apply. *As added by P.L.70-2010, SEC.1. Amended by P.L.35-2012, SEC.123.*

#### **IC 36-8-8-8.8**

##### **Purchase of out-of-state service credit**

Sec. 8.8. (a) This section applies to a fund member who, after June 30, 2010, completes service for which the 1977 fund gives credit.

(b) As used in this section, "out-of-state service" means service in another state in a comparable position for which the fund member would receive service credit in the 1977 fund if the service had been performed in Indiana.

(c) Subject to subsections (d) through (g), a fund member may purchase out-of-state service credit if the fund member meets the following requirements:

(1) The fund member has at least one (1) year of credited service in the 1977 fund.

(2) Before the fund member retires, the fund member makes contributions to the 1977 fund as follows:

(A) Contributions that are equal to the product of the following:

(i) The salary of a first class patrolman or firefighter at the time the fund member makes a contribution for the service credit.

(ii) A rate, determined by the actuary for the 1977 fund, that is based on the age of the fund member at the time the fund member makes a contribution for the service credit and that is computed to result in a contribution amount that approximates the actuarial present value of the retirement benefit attributable to the service credit purchased.

(iii) The number of years of out-of-state service credit the



fund member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary for the 1977 fund, for the period from the fund member's initial membership in the 1977 fund to the date payment is made by the fund member.

(3) The fund member has received verification from the 1977 fund that the out-of-state service is, as of the date payment is made by the fund member, valid.

(d) A fund member must have at least twenty (20) years of service before the fund member may receive a benefit based on service credit purchased under this section. A fund member's years of service may not exceed thirty-two (32) years with the inclusion of service credit purchased under this section.

(e) A fund member may not receive service credit under this section if the service for which the fund member requests credit also qualifies the fund member for a benefit in another governmental retirement system.

(f) A fund member who:

(1) terminates service before satisfying the eligibility requirements necessary to receive a retirement benefit payment from the 1977 fund; or

(2) receives a retirement benefit for the same service from another retirement system, other than under the federal Social Security Act;

may withdraw the fund member's contributions made under this section plus accumulated interest after submitting to the 1977 fund a properly completed application for a refund.

(g) The following apply to the purchase of service credit under this section:

(1) The system board may allow a fund member to make periodic payments of the contributions required for the purchase of the service credit. The system board shall determine the length of the period during which the payments must be made.

(2) The system board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) The fund member may not claim the service credit for purposes of determining eligibility or computing benefits unless the fund member has made all payments required for the purchase of the service credit.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state

or a political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing service credit under this section, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

*As added by P.L.88-2010, SEC.1. Amended by P.L.35-2012, SEC.124.*

### **IC 36-8-8-9**

#### **Conversion from prior fund**

Sec. 9. (a) This section applies to all police officers and firefighters who converted their benefits under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981).

(b) A police officer or firefighter who converted his benefits from a 1925, 1937, or 1953 fund to the benefits and conditions of this chapter is not entitled to receive any benefits from the original fund. However, he is entitled to credit for all years of service for which he would have received credit before his conversion in that original fund.

(c) A police officer or firefighter who:

(1) converted his benefits from a 1925, 1937, or 1953 fund;

(2) retired or became disabled on or before June 30, 1998; and

(3) is entitled to receive benefits provided under this chapter based on the eligibility requirements of this chapter;

shall be treated as a member of this fund for purposes of paying his benefits from the 1977 fund effective for benefits paid on or after October 1, 1998. Prior to October 1, 1998, he remains a member of the original fund entitled to receive only the benefits provided under this chapter based on the eligibility requirements of this chapter.

(d) A police officer or firefighter who:

(1) converted his benefits from a 1925, 1937 or 1953 fund;

(2) who did not retire or become disabled on or before June 30, 1998; and

(3) who is entitled to receive benefits provided under this chapter based on the eligibility requirements of this chapter;

remains a member of that original fund but is entitled to receive only the benefits provided under this chapter and based on the eligibility requirements of this chapter.

(e) A police officer or firefighter who converted shall contribute six percent (6%) of the salary of a first class patrolman or firefighter to the 1925, 1937, or 1953 fund. This amount shall be deducted from his salary each pay period by the disbursing officer of the employer. Contributions under this subsection may not be refunded.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.3-1990, SEC.134; P.L.22-1998, SEC.18.*

#### **IC 36-8-8-10**

##### **Eligibility for retirement; initiation of benefits; election to receive actuarially reduced benefits**

Sec. 10. (a) A fund member is eligible for retirement after he has completed twenty (20) years of active service.

(b) Unless the member is receiving benefits under subsection (c), unreduced benefits to a retired fund member begin the date:

- (1) the fund member becomes fifty-two (52) years of age; or
- (2) on which the fund member retires;

whichever is later. Benefit payments to a retired fund member under this subsection begin on the first day of the month on or after the date he reaches fifty-two (52) years of age or on which he retires, whichever is later.

(c) A retired member may elect to receive actuarially reduced benefits that begin the date:

- (1) the fund member becomes fifty (50) years of age; or
- (2) on which the fund member retires;

whichever is later. Benefit payments to a retired fund member under this subsection begin on the first day of the month on or after the day the member reaches fifty (50) years of age or on which the member retires, whichever is later.

(d) If a fund member:

- (1) becomes fifty-two (52) years of age in the case of unreduced benefits or fifty (50) years of age in the case of reduced benefits; or
- (2) retires on a date other than on the first day of the month;

the amount due the fund member for the initial partial monthly benefit is payable together with the regular monthly benefit on the first of the month following the date the fund member becomes fifty-two (52) or fifty (50) years of age, respectively, or retires, whichever is later.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.232-1997, SEC.1; P.L.22-1998, SEC.19.*

#### **IC 36-8-8-11**

##### **Computation of retirement benefits; actuarially reduced benefits**

Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) Except as provided in section 24.8 of this chapter, each fund member who qualifies for a retirement benefit payment under section 10(b) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended the member's active service plus:

- (1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each full year of active service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of active service;

over twenty (20) years, to a maximum of twelve (12) years.

