
BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND
Resolution No. 07-06

Adoption and Readoption of Fund Rules under the Indiana Administrative Code

WHEREAS, the Public Employees' Retirement Fund (the "Fund") exists to provide retirement benefits to public employees of the state of Indiana and participating political subdivisions and to their survivors and beneficiaries;

WHEREAS, the Board of Trustees of the Fund, by statute, administers the Public Employees' Retirement Fund;

WHEREAS, pursuant to Indiana Code 5-10.3-3-8, the Board of Trustees of the Fund may establish and amend rules and regulations for the administration of the Fund without adopting rules under the processes described in [IC 4-22-2](#);

WHEREAS, the Board of Trustees of the Fund may readopt Fund rules under the Indiana Administrative Code pursuant to [IC 4-22-2.5](#);

WHEREAS, the Board of Trustees of the Fund desires to amend the Fund rules contained in the Indiana Administrative Code;

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Public Employees' Retirement Fund that:

SECTION 1. The Board hereby amends the Fund's administrative rules as provided in Exhibit A, which is attached hereto, and directs staff to cause the amended rules to be published in the Indiana Administrative Code.

SECTION 2. THE FOLLOWING ARE READOPTED WITHOUT CHANGES: [35 IAC 1.2-1-1](#); [35 IAC 1.2-2-1](#); [35 IAC 1.2-3-1](#); [35 IAC 1.2-3-3](#); [35 IAC 1.2-3-4](#); [35 IAC 1.2-3-7](#); [35 IAC 1.2-3-8](#); [35 IAC 1.2-3-9](#); [35 IAC 1.2-3-10](#); [35 IAC 1.2-4-1](#); [35 IAC 1.2-4-3](#); [35 IAC 1.2-4-4](#); [35 IAC 1.2-4-5](#); [35 IAC 1.2-5-2](#); [35 IAC 1.2-5-5](#); [35 IAC 1.2-5-8](#); [35 IAC 1.2-5-10](#); [35 IAC 1.2-5-11](#); [35 IAC 1.2-5-13](#); [35 IAC 1.2-5-14](#); [35 IAC 1.2-5-15](#); [35 IAC 1.2-5-16](#); [35 IAC 1.2-5-18](#); [35 IAC 1.2-5-20](#); [35 IAC 1.2-6-4](#); [35 IAC 1.2-7-1](#); [35 IAC 1.2-7-2](#); [35 IAC 1.2-8-1](#); [35 IAC 1.2-8-2](#); [35 IAC 1.2-8-3](#); [35 IAC 2-1-4](#); [35 IAC 2-2-1](#); [35 IAC 2-3-1](#); [35 IAC 2-3-2](#); [35 IAC 2-5-1](#); [35 IAC 2-5-3](#); [35 IAC 2-8-1](#); [35 IAC 2-9-1](#); [35 IAC 2-9-2](#); [35 IAC 2-9-3](#); [35 IAC 2-9-4](#); [35 IAC 2-9-5](#); [35 IAC 2-9-6](#); [35 IAC 2-10-1](#); [35 IAC 2-10-2](#); [35 IAC 2-10-3](#); [35 IAC 4-1-1](#); [35 IAC 4-2-1](#); [35 IAC 4-3-1](#); [35 IAC 6-1-1](#); [35 IAC 6-2-1](#); [35 IAC 8-1-2](#); [35 IAC 8-1-3](#); [35 IAC 8-2-1](#); [35 IAC 9-1-2](#); [35 IAC 9-1-3](#); [35 IAC 9-1-4](#); [35 IAC 10-1-2](#); [35 IAC 10-1-3](#); [35 IAC 11-1-1](#); [35 IAC 12-1-2](#); [35 IAC 12-1-3](#); [35 IAC 12-1-4](#)

SECTION 3. [35 IAC 1.2-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-1-2](#) Delegation of authority; powers and duties of executive director

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3-2-1](#)

Sec. 2. The executive ~~secretary~~ **director** is the executive officer of the fund's affairs and operations, makes eligibility and other determinations on applications made to the board, makes periodic reports to the board, and performs all other duties assigned by the board. The executive ~~secretary~~ **director** shall cause all applicants and other necessary persons to be notified promptly of any determinations made concerning such applications. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-1-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 4. [35 IAC 1.2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-1-3](#) General powers

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 3. The board may employ ~~all necessary employees, attorneys~~ **investment managers, custodians, and investment consultants** to carry out the powers and duties of the fund. **The executive director may employ all necessary employees, auditors, technical experts, legal counsel, and other service providers to carry out**

the powers and duties of the fund. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-1-3](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 5. [35 IAC 1.2-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-2](#) Reemployment after termination of employment; suspension of membership; withdrawal of contributions

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-3-5](#); [IC 5-10.3](#)

Sec. 2. To cancel previous suspension, after termination of employment and withdrawal of contributions or by operation of [IC 5-10.2-3-5](#), and qualify prior service as creditable service, the individual must be reemployed in a PERF-covered position for a period of not less than six (6) consecutive months; however, if the employee shows to the satisfaction of the board fund that there was bona fide intent to return to employment and comply with this rule and the employee was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of the reemployment, then such six (6) month requirement shall be waived. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 6. [35 IAC 1.2-3-5](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-5](#) Leave of absence

Authority: [IC 5-10.3-3-8](#); [IC 5-10.3-7-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3-7-6](#)

Sec. 5. (a) As used in this section, "FMLA" refers to the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) and all applicable regulations and amendments.

(b) A member shall receive service credit for the period of time during which the member is granted a leave of absence under [IC 5-10.3-7-6](#) and for which applicable employer contributions have been made as follows:

(1) Except as otherwise required by the FMLA, the credit shall be allowed ~~only~~ if a copy of the grant of the leave of absence is filed with PERF within ninety (90) days from the date the leave was authorized by the employer. No leave granted retroactively by the employer will be considered as creditable service.