(c) Each fund member who qualifies for a retirement benefit payment under section 10(c) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended the member's active service plus one percent (1%) of that salary for each six (6) months of active service over twenty (20) years, to a maximum of twelve (12) years, all actuarially reduced for each month (if any) of benefit payments prior to fifty-two (52) years of age, by a factor established by the fund's actuary from time to time.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.342-1985, SEC.6; P.L.55-1989, SEC.62; P.L.22-1998, SEC.20; P.L.99-2010, SEC.12; P.L.42-2011, SEC.84.*

### **IC 36-8-8-11.5**

#### **Reemployment after retirement**

Sec. 11.5. (a) Not less than thirty (30) days after a fund member retires from a position covered by this chapter, the fund member may:

(1) be rehired by the same unit that employed the fund member in a position covered by this chapter for a position not covered by this chapter; and

(2) continue to receive the fund member's retirement benefit under this chapter.

(b) This section may be implemented unless the system board receives from the Internal Revenue Service a determination that prohibits the implementation.

*As added by P.L.130-2008, SEC.7. Amended by P.L.35-2012, SEC.125.*

### **IC 36-8-8-12**

#### **Benefits for members with covered impairments; retirement benefits for members who have a disability and are less than 52 years old**

Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

(b) If an active fund member has a covered impairment, as determined under sections 12.3 through 13.1 of this chapter, the member is entitled to receive the benefit prescribed by section 13.3 or 13.5 of this chapter. A member who has had a covered impairment and returns to active duty with the department shall not be treated as a new applicant seeking to become a member of the 1977 fund.

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the system board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable

period in which a fund member with a disability is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

- (1) a plan or policy of insurance providing benefits for loss of time because of disability;
- (2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's employer has made payroll deductions, including a group life policy providing installment payments for disability, a group annuity contract, or a pension or retirement annuity plan other than the fund established by this chapter;
- (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States Department of Veterans Affairs, or another federal, state, local, or other governmental agency;
- (4) worker's compensation payable under IC 22-3; and
- (5) a salary or wage, including overtime and bonus pay and extra or additional remuneration of any kind, the fund member receives or is entitled to receive from the member's employer.

For the purposes of this subsection, a retired fund member is considered eligible for benefits from subdivisions (1) through (5) whether or not the member has made application for the benefits.

(d) Notwithstanding any other law, a plan, policy of insurance, fund, or other arrangement:

- (1) delivered, issued for delivery, amended, or renewed after April 9, 1979; and
- (2) described in subsection (c)(1) or (c)(2);

may not provide for a reduction or alteration of benefits as a result of benefits for which a fund member may be eligible from the 1977 fund under subsection (c).

(e) Time spent receiving disability benefits, not to exceed twenty (20) years, is considered active service for the purpose of determining retirement benefits. A fund member's retirement benefit shall be based on:

- (1) the member's years of active service; plus
- (2) if applicable, the period, not to exceed twenty (20) years, during which the member received disability benefits.

(f) A fund member who is receiving disability benefits:

- (1) under section 13.3(d) of this chapter; or
- (2) based on a determination under this chapter that the fund member has a Class 3 impairment;

shall be transferred from disability to regular retirement status when the member becomes fifty-two (52) years of age.

(g) A fund member who is receiving disability benefits:

- (1) under section 13.3(c) of this chapter; or
- (2) based on a determination under this chapter that the fund member has a Class 1 or Class 2 impairment;

is entitled to receive a disability benefit for the remainder of the fund

member's life in the amount determined under the applicable sections of this chapter.

*As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.11; P.L.28-1988, SEC.116; P.L.1-1989, SEC.73; P.L.55-1989, SEC.63; P.L.311-1989, SEC.6; P.L.1-1991, SEC.211; P.L.4-1992, SEC.45; P.L.213-1995, SEC.8; P.L.22-1998, SEC.21; P.L.118-2000, SEC.23; P.L.62-2006, SEC.6; P.L.99-2007, SEC.219; P.L.32-2009, SEC.1; P.L.34-2009, SEC.1; P.L.13-2011, SEC.18; P.L.35-2012, SEC.126.*

### **IC 36-8-8-12.3**

#### **Covered impairments; hearings; inclusions; Class 3 excludable condition; determination**

Sec. 12.3. (a) Upon a request from a fund member or from the safety board of the appropriate police or fire department, the local board shall conduct a hearing under section 12.7 of this chapter to determine whether the fund member has a covered impairment.

(b) A covered impairment is an impairment that permanently or temporarily makes a fund member unable to perform the essential function of the member's duties, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, with the police or fire department. However, a covered impairment does not include an impairment:

- (1) resulting from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) resulting from the fund member's commission or attempted commission of a felony;
- (3) that begins within two (2) years after a fund member's entry or reentry into active service with the department and that was caused or contributed to by a mental or physical condition that manifested itself before the fund member entered or reentered active service. Notwithstanding this subdivision, a fund member may not be required to satisfy more than one (1) such two (2) year period for the same mental or physical condition; or
- (4) that is occasioned, in whole or in part, by the fund member currently engaging (as defined in 29 CFR 1630.3, Appendix) in any of the following:
  - (A) Use of a controlled substance (as defined in the Controlled Substances Act (21 U.S.C. 812)).
  - (B) Unlawful use of a prescription drug.

(c) Notwithstanding subsection (b), this subsection applies to the following:

- (1) A fund member who is hired after March 1, 1992.
- (2) A fund member who was admitted to the 1977 fund after having been covered by another public pension plan as a police officer or firefighter.

For a fund member who is determined by the system board to have a Class 3 excludable condition under IC 36-8-8-13.6, a covered impairment does not include an impairment that would be classified as a Class 3 impairment that begins at any time after the fund

member's entry or reentry into active service with the department and is related in any manner to the Class 3 excludable condition.

(d) If the local board determines that a covered impairment exists, the chief of the police or fire department shall submit to the local board written determinations of the following:

(1) Whether there is suitable and available work on the appropriate department for which the fund member is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

(2) For a fund member covered by sections 12.5 and 13.5 of this chapter, the fund member's years of service with the department.

*As added by P.L.311-1989, SEC.7. Amended by P.L.4-1992, SEC.46; P.L.213-1995, SEC.9; P.L.231-1997, SEC.5; P.L.35-2012, SEC.127.*

#### **IC 36-8-8-12.4**

##### **Election of coverage by IC 36-8-8-12.5 and IC 36-8-8-13.5**

Sec. 12.4. A fund member who is hired for the first time before January 1, 1990, may choose to be covered by sections 12.5 and 13.5 of this chapter (instead of section 13.3 of this chapter) if the fund member files an election with the system board before January 1, 1991. However, an election may not be filed after the fund member has a covered impairment. An election filed under this section is irrevocable.