Furthermore, except as otherwise required by the FMLA or other federal or state laws that specifically require the granting of service credit for authorized unpaid leaves of absence, service credit shall not be granted for any unpaid leaves of absence taken on or after January 1, 2007, if employer contributions are not made for such periods of leave.

(2) A leave of absence will be treated as creditable service only if the member returns to employment for a period of not less than six (6) consecutive months; however, if the member shows to the satisfaction of the board fund that there was a bona fide intent to return to employment and comply with this rule and the member was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of return to employment, then this six (6) month requirement shall be waived.

(c) This section and [IC 5-10.3-7-6](#) shall be administered in a manner consistent with the FMLA.

(d) If the member is compensated while on an FMLA-covered leave, the statutory contributions must be maintained. A member may make contributions as provided in [IC 5-10.3-7-6](#)(b) during an unpaid FMLA leave, although such contributions shall not result in service credit for benefit purposes unless employer contributions are made for such period of leave. The member's employer is not required to make contributions with respect to an unpaid FMLA leave; however, if employer contributions are not made, the member shall be entitled only to the eligibility service required by the FMLA.

(e) In calculating credit for vesting and eligibility purposes, time spent on an FMLA protected leave shall be counted, including any time spent receiving disability benefits while on such leave.

(f) A member seeking credit for an FMLA leave must provide documentary evidence demonstrating that the statutory requirements have been satisfied. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-5](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; filed May 7, 1998, 4:15 p.m.: 21 IR 3326; readopted filed Oct

SECTION 7. [35 IAC 1.2-3-6](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-6](#) Reinstatement

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 6. A member whose service is involuntarily terminated and who is later reinstated as a result of a court determination and order or administrative final determination and order may be eligible for PERF credit if proper supporting documents are filed with PERF and approved by the board or the executive ~~secretary~~ **director** and employer contributions are made. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-6](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 8. [35 IAC 1.2-3-11](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-11](#) Comprehensive Employment Training Act (CETA)

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 11. **Employees involved in the administration of** Comprehensive Employment Training Act (CETA) ~~employees who leave CETA employment and subsequently enter employment in a PERF programs may be covered by PERF. Regular CETA employment is not such employment that may be covered by PERF.~~ **CETA employees who leave CETA employment and subsequently enter employment in a PERF-covered position shall not receive service credit for prior CETA employment, even if the position is essentially the same. The participating employer is solely responsible for classifying the member's service, and such classification is binding on the affected employee and the fund.** (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-11](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 9. [35 IAC 1.2-3-12](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-12](#) Purchase of prior bureau of motor vehicles commission service

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-3-1](#); [IC 5-10.3-7](#)

Sec. 12. (a) Under [IC 5-10.2-3-1](#) and [IC 5-10.3-7-2](#), employees of the bureau of motor vehicles commission (BMVC) are not entitled to automatic coverage or service credit prior to July 1, 1999, for service with the BMVC, because of their coverage in a retirement plan established by the BMVC. However, under [IC 5-10.3-7-8](#), the board believes it would be reasonable to allow employees to purchase any BMVC service from the later of:

- (1) January 1, 1987, the date the BMVC established its retirement plan; or
- (2) the date the individual became an employee of the BMVC;

through June 30, 1999, the date the BMVC terminated its retirement plan. For purposes of this section, BMVC service does not include service in any license branch prior to becoming a BMVC employee, or service at a license branch prior to the conversion of that license branch to the BMVC. Service in a license branch that is not BMVC service shall not be eligible for service purchase under this rule nor shall it be credited to any employee without purchase.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The ~~board~~ **fund** shall provide the employees with information with respect to the cost of such service.

(c) The employees may purchase such service subject to the following:

- (1) Any such purchase may be made via a direct cash payment, a direct rollover under [IC 5-10.3-7-9.5](#), or a combination of both.
- (2) Any direct rollover may not exceed the actual cost of such service as established by the ~~board~~ **fund**.
- (3) Any direct cash payment may be made in a lump sum or in installments for a period not to exceed five (5) years. Any installment shall bear interest at the actuarial interest rate effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the ~~board~~ **fund** may limit any payments in a manner necessary to comply with these limits.

(d) This section also applies to former employees of the BMVC with BMVC service who are employed in a PERF-covered position at the time they purchase such service.

(e) In no event shall any BMVC service prior to July 1, 1999, be credited under [IC 5-10.3-7-7.5](#) because of the exclusion under [IC 5-10.3-7-2\(4\)](#) unless purchased in accordance with this section.

(f) The restriction contained in [IC 5-10.3-7-4.5\(d\)](#) does not apply to a purchase made under this section. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-12](#); filed Dec 11, 2000, 2:12 p.m.: 24 IR 946; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 10. [35 IAC 1.2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-1 Retirement options](#)

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4-2](#); [IC 5-10.2-4-7](#); [IC 5-10.3](#)

Sec. 1. (a) A member who retires or becomes eligible for a disability retirement cannot change the retirement option, nor may a member who chooses a lump sum payment under [IC 5-10.2-4-2\(a\)](#) ~~changes~~ **change** this choice, nor may the beneficiary designation on the application for benefits be changed under joint and survivorship options 30, 40, or 50, after the first day of the month that benefit payments are scheduled to begin. It is immaterial whether or not a check has been sent, received, or negotiated. (See also section 13 of this rule.)

(b) Under [IC 5-10.2-4-7](#), in the event that the increased retirement benefit under the integration with Social Security option prior to Social Security eligibility is calculated to be greater than an amount which is the actuarial equivalent of the retirement benefit under the normal guaranteed retirement benefit payable as a life annuity which ceases on the date of the member's death or, if later, the member's Social Security age of eligibility, then the increased retirement benefit shall be limited to such actuarial equivalent and there will be no retirement benefit payable after the age of Social Security eligibility. (In no event shall fewer than sixty (60) payments be made.)

(c) The integration with Social Security option and the cash refund annuity option may each be made only with the normal guaranteed retirement benefit.

(d) None of the retirement benefit payment options may be made in connection with any other such retirement benefit payment option. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-1](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 11. [35 IAC 1.2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-4 Disability alternatives](#)

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 4. (a) A member who is eligible for early retirement and who has on file with the ~~board~~ **fund** a copy of application to Social Security for Social Security disability benefits may file for early retirement and retain his right to disability benefits. Under such circumstances, when the member notifies the ~~PERF board~~ **fund** that he qualifies for Social Security disability benefits, early retirement benefits shall cease and disability benefits shall begin.

(b) A member who has five (5) years of creditable service and who is not eligible for early retirement and has on file with the ~~board~~ **fund** a copy of a request to Social Security for a disability determination may request a lump sum withdrawal of his annuity account without prejudice to his right to disability benefits under PERF should the Social Security Administration approve the request for disability within three (3) years from the date of the member's termination from employment. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-4](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 12. [35 IAC 1.2-5-6](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-6 Reemployment](#)

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4](#); [IC 5-10.3-2-1](#)

Sec. 6. (a) Reemployment terms are set forth at [IC 5-10.2-4-8](#) through [IC 5-10.2-4-10](#).

(b) Under [IC 5-10.2-4-8](#), if the position in which the member is reemployed has an annual salary which that is more than the "exempt amount", then retirement benefit payments shall stop beginning the first of the month following the date that the member's year-to-date earnings from the reemployed position have exceeded the exempt amount. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-5-6](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 13. [35 IAC 1.2-5-7](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-7](#) Service for disability and survivor benefits

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 7. "In service" under ~~[IC 5-10.2-3-7](#)~~ though ~~[IC 5-10.2-3-8](#)~~, and "in active service" under ~~[IC 5-10.2-4-6](#)~~, means that the member was in an employer-employee relationship as determined by the employer within established rules of the employer. Benefits for disability shall be paid beginning with the later of:

(1) that point in time when such employer-employee relationship no longer exists as determined by the employer; or

(2) the onset of disability as determined by the Social Security Administration.

In determining whether a member has achieved eligibility for disability benefits, periods of leave under the Family and Medical Leave Act (as defined in [35 IAC 1.2-3-5](#)) shall be included. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-5-7](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 14. [35 IAC 1.2-5-9](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-9](#) Survivor benefits

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 9. (a) A survivor benefit under [IC 5-10.2-3-7](#) can be paid only to one (1) of the following three (3) categories of dependent beneficiaries:

(1) Surviving spouse.

(2) Child of deceased member.

(3) Parent of the deceased member.

~~PERF shall use the same dependency test used by Health and Human Service for Social Security.~~

~~(b) A child of a deceased member is eligible to receive survivor benefits until his eighteenth birthday or during a continuing period of mental or physical disability which extends beyond such birthday and which meets Social Security guideline, subject to annual review. Persons confined in a mental institution need not be reexamined regularly, but the PERF board may rely upon statements from the administrator of the institution.~~

~~(e) If the total amount of survivor benefits paid to a **surviving spouse or surviving** dependent beneficiary does not exceed the member's total contributions plus accumulated interest, the difference shall be paid to the **surviving** dependent beneficiary in a lump sum after termination of benefit payments. **or his estate or, in the case of a surviving spouse, the surviving spouse's estate.** (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-5-9](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))~~

SECTION 15. [35 IAC 1.2-5-12](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-12](#) Minimum disability retirement benefit

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4](#); [IC 5-10.3](#)

Sec. 12. (a) The minimum monthly disability retirement benefit specified in [IC 5-10.2-4-6\(b\)](#) is one hundred

dollars (\$100) only if the member chooses an annuity under ~~IC 5-10.2-4-4(b)~~ **IC 5-10.2-4-2(a)** and the retirement benefit guarantee determined under ~~IC 5-10.2-4-2(a)~~; **IC 5-10.2-4-7(b)**, subject to the provisions of ~~IC 5-10.2-4-2(b)~~.

(b) Should the member choose a lump sum distribution of the amount in his annuity savings account under **IC 5-10.2-4-2** and/or a retirement benefit payment option, under **IC 5-10.2-4-7**, **other than the five (5) year guaranteed retirement benefit**, the minimum disability retirement benefit shall be the actuarial equivalent of the one hundred dollars (\$100) under subsection (a) as determined by the rules of the board. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-12; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 16. **35 IAC 1.2-5-17** IS AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-5-17 Birth date; proof required

Authority: **IC 5-10.3-3-8**

Affected: **IC 5-10.2; IC 5-10.3**

Sec. 17. No member shall receive a retirement benefit from the fund until one (1) of the following proofs of birth is submitted. (This rule also covers other instances where birth dates are necessary to determinations made for other benefits.):