*As added by P.L.311-1989, SEC.8. Amended by P.L.35-2012, SEC.128.*

#### **IC 36-8-8-12.5**

##### **Determination of class of impairment**

Sec. 12.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and

subdivision (2) shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is:

(A) a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause; or

(B) a health condition caused by:

(i) an exposure related heart or lung disease;

(ii) an exposure related cancer; or

(iii) exposure related Parkinson's disease;

that results in a presumption of disability incurred in the line of duty under IC 5-10-15.

(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

*As added by P.L.311-1989, SEC.9. Amended by P.L.213-1995, SEC.10; P.L.185-2002, SEC.11; P.L.62-2006, SEC.7; P.L.59-2009, SEC.5.*

### **IC 36-8-8-12.7**

#### **Hearings; notice; procedure; discovery; determinations; appeals; records; determination whether disability in line of duty**

Sec. 12.7. (a) This section applies to hearings conducted by local boards concerning determinations of impairment under this chapter or of disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(b) At least five (5) days before the hearing, the local board shall give notice to the fund member and the safety board of the time, date, and place of the hearing.

(c) The local board must hold a hearing not more than ninety (90) days after the fund member requests the hearing.

(d) At the hearing, the local board shall permit the fund member and the safety board to:

(1) be represented by any individual;

(2) through witnesses and documents, present evidence;

(3) conduct cross-examination; and



(4) present arguments.

(e) At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

(f) The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

(i) If the local board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment. The system board shall review an impairment determined under this subsection as provided in section 13.1 of this chapter.

(j) The local board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination of the local board after a hearing is final and may be appealed to the court.

(o) With respect to a hearing conducted for purposes of determining impairment or class of impairment under this chapter, the fund member may appeal the local board's determinations. An appeal under this subsection:

- (1) must be made in writing;
- (2) must state the class of impairment and the degree of impairment that is claimed by the fund member;
- (3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and
- (4) must be filed with the local board and the system board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations.

(p) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

- (1) retained in the separate medical file created for the member; and
- (2) treated as a confidential medical record.

(q) If a local board determines that a fund member described in section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the system board concerning whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter. The local board shall forward its recommendation to the system board.

(r) The system board shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The system board shall notify the local board, the safety board, and the fund member of its initial determination.

(s) The fund member, the safety board, or the local board may object in writing to the system board's initial determination under subsection (r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the system board's initial determination becomes final. If a timely written objection is filed, the system board shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

*As added by P.L.311-1989, SEC.10. Amended by P.L.5-1990, SEC.22; P.L.4-1992, SEC.47; P.L.22-1998, SEC.22; P.L.195-1999, SEC.33; P.L.118-2000, SEC.24; P.L.29-2006, SEC.2; P.L.35-2012, SEC.129.*

### **IC 36-8-8-13**

**Repealed**

*(Repealed by P.L.1-1991, SEC.212.)*

**IC 36-8-8-13.1**

**Submission of determination of local board and safety board to system director; medical examinations; initial determination; objections; hearing; final order; appeals**

Sec. 13.1. (a) If:

- (1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or
- (2) the fund member has filed an appeal under section 12.7(o) of this chapter;

the local board shall submit the local board's determinations and the safety board's determinations to the system board's director.

(b) Whenever a fund member is determined to have an impairment under section 12.7(i) of this chapter, the system board's director shall initiate a review of the default award not later than sixty (60) days after the director learns of the default award.

(c) After the system board's director receives the determinations under subsection (a) or initiates a review under subsection (b), the fund member must submit to an examination by a medical authority selected by the system board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The system board shall adopt rules to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the system board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

(d) The system board's director shall review the medical authority's report and the local board's determinations and issue an initial determination within sixty (60) days after receipt of the local board's determinations. The system board's director shall notify the local board, the safety board, and the fund member of the initial determination. The following provisions apply if the system board's director does not issue an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

- (1) In the case of a review initiated under subsection (a)(1):
  - (A) the determinations of the local board and the chief of the police or fire department are considered to be the initial determination; and
  - (B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.
- (2) In the case of an appeal submitted under subsection (a)(2),

the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.

(3) In the case of a review initiated under subsection (b), the initial determination is the impairment determined under section 12.7(i) of this chapter.

(e) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the system board. If a timely written objection is filed, the system board shall issue the final order after a hearing. Unless an administrative law judge orders a waiver or an extension of the period for cause shown, the final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination or the date the system board's director initiates a review under subsection (b). The following provisions apply if a final order is not issued within the time limit described in this subsection and if the delay is not attributable to the fund member or the chief of the police or fire department:

- (1) In the case of a review initiated under subsection (a)(1):
  - (A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and
  - (B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.
- (2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.
- (3) In the case of a review initiated under subsection (b), the impairment determined under section 12.7(i) of this chapter is considered to be the final order.

(f) If the system board approves the director's initial determination, then the system board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the system board does not approve the initial determination, the system board may receive additional evidence on the matter before issuing a final order.

(g) Appeals of the system board's final order may be made under IC 4-21.5.

(h) The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in section 12.7(p) of this chapter.

*As added by P.L.1-1991, SEC.213. Amended by P.L.4-1992, SEC.48; P.L.195-1999, SEC.34; P.L.29-2006, SEC.3; P.L.13-2011, SEC.19; P.L.23-2011, SEC.28; P.L.6-2012, SEC.252; P.L.35-2012, SEC.130.*

### **IC 36-8-8-13.3**

#### **Disability benefits**

Sec. 13.3. (a) This section applies only to a fund member who:

- (1) is hired for the first time before January 1, 1990; and
- (2) does not choose coverage by sections 12.5 and 13.5 of this chapter under section 12.4 of this chapter.

This section does not apply to a fund member described in section 12.3(c)(2) of this chapter.

(b) A fund member:

- (1) who became disabled before July 1, 2000;
- (2) is determined to have a covered impairment; and
- (3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the fund member with a disability does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(c) Except as otherwise provided in this subsection, a fund member:

- (1) who becomes disabled after July 1, 2000;
- (2) who is determined to have a covered impairment that is:
  - (A) the direct result of:
    - (i) a personal injury that occurs while the fund member is on duty;
    - (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member is trained, in the case of a firefighter; or
    - (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);
  - (B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:
    - (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
    - (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
    - (iii) the disease can be traced to the fund member's employment as the proximate cause); or
  - (C) a disability presumed incurred in the line of duty under

IC 5-10-13 or IC 5-10-15; and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the fund member with a disability does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(d) Except as otherwise provided in this subsection, a fund member:

(1) who becomes disabled after July 1, 2000;

(2) who is determined to have a covered impairment that is not a covered impairment described in subsection (c)(2); and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the federal Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the fund member with a disability does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(e) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

(1) has had a covered impairment;

(2) recovers and returns to active service with the department; and

(3) within two (2) years after returning to active service has an impairment that except for section 12.3 of this chapter would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

*As added by P.L.311-1989, SEC.12. Amended by P.L.4-1992, SEC.49; P.L.213-1995, SEC.11; P.L.22-1998, SEC.23; P.L.118-2000, SEC.25; P.L.62-2006, SEC.8; P.L.99-2007, SEC.220.*

#### **IC 36-8-8-13.4**

#### **Application with local board for recommendation of line of duty**

**disability; final determination by system board**

Sec. 13.4. (a) This section applies only to a fund member or survivor of a fund member who is receiving a disability benefit under section 13.3(b) of this chapter.

(b) A fund member or survivor of a fund member described in subsection (a) may file an application, in accordance with this section, requesting a determination that:

(1) the member's covered impairment, as determined under section 13.3(b) of this chapter, was:

(A) the direct result of:

(i) a personal injury that occurred while the fund member was on duty;

(ii) a personal injury that occurred while the fund member was off duty and was responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member was trained, in the case of a firefighter; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease, which for purposes of this section, means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause; or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; or

(2) the member's covered impairment, as determined under section 13.3(b) of this chapter, was not a covered impairment described in subsection (b)(1).

The application must be filed with the local board that made the determination of a covered impairment resulting in a disability benefit under section 13.3(b) of this chapter. The application form shall be prepared by the system board or its designee and be made available to a fund member or survivor of a fund member described in subsection (a) upon request.

(c) A fund member or survivor of a fund member who files an application under this section has the burden of presenting sufficient evidence to support a finding that the member's covered impairment, as determined under section 13.3(b) of this chapter, satisfies the standard provided in subsection (b)(1). Such evidence may include

any documents, materials, or other evidence provided in connection with the original hearing and determination of a covered impairment as determined under section 13.3(b) of this chapter, including any transcript from that proceeding. A fund member or a survivor of a fund member may include with an application any additional probative evidence that is relevant to the determination under subsection (b)(1). The local board may establish reasonable procedures with respect to the application process and may engage a medical authority to provide opinions relevant to making its determination. The local board may hold a hearing with respect to an application filed under this section if the fund member or survivor of a fund member shows good cause that documents or other probative evidence sufficient to make the showing required under this subsection is not reasonably obtainable and that holding a hearing would be reasonably likely to provide such probative evidence. If the local board conducts a hearing, it shall be subject to the provisions of section 12.7 of this chapter relating to the conduct of hearings on the determinations of covered impairments under this chapter.

(d) The local board shall make its recommendation, including findings of fact, in writing and shall provide copies of its recommendation to the fund member or survivor of the fund member and the system board not later than thirty (30) days after the:

- (1) filing of the application, if no hearing is held; or
- (2) hearing, if held.

(e) If the local board does not issue its recommendation within the time required under subsection (d), the member's covered impairment shall be considered to be a covered impairment described under subsection (b)(1) for purposes of the local board's recommendation.

(f) The system board shall review the local board's recommendation, or the considered recommendation under subsection (e), not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the covered impairment is one described under subsection (b)(1). The system board shall notify the local board and the fund member or survivor of the fund member of its initial determination.

(g) The fund member or survivor of the fund member or the local board may object in writing to the system board's initial determination under subsection (f) not later than fifteen (15) days after the initial determination is issued by filing an objection with the system board. If a written objection is not filed, the system board's initial determination becomes final. If a timely written objection is filed, the system board shall issue a final determination after a hearing. Unless an administrative law judge orders a waiver or an extension of the period for cause shown, the final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

(h) If the system board fails to issue an initial determination within forty-five (45) days after receiving the local board's recommendation, the default determination on whether the covered impairment is one described under subsection (b)(1) will be the determination made by



the system board's medical authority. An objection to this determination may be filed in accordance with the provisions of subsection (g).

(i) A determination that a member's covered impairment is one described under subsection (b)(1) will apply only on a prospective basis beginning on January 1 of the calendar year in which the determination is made. The amount of the benefit will not be changed as a result of this determination.

(j) A fund member or survivor of a fund member described in subsection (a) must file an application under this section no later than two (2) years after the date the system board notifies the fund members and survivors described in subsection (a) that the board has received a favorable ruling from the Internal Revenue Service. The system board will provide notice of receipt of a favorable ruling within thirty (30) days of its receipt.

(k) This section expires July 1, 2021.

*As added by P.L.177-2011, SEC.2. Amended by P.L.35-2012, SEC.131.*

### **IC 36-8-8-13.5**

#### **Applicability to certain fund members; disability benefits for classes of impairment**

Sec. 13.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 12.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) A fund member who is determined to have a Class 1 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the

member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and

(C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment occurs before the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(4) A fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment is related in any manner to the Class 3 excludable condition.

(5) If, during the first four (4) years of service with the employer:

(A) a fund member with a Class 3 excludable condition is determined to have a Class 3 impairment; and

(B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;

the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an accidental injury. The local board shall forward the initial determination to the director of the system board for a final determination by the system board or the system board's designee.

(f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the Indiana public retirement system medical authority based on the degree of impairment.

(g) Benefits for a Class 1 impairment as determined under this section are payable for the remainder of the fund member's life.