- (1) ~~A An original or certified copy of the birth certificate from issued by the public health department where state in which the birth was recorded at time of birth. occurred.~~
- (2) ~~A copy of a birth certificate required at a uniform baptism, such as those required by the Lutheran and Catholic churches.~~
- (3) ~~A court decree obtained pursuant to **IC 34-4-3** and certified by the clerk of the court.~~
- (4) ~~If any applicant for retirement benefits cannot obtain any of the above, said applicant shall file with the board all evidence he may have relative to this actual date of birth, and upon such evidence the board may act in fixing a birth date for computing his retirement benefits.~~
- (2) **Official baptismal or church record.**
- (3) **Certified immigration or naturalization record.**
- If proof in accordance with 1-3 above [subdivisions (1) through (3)] cannot be provided, then a photocopy of at least two (2) of the documents listed below must be submitted to PERF:**
- (4) **Passport.**
- (5) **Notification of registration of birth in a public registry of vital statistics.**
- (6) **Social Security Administration record verifying date of birth.**
- (7) **United States Census Bureau certification or record of age.**
- (8) **Military record.**
- (9) **Family Bible record.**
- (10) **Certified school record.**
- (11) **Certified vaccination record.**
- (12) **A life insurance policy that states the age or date of birth.**
- (13) **Marriage license or certificate that states the age or date of birth.**

(*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-17; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 17. **35 IAC 1.2-5-19** IS AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-5-19 Proration of retirement costs

Authority: **IC 5-10.3-3-8**

Affected: **IC 5-10.2; IC 5-10.3**

Sec. 19. (a) A member with service credit from more than one (1) employer shall have his retirement reserve cost prorated based on months of service among all his or her employers.

(b) Any employer may object to this basis of proration by written objection made within fifteen (15) days from receipt by the employer of notification of each such proration.

(c) The ~~board of trustees~~ **fund** may, if evidence of substantial inequity is presented by such objecting employer, use the following basis for reaching a result.

(d) The annual compensation for each calendar year or part thereof shall be divided by the annual average

consumer price index figure (1967 = \$100) of the U.S. Bureau of Labor Statistics for each such year to determine a weighted salary for each year or part thereof.

(e) The ~~PERF board~~ **fund** shall prorate retirement reserve costs to participating employers on the basis of the weighted salary each has paid, or such other method that, in the judgment of the ~~PERF board~~, **fund**, equitably allocates the retirement reserve cost between the member's employers. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-5-19](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 18. [35 IAC 1.2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-6-1](#) Quarterly reports

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 1. (a) A quarterly report and payment of employee contributions and employer contributions shall be due in the PERF office no later than the fifteenth day following the end of each calendar quarter. Specifically, January 15, April 15, July 15, and October 15 each year. If the fifteenth day following the end of the quarter falls on a Saturday, Sunday, or a legal holiday, the due date becomes the next working day. It shall be the responsibility of the local official to employ such method of delivery to insure that the report and payment will reach the PERF office, Suite 800, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204, on or before the due date.

(b) Any employer who fails to make payments by the dates specified may be assessed a penalty. The penalty will be determined by the ~~board of trustees~~, **fund**. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-6-1](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 19. [35 IAC 1.2-6-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-6-2](#) Admission to the fund

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3-2-1](#); [IC 5-10.3-6-1](#)

Sec. 2. (a) Admission to the fund by a political subdivision shall be governed by ~~IC 5-10.3-6-1~~(b). [IC 5-10.3-6-1](#).

(b) In addition, any political subdivision whose existence is subject to termination or whose funding is dependent upon sources external to it must demonstrate to the board's satisfaction that any problems which might arise are fully addressed and resolved or it will not be admitted. The board's consideration and determination will be guided in part by the political subdivision's demonstrated ability to meet all obligations to the fund, both current and ongoing.

(c) A township trustee will not be considered as the governing body of a township for purposes of the fund and the board will not approve any ordinance or resolution coming solely from such township trustees. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-6-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 20. [35 IAC 1.2-6-5](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-6-5](#) Interest on employer's accounts

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 5. All political subdivisions having a negative year-end account balance may be charged an appropriate interest rate as determined by the ~~board~~, **fund**. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-6-5](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 21. [35 IAC 1.2-6-6](#) IS AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-6-6 Refund of contributions

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 6. A member who is on an approved leave of absence is not eligible for a refund of contributions and accumulated interest unless the reason for the leave is a layoff. In order for a member to receive a refund of his PERF contributions and accumulated interest, the member must have terminated his employment and be certified by his employer as being off the payroll and the date of termination. Refunds will be made on **or after** the fifteenth day of the month next following the month of termination, if such termination is on or prior to the fifteenth day of the month and the application for refund is received prior to the end of the month of termination. If the member becomes reemployed in a PERF-covered position within thirty (30) days from the date of such termination then the effective date of the suspension of membership shall be automatically deferred and the member shall not be eligible for such refund. The member shall notify PERF immediately if the member becomes reemployed within such thirty (30) day period. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-6](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 22. [35 IAC 1.2-6-7](#) IS AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-6-7 Legislators' defined contribution plan loans

Authority: [IC 2-3.5-5-11](#); [IC 5-10.3-3-8](#)

Affected: [IC 2-3.5-5-11](#)

Sec. 7. (a) Any participant in the legislators' defined contribution plan may apply on the applicable form to the fund for a loan from the legislators' defined contribution plan pursuant to this rule and such other procedures as may be established by the fund. Such loans will be available to all such participants on a uniform and nondiscriminatory basis. All loans are subject to the approval of the fund or its designee.

(b) The maximum amount of such loan, when added to the outstanding balance of all other loans from the fund, shall not exceed the lesser of:

- (1) fifty thousand dollars (\$50,000), reduced by the excess, if any, of the highest outstanding balance of loans from the fund during the one (1) year period ending on the day before the date on which the loan is made, over the outstanding balance of loans from the fund on the date on which such loan is made; or
- (2) one-half (1/2) of the employee's accounts within the defined contribution plan of the participant under the fund.

(c) Subject to subsection (b), the minimum amount of a loan shall be one thousand dollars (\$1,000).