(h) Benefits for a Class 2 impairment are payable:

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) for the remainder of the fund member's life if the fund member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

(i) Benefits for a Class 3 impairment are payable:

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) until the member becomes fifty-two (52) years of age if the member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a

first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

(j) Upon becoming fifty-two (52) years of age, a fund member with a Class 2 impairment determined under subsection (h)(1) is entitled to receive the retirement benefit payable to a fund member with:

- (1) twenty (20) years of service; or
- (2) the total years of service (including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits) and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age;

whichever is greater.

(k) Upon becoming fifty-two (52) years of age, a fund member who is receiving or has received a Class 3 impairment benefit that is:

- (1) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or
- (2) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service;

is entitled to receive the retirement benefit payable to a fund member with twenty (20) years of service.

(l) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

- (1) has had a covered impairment;
- (2) recovers and returns to active service with the department; and
- (3) within two (2) years after returning to active service has an impairment that, except for section 12.3(b)(3) of this chapter, would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

*As added by P.L.311-1989, SEC.13. Amended by P.L.4-1992, SEC.50; P.L.213-1995, SEC.12; P.L.22-1998, SEC.24; P.L.32-2009, SEC.2; P.L.34-2009, SEC.2; P.L.35-2012, SEC.132.*

### **IC 36-8-8-13.6**

#### **"Class 3 excludable condition"; rules; recording and retaining listing of condition**

Sec. 13.6. (a) As used in this chapter, "Class 3 excludable

condition" means a condition that is included on the list of excludable medical conditions established by the system board under subsection (b).

(b) The system board shall adopt rules to establish a list of excludable medical conditions.

(c) To the extent required by the Americans with Disabilities Act, the system board shall record and retain the listing of a fund member's Class 3 excludable condition in the fund member's confidential medical file.

*As added by P.L.4-1992, SEC.51. Amended by P.L.23-2011, SEC.29.*

### **IC 36-8-8-13.7**

#### **Review of member's impairment; hearing; costs of medical examination**

Sec. 13.7. (a) No more than once every twelve (12) months after the final determination of covered impairment under this chapter:

(1) a petition for review of the fund member's impairment may be filed with the local board by the fund member, the safety board, or the system board; or

(2) the local board may on its own motion seek a review of a fund member's impairment.

(b) The review may include a review of whether a covered impairment continues to exist, whether the degree of impairment has changed, and any other matter considered appropriate by the local board.

(c) The local board shall conduct a hearing under section 12.7 of this chapter to determine the matters raised in the petition for review. The local board's determination shall be submitted to the system board, and the procedures specified in section 13.1 of this chapter apply.

(d) The costs of a medical examination required by the local board shall be paid by the party who filed the petition for review.

*As added by P.L.311-1989, SEC.14. Amended by P.L.1-1991, SEC.214; P.L.35-2012, SEC.133.*

### **IC 36-8-8-13.8**

#### **Members dying other than in line of duty after August 31, 1982**

Sec. 13.8. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 14.1 of this chapter) after August 31, 1982.

(b) If a fund member dies while receiving retirement or disability benefits, the following apply:

(1) Except as otherwise provided in this subsection, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(A) until the child becomes eighteen (18) years of age; or

(B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or

university;  
whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child. (2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If a fund member dies while receiving retirement or disability benefits, there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(c) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime. As used in this subsection, a parent is wholly dependent on a fund member if the fund member claimed the parent as a dependent on the federal income tax return filed by the fund member in the year before the year in which the fund member died.

(c) Except as otherwise provided in this subsection, if a fund member dies while on active duty or while retired and not receiving benefits, the member's children and the member's spouse, or the member's parent or parents are entitled to receive a monthly benefit determined under subsection (b). If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

*As added by P.L.118-2000, SEC.26. Amended by P.L.1-2007, SEC.242; P.L.62-2010, SEC.1; P.L.23-2010, SEC.1.*

### **IC 36-8-8-13.9**

#### **Members dying in line of duty before September 1, 1982**

Sec. 13.9. (a) This section applies to an active member who died in the line of duty (as defined in section 14.1 of this chapter) before

September 1, 1982.

(b) Except as otherwise provided in this subsection, if a fund member dies in the line of duty, the following apply:

(1) Each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

- (A) until the child becomes eighteen (18) years of age; or
- (B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(c) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime. As used in this subsection, a parent is wholly dependent on a fund member if the fund member claimed the parent as a dependent on the federal income tax return filed by the fund member in the year before the year in which the fund member died.

(c) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit under subsection (b) is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

(d) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for

health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

*As added by P.L.118-2000, SEC.27. Amended by P.L.86-2003, SEC.8; P.L.1-2007, SEC.243; P.L.62-2010, SEC.2; P.L.23-2010, SEC.2.*

#### **IC 36-8-8-14**

##### **Repealed**

*(Repealed by P.L.50-1984, SEC.13.)*

#### **IC 36-8-8-14.1**

##### **Members dying in line of duty after August 31, 1982**

Sec. 14.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) This section applies to an active member who dies in the line of duty after August 31, 1982.

(c) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to a monthly benefit during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years service at fifty-two (52) years of age. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(d) If a fund member dies in the line of duty, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

- (1) until the child reaches eighteen (18) years of age; or
- (2) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2),



the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(e) If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(c) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime. As used in this subsection, a parent is wholly dependent on a fund member if the fund member claimed the parent as a dependent on the federal income tax return filed by the fund member in the year before the year in which the fund member died.

(f) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

(g) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from:

- (1) any action that the member, in the member's capacity as a police officer:
  - (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
  - (B) performs in the course of controlling or reducing crime or enforcing the criminal law; or
- (2) any action that the member, in the member's capacity as a firefighter:
  - (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
  - (B) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

*As added by P.L.50-1984, SEC.14. Amended by P.L.196-1988, SEC.4; P.L.1-1989, SEC.74; P.L.55-1989, SEC.64; P.L.1-1993, SEC.247; P.L.52-1993, SEC.6; P.L.197-1993, SEC.6; P.L.1-1994, SEC.180; P.L.25-1994, SEC.11; P.L.231-1997, SEC.6; P.L.40-1997, SEC.9; P.L.22-1998, SEC.25; P.L.195-1999, SEC.35; P.L.118-2000, SEC.28; P.L.62-2002, SEC.4; P.L.185-2002, SEC.12; P.L.86-2003, SEC.9; P.L.1-2007, SEC.244; P.L.62-2010, SEC.3; P.L.23-2010, SEC.3.*