(d) The loan program described in this rule shall be administered by the fund **or its designee**. All loans shall comply with the following terms and conditions:

- (1) All loans shall be subject to ~~the approval of the fund and subject to~~ applicable Internal Revenue Service restrictions.
- (2) A participant may apply for a loan by completing the applicable forms.
- (3) Each loan shall be amortized on a substantially level basis with monthly payments. Payments shall be made on the first of a month for that month. The period of repayment shall be a minimum of twelve (12) months and shall not exceed five (5) years from the loan origination date. Notwithstanding the preceding sentence, the term of the loan shall not extend beyond the earlier of:
 - (A) in the case of a distribution which begins after the date of the loan, the date such distribution of the employee's accounts within the defined contribution plan of the participant under the fund begins; or
 - (B) the date of a default on the loan.

(e) The participant receiving the loan shall make the required repayments in accordance with the loan agreement.

(f) The rate of interest shall be the prime rate per annum, as published in The Wall Street Journal on the first day of the quarter (or the earliest publication day of the quarter in the event of a publication holiday) in which a completed loan application is submitted, plus one percent (1%). A loan will carry the same interest rate throughout its term.

(g) The fund shall declare a default on a loan as of:

- (1) the last day of the calendar quarter following the calendar quarter in which the participant fails to make a

payment, unless the participant pays the amount due plus accrued interest prior to such date; or
(2) the date thirty (30) days after the fund in good faith deems the plan insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(h) On default, the entire amount outstanding on the participant's loan will be due and payable.

(i) On default, the fund shall report to the Internal Revenue Service the outstanding loan balance (principal and interest) as a taxable distribution to the participant, which may also be subject to an additional ten percent (10%) excise tax under the Internal Revenue Code.

(j) Each loan shall be adequately secured. The plan shall have a security interest in the employee's accounts within the defined contribution plan of the participant under the fund.

(k) Any loan to a participant shall be considered to be a separate asset of the legislators' defined contribution plan segregated for the benefit of such participant. The interest paid on the loan shall be credited to the employee's accounts within the defined contribution plan of the participant. Such portion of the employee's accounts within the defined contribution plan on loan to the participant shall not share in the allocation of gains or losses. The principal and interest paid on the loan shall be credited to such employee's accounts within the defined contribution plan as determined by the fund.

(l) A participant may not take more than two (2) loans in any calendar year.

(m) A participant may have any number of loans outstanding as long as all of the requirements of this rule are met.

(n) Any loan processing fee charged by a third party will be paid by the participant from the employee's accounts within the defined contribution plan of the participant.

(o) The loan proceeds will come from the employee's accounts within the defined contribution plan of the participant on a pro rata basis, and from the directed investment options of the participant on a pro rata basis.

(p) The participant may prepay, without penalty, the entire (or any part of the) outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (excluding cash) made payable to the fund and delivered to the fund **or its designee**. No reamortization will apply. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-7; filed Dec 18, 2001, 9:09 a.m.: 25 IR 1488; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 23. [35 IAC 2-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-1-1](#) Application for membership

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-7](#)

Sec. 1. (a) Employee membership applications for the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) will be accepted by the ~~state board~~ **1977 Fund** if signed by the local board and the appointing authority.

(b) All application materials and other personal records containing medical information shall be treated as confidential medical information to the extent required under the Americans with Disabilities Act (as defined in [35 IAC 2-9-2\(b\)](#)). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-1; filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 24. [35 IAC 2-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-1-2](#) Prior service credit; prerequisites

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-7](#); [IC 36-8-8-8](#)

Sec. 2. Prior service credit shall be given to any member of the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) providing the following conditions are met:

(1) As used in this section, "prior service" means any services or duties performed as a member of the 1977 Fund after April 30, 1977.

(2) The police officer or firefighter was a member of the 1977 Fund and had contributions withheld for membership.

(3) The city, town, or township to which the police officer or firefighter is transferred or has been hired by is a member of the 1977 Fund.

(4) The member repays, either in a lump sum or a series of payments determined by the ~~state board~~, **1977 Fund**, the amount of contributions plus interest which was refunded to him.

(5) For the purpose of computing benefits, prior service shall be included only once.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-2](#); filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 25. [35 IAC 2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-1-3](#) Effective date

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-7](#)

Sec. 3. Effective Date. Enrollment and pension fund rights begin on the **later of the actual hire date a full time Police Officer or Firefighter is sworn in: on the membership record document or the admission approval date of the 1977 Fund.** *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-3](#); filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 26. [35 IAC 2-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-2-2](#) Interest on employees' contribution accounts

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-8](#)

Sec. 2. Employee Contribution Interest Crediting. When crediting interest on employee contribution accounts the ~~State Board~~ **1977 Fund** shall:

(1) Credit interest on the prior fiscal year-end balance.

(2) Cease crediting interest to accounts which have no activity after five (5) years after the last contribution posting, and, which have total service credit of less than twenty (20) years.

(3) Not credit interest at a rate greater than the investment income earned.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-2-2](#); filed May 9, 1979, 11:31 a.m.: 2 IR 681; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 27. [35 IAC 2-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-4-1](#) Death benefits

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-16](#)

Sec. 1. The death benefits under [IC 36-8-8-16](#) for a deceased member's heirs or estate shall be paid by the ~~state board~~ **1977 Fund** from the employer contributions of the city, town, or township where the member was last employed. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-4-1](#); filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 28. [35 IAC 2-4-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-4-2](#) Survivor benefits; active duty

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-14.1](#)

Sec. 2. (a) For purposes of [IC 36-8-8-14.1](#), a member is on active duty if that member is in employment status with the employer and is not on leave of absence or has not been suspended from his or her duties.

However, a member who is on a leave pursuant to the Family and Medical Leave Act of 1993 shall be considered to be on active duty. The ~~state board~~ **1977 Fund** will require a certification from the member's employer with respect to the member's status at the time of death for purposes of determining active duty.

(b) Active duty does not have the same meaning as line of duty, which is defined by [IC 36-8-8-14.1\(d\)](#). (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-4-2](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 29. [35 IAC 2-5-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-5-2](#) Transfer from disability to regular retirement

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-12.4](#)

Sec. 2. (a) A fund member hired for the first time before January 1, 1990, and who did not file an election under [IC 36-8-8-12.4](#) with the PERF board prior to January 1, 1991, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status.

(b) Upon attaining ~~fifty-five (55)~~ **fifty-two (52)** years of age, a member receiving Class 1 or Class 2 impairment benefits shall be entitled to receive a retirement benefit equal to the greater of:

(1) the benefit payable to a member with twenty (20) years of service; or

(2) a benefit calculated on the total years of service and salary, as of the year the member attains ~~fifty-five (55)~~ **fifty-two (52)** years of age, that the member would have earned had the member remained in active service until attaining ~~fifty-five (55)~~ **fifty-two (52)** years of age.

(c) Upon attaining fifty-five (55) years of age, a member receiving Class 3 impairment benefits, who has at least four (4) years of service or who is receiving a Class 3 impairment benefit that equals or exceeds thirty percent (30%) of the monthly salary of a first class police officer or firefighter in the year of the local board's determination of impairment, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-2](#); filed Aug 6, 1981, 2:30 p.m.: 4 IR 1806; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 30. [35 IAC 2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-5-4](#) Applicable disability structure; member transfers

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8](#)

Sec. 4. (a) For purposes of determining which disability benefit provisions apply, the ~~state board~~ **1977 Fund** shall interpret the phrase "hired for the first time" by using the member's first date of employment by the local unit where the member is currently employed. However, in the case of a fund member who directly transfers from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used.

(b) Members who directly transfer from covered employment with one (1) local unit to covered employment with another local unit shall not be subjected to any additional preexisting conditions or excludable conditions that may be detected at the time of such transfer.

(c) For purposes of this section, "directly transfer" and "directly transfers" mean a transfer between covered employment with one (1) local unit to covered employment with a different local unit with no more than thirty (30) days between the covered employments. Furthermore, "directly transfer" and "directly transfers" shall not include any situation where the member files an application for a refund of his or her contributions from the fund. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-4](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 31. [35 IAC 2-5-5](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-5-5](#) 1977 Police Officers' and Firefighters' Pension and Disability Fund disability procedures

Authority: [IC 36-8-8-5](#)

Affected: [IC 4-21.5](#); [IC 36-8-8-12.5](#)

Sec. 5. (a) The disability application process shall be as described as follows:

(1) The local board shall submit to the state board the following documents:

(A) A completed disability application form that includes the following:

- (i) The member's name, address, and Social Security number.
- (ii) The date of the local board's hearing.
- (iii) The date the local board determined a covered impairment exists.

The local board shall use the applicable forms developed by the state board for this purpose.

(B) The applicable form developed by the state board shall require the following:

- (i) The local board to submit its determinations, including findings of fact, with regard to the existence of a covered impairment and the class of impairment for a fund member who was hired for the first time after December 31, 1989, or who had elected coverage under [IC 36-8-8-12.5](#) and [IC 36-8-8-13.5](#) (Class 1 duty related injury, Class 2 duty related disease, and Class 3 all other covered impairments).
- (ii) A copy of the written job description for the member's position.
- (iii) A statement from the local board that certifies that the member cannot perform the essential functions of the job as reflected on the written job description by identifying the specific functions the member is incapable of performing.
- (iv) A statement from the appointing authority that certifies that there is no suitable and available work in the member's department for which the member is or may be capable of becoming qualified, considering reasonable accommodations to the extent required by the Americans with Disabilities Act.
- (v) The local board's findings with respect to self-inflicted injury, attempted suicide, commission of felony, or preexisting conditions.
- (vi) The local board's determination on whether the impairment resulted from an accidental injury.
- (vii) A statement that certifies that the local board's decision was communicated, in writing, to the fund member and the appointing authority.

(C) A transcript of the local board's hearing. The transcript should be signed by the person doing the transcription and by the pension secretary reflecting that the transcript is a true and accurate report of the testimony and exhibits presented during the local board's hearing.

(D) Copies of all exhibits accepted by the local pension board. These exhibits would include the medical evaluations of the fund member. Tests and examination results must be included.

(E) Certification by the appointing authority or the local board with regard to the fund member's last day of pay (including the last payment for any type and all forms of paid leave).

(F) Certification by the appointing authority of years of service.

(2) Unless the application is complete, the ~~state board~~ **1977 Fund** will not accept the application. If the application is not accepted, the ~~state board~~ **1977 Fund** shall do the following:

(A) Determine whether the file is complete.

(B) Send a letter to the local board stating that either a complete file has been received or the file is incomplete and will not be accepted until the specified items have been received by the ~~state board~~ **1977 Fund**. If the file is incomplete, the ~~state board~~ **1977 Fund** will send a letter stating the file is complete after all previously specified items have been received by the ~~state board~~ **1977 Fund**.

(C) Once a completed file is accepted, the ~~state board~~ **1977 Fund** will give the completed file to the medical authority.

(3) The ~~state~~ **PERF** board or its duly authorized representative will make an initial determination within sixty (60) days from the date the complete application is received by the ~~state board~~ **1977 Fund** unless there is a delay attributable to the fund member or the appointing authority. This initial determination shall include a determination of which disability provisions the application has been processed. In making this determination, the ~~state board~~ **1977 Fund** shall treat a member as first hired using the member's first date of employment with the local unit where the member is currently employed. However, in the case of a fund member who directly transferred from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used. If the application is not accepted, the ~~state board~~ **1977 Fund** shall do the following:

(A) The ~~state board~~ **1977 Fund** will not consider the sixty (60) day period to begin until a completed file is accepted.