#### **IC 36-8-8-15**

##### **Cost of living adjustment**

Sec. 15. Each year the system board shall determine if there has been an increase or decrease in the consumer price index (United States city average) prepared by the United States Department of Labor by comparing the arithmetic mean of the consumer price index for January, February, and March of that year with the arithmetic mean for the same three (3) months of the preceding year. If there has been an increase, or a decrease, it shall be stated as a percentage of the arithmetic mean for the preceding three (3) month period. The percentage shall be rounded to the nearest one-tenth of one percent (0.1%) and may not exceed three percent (3%). If there is a percentage increase of the arithmetic mean for the preceding three (3) month period, a fund member's or survivor's monthly benefit, beginning with the July payment, shall be increased by an amount equal to the June payment times the percentage increase. However, a fund member's or survivor's monthly benefit may not be increased under this section until July of the year following the year of the first monthly benefit payment to the fund member or survivor. In computing a fund member's benefit, the increase is based only on those years for which the fund member was eligible for benefit payments under this chapter. A monthly benefit may not be reduced if there is a percentage decrease of the arithmetic mean for the preceding three (3) month period.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.99-2010, SEC.13; P.L.35-2012, SEC.134.*

#### **IC 36-8-8-16**

##### **Lump sum death benefit**

Sec. 16. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) The heirs or estate of a fund member is entitled to receive at least twelve thousand dollars (\$12,000) upon the fund member's death.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.200-1984, SEC.6; P.L.55-1989, SEC.65; P.L.311-1989, SEC.15; P.L.169-1994, SEC.5; P.L.49-1998, SEC.8; P.L.28-2008, SEC.4.*

### **IC 36-8-8-17**

#### **Benefits exempt from judicial process; transfer prohibited; rollover to eligible retirement plan**

Sec. 17. (a) The benefits of this chapter are exempt from attachment and garnishment and may not be seized, taken, or levied upon by any execution or process.

(b) Except as provided in subsection (c) and section 17.2 of this chapter, a person receiving a benefit under this chapter may not transfer, assign, or sell the benefit.

(c) Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1977 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.10-1993, SEC.19; P.L.183-2003, SEC.2.*

### **IC 36-8-8-17.2**

#### **Voluntary benefit deductions**

Sec. 17.2. (a) Notwithstanding any other provision of this chapter, a person receiving a disability, retirement, or survivor monthly benefit under this chapter may, after June 30, 2004, authorize the system board to make a deduction from the benefit.

(b) An authorization for a deduction from a disability, retirement, or survivor monthly benefit paid under this chapter is valid only if all the following requirements are met:

(1) The authorization is:

(A) in writing;

(B) signed personally by the person receiving the benefit;

(C) revocable at any time by the person receiving the benefit upon written notice to the system board; and

(D) agreed to in writing by the system board.

(2) An executed copy of the authorization is delivered to the system board within ten (10) days after its execution.

(3) The deduction is made for a purpose described in subsection (c).

(c) A deduction under this section may be made for the purpose of paying any of the following:

(1) A premium on a policy of insurance for medical, surgical, hospitalization, dental, vision, long term care, or Medicare supplement coverage offered to retired fund members by the

fund member's former employer, the state, or the system board.

(2) A pledge or contribution to a charitable or nonprofit organization.

(3) Dues payable by the person receiving the benefit to a labor organization of which the person is a member.

*As added by P.L.183-2003, SEC.3. Amended by P.L.35-2012, SEC.135.*

### **IC 36-8-8-18**

#### **Credit for service prior to participation in 1977 fund; rollover distributions; trustee to trustee transfers**

Sec. 18. (a) Except as provided in subsection (b), if a unit becomes a participant in the 1977 fund, credit for prior service by police officers (including prior service as a full-time, fully paid town marshal or full-time, fully paid deputy town marshal by a police officer employed by a metropolitan board of police commissioners) or by firefighters before the date of participation may be given by the system board only if:

(1) the unit contributes to the 1977 fund the amount necessary to amortize prior service liability over a period of not more than forty (40) years, the amount and period to be determined by the system board; and

(2) the police officers or firefighters pay, either in a lump sum or in a series of payments determined by the system board, the amount that they would have contributed if they had been members of the 1977 fund during their prior service.

If the requirements of subdivisions (1) and (2) are not met, a fund member is entitled to credit only for years of service after the date of participation.

(b) If a unit becomes a participant in the 1977 fund under section 3(c) of this chapter, or if a firefighter becomes a member of the 1977 fund under section 7(g) of this chapter, credit for prior service before the date of participation or membership shall be given by the system board as follows:

(1) For a member who will accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, the member will be given credit in the 1977 fund for one-third (1/3) of the member's years of participation in PERF as a police officer, a firefighter, or an emergency medical technician.

(2) For a member who will not accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, such prior service shall be given only if:

(A) The unit contributes to the 1977 fund the amount necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary earned by a

first class firefighter at the time the unit becomes a participant in the 1977 fund, or the firefighter becomes a member of the 1977 fund, or if no such salary designation exists, the actual salary earned by the firefighter. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical technician under section 7(g) of this chapter.

(B) The amount the firefighter would have contributed if the firefighter had been a member of the 1977 fund during the firefighter's prior service must be fully paid and must be based on the firefighter's actual salary earned during that period before service can be credited under this section.

(C) Any amortization schedule for contributions paid under clause (A) and contributions to be paid under clause (B) must include interest at a rate determined by the system board.

(3) If, at the time a unit entered the 1977 fund, the unit contributed the amount required by subdivision (2) so that a fund member received the maximum prior service credit allowed by subdivision (2) and, at a later date, the earliest retirement age was lowered, the unit may contribute to the 1977 fund on the fund member's behalf an additional amount that is determined in the same manner as under subdivision (2) with respect to the additional prior service, if any, available as a result of the lower retirement age. If the unit pays the additional amount described in this subdivision in accordance with the requirements of subdivision (2), the fund member shall receive the additional service credit necessary for the fund member to retire at the lower earliest retirement age.

(c) This subsection applies to a unit that:

(1) becomes a participant in the 1977 fund under section 3(c) of this chapter; and

(2) is a fire protection district created under IC 36-8-11 that includes a township or a municipality that had a 1937 fund.