(B) The initial determination will be mailed, by certified mail return receipt requested, to the member, the local board, and the appointing authority. ~~Allowing three (3) days for delivery, the state board or its duly authorized representative will accept objections if the objections are received by the state board within eighteen (18) days after the date of the state board's~~ **An appeal of the initial determination letter must be filed within fifteen (15) days after receiving written notice of the initial determination pursuant to [IC 4-21.5](#).**

(C) If the ~~state~~ **PERF** board or its duly authorized representative does not make an initial determination

within sixty (60) days and if the delay is not attributable to the fund member or the appointing authority, the local board's determination, or the fund member's statement in the case of an appeal of a local board determination, shall constitute the ~~state~~ **PERF** board's initial determination. A letter confirming this initial determination shall be sent by the ~~state board~~ **1977 Fund** to the local board, the fund member, and the appointing authority.

(D) The letter communicating the ~~state~~ **PERF** board's initial determination shall inform the parties of the time limit on filing objections and shall clearly state that, if no objections are filed, the initial determination shall automatically become the state board's final order.

(4) If no objection to the ~~state~~ **PERF** board's initial determination is filed with the ~~state board~~ **1977 Fund** within ~~eighteen (18)~~ **fifteen (15)** days after the date of the ~~state~~ **PERF** board's initial determination letter, the ~~state~~ **PERF** board's initial determination shall become the ~~state~~ **PERF** board's final order.

(5) If a timely objection to the ~~state~~ **PERF** board's initial determination is filed, the ~~state board~~ **1977 Fund** shall follow an internal hearing procedure. The ~~state board~~ **1977 Fund** shall notify the member if the appeal is not timely. Such notice will indicate that the initial determination automatically became the ~~state~~ **PERF** board's final order. ~~that may be subject to judicial review.~~

(6) After receiving a timely objection to the initial determination, the ~~state board~~ **1977 Fund** shall designate a hearing officer to review the case. The hearing officer must make a recommendation to the ~~state board~~ **1977 Fund** with regard to a final decision within ~~three (3) weeks~~ **sixty (60) days** after the hearing. The hearing will be recorded and a transcript prepared.

(7) Based upon the complete record and the recommendation from the hearing officer, the ~~state~~ **PERF** board shall issue a final order. The ~~state~~ **PERF** board may accept, but shall not be required to accept, the hearing officer's recommendation as its final order. The final order will be communicated in a letter, sent certified mail return receipt requested, to the fund member, the local board, and the appointing authority. In addition, the ~~state~~ **PERF** board may do the following:

(A) The ~~state~~ **PERF** board may request or accept additional information before issuing a final determination.

(B) The ~~state~~ **PERF** board shall issue a final order within one hundred eighty (180) days from the date the complete application is received by the ~~state board~~ **1977 Fund** unless there is a delay attributable to the fund member or the appointing authority. If an order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the appointing authority, the initial determination statements shall constitute the ~~state~~ **PERF** board's final order.

(b) The review of a fund member's impairment may be initiated by the ~~state board~~, **1977 Fund**, the fund member, the safety board, or the local board. The review shall follow the procedure for disability applications. The cost of any medical examination required by the local board shall be paid by the party who petitioned for review.

(c) Requirements for recovered disabilitants shall be as follows:

(1) If there is a final determination that a disabilitant has recovered, the ~~state board~~ **1977 Fund** shall solicit a certification from the local authorities with regard to the existence of suitable and available work on the police or fire department.

(2) Benefits will be terminated if suitable and available work on the police or fire department has been offered to the member. Benefits shall terminate in such a case regardless of the member's decision to accept or reject the employment offer from the police or fire department.

(3) A recovered member returning to the same department will not be treated as a new applicant and will not be subjected to the application process for new members in the fund.

(4) In the event a member recovers from a covered impairment, returns to active service with the police or fire department, and becomes unable to perform all suitable and available work on the police or fire department within two (2) years of returning to active duty due to a covered impairment that is based on the same condition or conditions for which disability benefits were previously paid to the member, the member shall be entitled to receive monthly disability benefits equal to the amount of the monthly disability benefits that were paid to the member at the time of the member's return to active service plus any applicable cost of living adjustments.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-5](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))

SECTION 32. [35 IAC 2-5-5.1](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 2-5-5.1](#) Standard to determine degree of impairment for a covered impairment

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-13.1](#)

Sec. 5.1. To determine the degree of impairment, for a member who has been found to have a covered impairment, the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities in effect at the time the application for disability benefits is filed with the PERF board shall be used to determine the degree of impairment. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-5.1](#); adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 33. [35 IAC 2-5-6](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-5-6](#) Determination of work within the fund member's department

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-12.3](#)

Sec. 6. In order for the state PERF board to make a determination with respect to a fund member's disability, the ~~state board~~ **1977 Fund** must receive a certification from the local safety board that there is no suitable and available work in the member's 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. The ~~state board~~ **1977 Fund** will not process an application for disability unless the appropriate certification is included with the application for disability benefits. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-6](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3331; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 34. [35 IAC 2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-6-1](#) Quarterly report and payment of contributions

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-4](#)

Sec. 1. Quarterly Reports. A quarterly report containing payments of employer and employee contributions, shall be due in the office of the ~~state board~~ **1977 Fund** no later than the fifteenth (15th) day following the end of each calendar quarter, i.e., January 15, April 15, July 15, and October 15 each year.