A firefighter who continues uninterrupted service with a unit covered by this subsection and who participated in the township or municipality 1937 fund is entitled to receive service credit for such service in the 1977 fund. However, credit for such service is limited to the amount accrued by the firefighter in the 1937 fund or the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter becomes

fifty-two (52) years of age, whichever is less.

(d) The unit shall contribute into the 1977 fund the amount necessary to fund the amount of past service determined in accordance with subsection (c), amortized over a period not to exceed ten (10) years with interest at a rate determined by the system board.

(e) If the township or municipality has accumulated money in its 1937 fund, any amount accumulated that exceeds the present value of all projected future benefits from the 1937 plan shall be paid by the township or municipality to the unit for the sole purpose of making the contributions determined in subsection (d).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a rollover of a distribution from any of the following:

- (1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.
- (2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.
- (4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a trustee to trustee transfer from any of the following:

- (1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

*As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.313-1989, SEC.2; P.L.4-1990, SEC.19; P.L.149-1992, SEC.1; P.L.101-1998, SEC.2; P.L.49-1998, SEC.9; P.L.61-2002, SEC.17; P.L.148-2007, SEC.2; P.L.13-2011, SEC.20; P.L.35-2012, SEC.136.*

### **IC 36-8-8-18.1**

#### **1977 fund participants previously covered in PERF or firefighters participating in 1977 fund; minimum benefit; transfer of contributions; reduction of contributions; credit for prior service**

Sec. 18.1. (a) As used in this section, "police officer" includes a former full-time, fully paid town marshal or full-time, fully paid deputy town marshal who is employed as a police officer by a metropolitan board of police commissioners.

(b) If a unit becomes a participant in the 1977 fund and the unit previously covered police officers, firefighters, or emergency medical technicians in PERF, or if the employees of the unit become members of the 1977 fund under section 7(g) of this chapter, the following provisions apply:

(1) A minimum benefit applies to members electing to transfer or being transferred to the 1977 fund from PERF. The minimum benefit, payable at age fifty-two (52), for such a member equals the actuarial equivalent of the vested retirement benefit payable to the member upon normal retirement under IC 5-10.2-4-1 as of the day before the transfer, based solely on:

(A) creditable service;

(B) the average of the annual compensation; and

(C) the amount credited to the annuity savings account; of the transferring member as of the day before the transfer under IC 5-10.2 and IC 5-10.3.

(2) The system board shall transfer from PERF to the 1977 fund the amount credited to the annuity savings accounts and the present value of the retirement benefits payable at age sixty-five (65) attributable to the transferring members.

(3) The amount the unit and the member must contribute to the 1977 fund under section 18 of this chapter, if any service credit is to be given under that section, will be reduced by the amounts transferred to the 1977 fund by the system board under subdivision (2).

(4) Credit for prior service in PERF of a member as a police officer, a firefighter, or an emergency medical technician is waived in PERF. Any credit for that service under the 1977 fund shall only be given in accordance with section 18 of this chapter.

(5) Credit for prior service in PERF of a member, other than as a police officer, a firefighter, or an emergency medical technician, remains in PERF and may not be credited under the 1977 fund.

*As added by P.L.4-1990, SEC.20. Amended by P.L.1-1991, SEC.215; P.L.101-1998, SEC.3; P.L.13-2011, SEC.21; P.L.35-2012, SEC.137.*

### **IC 36-8-8-19**

#### **Baseline statewide physical and mental examinations**

Sec. 19. (a) The baseline statewide physical examination required by section 7(a) of this chapter shall be prescribed by the system board and shall be administered by the appointing authority, as determined by the local board, after the appointing authority extends a conditional offer for employment. The baseline statewide physical examination shall be administered by a licensed physician and must include all of the following:

(1) A general medical history.

(2) The tests identified in rules that shall be adopted by the system board.

(b) The system board shall adopt minimum standards by rule that a police officer or firefighter must meet for the baseline statewide physical examination described in subsection (a). The baseline statewide physical examination and related standards must:

(1) reflect the essential functions of the job;

(2) be consistent with business necessity; and

(3) be evaluated by the system board one (1) time before January 1, 2015, and every five (5) years thereafter.

(c) The system board shall, in consultation with the commissioner of mental health, select the baseline statewide mental examination described in section 7(a) of this chapter. The standards for passing the baseline statewide mental examination shall be determined by the local board. The baseline statewide mental examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; and
- (3) be evaluated by the system board one (1) time before January 1, 2015, and every five (5) years thereafter.

The purpose of the baseline statewide mental examination is to determine if the police officer or firefighter is mentally suitable to be a member of the department. The local board may designate a community mental health center or a managed care provider (as defined in IC 12-7-2-127(b)), a hospital, a licensed physician, or a licensed psychologist to administer the examination. However, the results of a baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist.

(d) The employer shall pay for no less than one-half (1/2) the cost of the examinations.

(e) Each local board shall name the physicians who will conduct the examinations under this section.

(f) If a local board determines that a candidate passes the local physical and mental standards, if any, established under IC 36-8-3.2-6, the baseline statewide physical examination described in subsection (a), and the baseline statewide mental examination described in subsection (c), the local board shall send the following to the Indiana public retirement system:

- (1) Copies and certification of the results of the baseline statewide physical examination described in subsection (a).
- (2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.
- (3) Certification of the results of the baseline statewide mental examination described in subsection (c).

(g) The system board or the system board's designee shall then determine whether the candidate passes the baseline statewide physical standards adopted under subsection (b). If the candidate passes the baseline statewide standards, the system board or the system board's designee shall also determine whether the candidate has a Class 3 excludable condition under section 13.6 of this chapter. The system board or the system board's designee shall retain the results of the examinations and all documents related to the examination until the police officer or firefighter retires or separates from the department.

(h) To the extent required by the federal Americans with Disabilities Act, the system board shall do the following:

- (1) Treat the medical transcripts, reports, records, and other material compiled under this section as confidential medical



records.

(2) Keep the transcripts, reports, records, and material described in subdivision (1) in separate medical files for each member.

(i) A local board may, at the request of an appointing authority or on the local board's own motion, issue subpoenas, discovery orders, and protective orders in accordance with the Indiana Rules of Trial Procedure to facilitate the receipt of accurate and original documents necessary for the proper administration of this chapter. A subpoena or order issued under this subsection:

(1) must be served in accordance with the Indiana Rules of Trial Procedure; and

(2) may be enforced in the circuit or superior court with jurisdiction for the county in which the subpoena or order is served.

*As added by P.L.365-1983, SEC.2. Amended by P.L.202-1984, SEC.2; P.L.342-1985, SEC.8; P.L.4-1992, SEC.52; P.L.40-1994, SEC.82; P.L.99-2010, SEC.14; P.L.23-2011, SEC.30; P.L.6-2012, SEC.253.*

#### **IC 36-8-8-20**

##### **Special lump sum death benefit in addition to other benefits**

Sec. 20. (a) As used in this section, "dies in the line of duty" has the meaning set forth in section 14.1 of this chapter.

(b) Benefits paid under this section are subject to section 2.5 of this chapter.

(c) A special death benefit of seventy-five thousand dollars (\$75,000) for a fund member who dies in the line of duty before January 1, 1998, and one hundred fifty thousand dollars (\$150,000) for a fund member who dies in the line of duty after December 31, 1997, shall be paid in a lump sum by the Indiana public retirement system from the pension relief fund established under IC 5-10.3-11 to the following relative of a fund member who dies in the line of duty:

(1) To the surviving spouse.

(2) If there is no surviving spouse, to the surviving children (to be shared equally).

(3) If there is no surviving spouse and there are no surviving children, to the parent or parents in equal shares.

(d) The benefit provided by this section is in addition to any other benefits provided under this chapter.

*As added by P.L.223-1986, SEC.4. Amended by P.L.55-1989, SEC.66; P.L.225-1991, SEC.4; P.L.53-1993, SEC.5; P.L.49-1998, SEC.10; P.L.35-2012, SEC.138.*

#### **IC 36-8-8-21**

##### **1977 fund members; age limitation; aptitude, physical agility, and physical and mental standards; credit for prior service**

Sec. 21. (a) This section applies to firefighters who:

(1) are employed by units that become participants in the 1977 fund under section 3(c) of this chapter; or

(2) become members of the 1977 fund under section 7(g) of this chapter.

(b) A firefighter may become a member of the 1977 fund without meeting the age limitation under section 7(a) of this chapter if the firefighter satisfies:

(1) any aptitude, physical agility, or physical and mental standards established by a local board under IC 36-8-3.2; and

(2) the minimum standards that are:

(A) adopted by the system board under section 19 of this chapter; and

(B) in effect on the date the firefighter becomes a member of the 1977 fund.

(c) Credit for prior service of a firefighter who becomes a member of the 1977 fund under this section shall be determined under section 18 or 18.1 of this chapter. No service credit beyond that allowed under section 18 or 18.1 of this chapter may be recognized under the 1977 fund.

*As added by P.L.313-1989, SEC.3. Amended by P.L.4-1990, SEC.21; P.L.4-1992, SEC.53; P.L.35-2012, SEC.139.*

#### **IC 36-8-8-22**

##### **Selection of administrative law judge**

Sec. 22. Nothing in this chapter limits the discretion of the system board to select an administrative law judge under IC 4-21.5-3-9.

*As added by P.L.311-1989, SEC.16. Amended by P.L.35-2012, SEC.140.*

#### **IC 36-8-8-23**

##### **Disability retiree supplemental benefit**

Sec. 23. (a) This section applies to a fund member who:

(1) after June 30, 2009, receives a benefit based on a determination that the member has a Class 1 or Class 2 impairment, regardless of whether the determination was made before, on, or after June 30, 2009; and

(2) before July 1, 2009, has not had the member's disability benefit recalculated under section 13.5 of this chapter.

(b) Upon becoming fifty-two (52) years of age, a fund member receiving a Class 1 impairment benefit or Class 2 impairment benefit under section 13.5(h)(2) of this chapter is entitled to receive a monthly supplemental benefit determined in STEP THREE of the following formula:

STEP ONE: Determine the greater of:

(A) the monthly retirement benefit payable to a fund member with twenty (20) years of service; or

(B) the monthly retirement benefit payable to a fund member with the total years of service (including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits) and salary, as of the year the fund member becomes fifty-two (52) years of age, that the fund member would have earned if the fund

member had remained in active service until becoming fifty-two (52) years of age.

STEP TWO: Subtract from the amount determined under STEP ONE the amount of any monthly benefit determined under section 13.5 of this chapter that the fund member is entitled to receive for the remainder of the fund member's life.

STEP THREE: Determine the greater of the following:

- (A) The remainder determined under STEP TWO.
- (B) Zero (0).

(c) A monthly supplemental benefit determined under this section is payable for the remainder of the fund member's life.

*As added by P.L.32-2009, SEC.3; P.L.34-2009, SEC.3.*

### **IC 36-8-8-24**

#### **Beneficiary designation**

Sec. 24. (a) A fund member may designate one (1) or more beneficiaries to receive in a lump sum the fund member's contributions plus interest at a rate determined by the system board if the fund member dies:

- (1) without receiving a retirement benefit under sections 10 and 11 of this chapter;
- (2) without receiving a disability benefit under section 13.3 or 13.5 of this chapter;
- (3) without a survivor entitled to receive a benefit under section 13.8, 13.9, or 14.1 of this chapter; and
- (4) without the system board returning the fund member's contributions under section 8 of this chapter.

(b) A fund member who chooses to designate one (1) or more beneficiaries under this section shall file the fund member's designation with the system board on a form prescribed by the system board.

(c) The system board shall adopt rules to allow a fund member who designates more than one (1) beneficiary to allocate the contributions and interest paid in percentage increments.

(d) Whenever a fund member does not designate a beneficiary under this section and has no survivors entitled to receive a benefit under section 13.8, 13.9, or 14.1 of this chapter, the system board shall refund to the fund member's estate:

- (1) the fund member's contributions; plus
- (2) interest at a rate determined by the system board.

*As added by P.L.23-2010, SEC.4; P.L.62-2010, SEC.4. Amended by P.L.35-2012, SEC.141.*

### **IC 36-8-8-24.8**

#### **Expired**

*(Expired 7-1-2012 by P.L.177-2011, SEC.3.)*