Any employer who fails to make such payments by the due date may be assessed a penalty. The penalty will be determined by the Board of Trustees. *(Board of Trustees of the Public Employees' Retirement Fund; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 35. [35 IAC 2-7-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-7-1](#) Report of salary levels

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-1-11](#); [IC 36-8-8-11](#)

Sec. 1. Annually, on or before January first each year, the Clerk-Treasurer or City Controller shall certify to the ~~state board~~ **1977 Fund** within the limits of [IC 36-8-1-11](#) what constitutes the salary of a first class patrolman or firefighter for that employer for that calendar year. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-7-1](#); filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 36. [35 IAC 2-8-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-8-2](#) Interest on employer's account

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-4](#)

Sec. 2. Interest on Employer's Account. Annual interest shall be paid each year, on the prior year-end account balance at a rate determined by the ~~state board~~, **1977 Fund**, on all accounts having a positive year-end balance. All accounts having a negative year-end account balance may be charged an interest rate determined by the ~~state board~~: **1977 Fund**. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-8-2](#); filed Aug 6, 1981, 2:30 p.m.: 4 IR 1806; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#))*

SECTION 37. [35 IAC 4-2-2](#) IS AMENDED TO READ AS FOLLOWS:

ARTICLE 4. STATE EXCISE POLICE, GAMING AGENT, GAMING CONTROL OFFICER & CONSERVATION ENFORCEMENT OFFICERS' RETIREMENT PLAN

[35 IAC 4-2-2](#) Transfers with public employees retirement fund

Authority: [IC 5-10-5.5-3](#); [IC 5-10.3-3-8](#)

Affected: [IC 5-10-5.5-7](#)

Sec. 2. PERF Service. Service as a Conservation Officer, ~~or~~, Excise Officer, **Gaming Agent, or Gaming Control Officer** can be transferred to PERF. Service in PERF cannot be transferred to ~~Conservation Officers or Excise Officers~~ **the Plan** except as specifically authorized by statute. Duplicate service cannot be granted. (*Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 a.m.: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 38. [35 IAC 8-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 8-1-1](#) Definitions

Authority: [IC 2-3.5-3-4](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-13-8-25](#); [IC 33-14-9-10](#); [IC 36-8-8-5](#)

Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.3](#); [IC 33-13-8](#); [IC 33-14-9](#); [IC 36-8](#)

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(e) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

- (1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.
- (2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.
- (3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.
- (4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:
 - (A) a traditional individual retirement account or individual retirement annuity; or
 - (B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.
- (5) Any distribution that is made upon hardship by the member.

(f) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police, **gaming agent, gaming control officer** and conservation enforcement officers' retirement plan, judges' retirement fund, 1977 **police officers' and firefighters' pension and disability** fund, the prosecuting attorneys retirement fund, and funds funded through the pension relief fund.

(g) "IRS" means the Internal Revenue Service.

(h) "UCA" refers to the federal Unemployment Compensation Amendments of 1992, P.L.102-318, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 8-1-1](#); filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 39. [35 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

35 IAC 9-1-1 Definitions

Authority: [IC 2-3.5-3-4](#); [IC 5-10-5.5-3](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-13-8-25](#); [IC 33-14-9-10](#); [IC 36-8-8-5](#)

Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.2](#); [IC 5-10.3](#); [IC 33-13-8](#); [IC 33-14-9](#); [IC 36-8](#)

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "Fund" or "funds" means the following:

- (1) Legislators' Retirement System.
- (2) Public Employees' Retirement Fund.
- (3) State Excise Police, **Gaming Agent, Gaming Control Officer** and Conservation Officers' Retirement Plan.
- (4) Judges' Retirement System.
- (5) 1977 Police Officers' and Firefighters' Pension and Disability Fund.
- (6) Prosecutors' Retirement Fund.
- (7) Local public safety funds funded through the Pension Relief Fund.

(d) "IRS" means the Internal Revenue Service.

(e) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 9-1-1](#); filed May 31, 1996, 4:00 p.m.: 19 IR 2854; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

SECTION 40. [35 IAC 10-1-1](#) IS AMENDED TO READ AS FOLLOWS:

ARTICLE 10. ROLLOVERS AND TRUSTEE-TO-TRUSTEE TRANSFERS

Rule 1. Rollovers and Trustee-to-Trustee Transfers

35 IAC 10-1-1 Definitions

Authority: [IC 2-3.5-3-4](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#); [IC 36-8-8-5](#)

Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.3](#); [IC 33-39-7](#); [IC 36-8](#)

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "Direct rollover" means a payment from an eligible retirement plan specified by the member to the fund.

(e) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(f) "Eligible retirement plan" means:

- (1) an individual retirement account described in Section 408(a) of the Code;
- (2) an individual retirement annuity described in Section 408(b) of the Code;
- (3) an annuity plan described in Section 403(a) of the Code;
- (4) a qualified trust described in Section 401(a) of the Code;
- (5) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or
- (6) an annuity contract under Section 403(b) of the Code;

that accepts the distributee's eligible rollover distribution.

(g) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

- (1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.
- (2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.
- (3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.
- (4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:
 - (A) a traditional individual retirement account or individual retirement annuity; or
 - (B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.
- (5) Any distribution that is made upon hardship by the member.

(h) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police, **gaming agent, gaming control officer** and conservation enforcement officers' retirement plan, judges' retirement fund, prosecuting attorneys retirement fund, and the 1977 ~~police officers' and firefighters'~~ **pension and disability** fund.

(i) "IRS" means the Internal Revenue Service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-1; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 41. [35 IAC 10-1-4](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 10-1-4](#) Direct rollovers to Roth IRAs

Authority: [IC 2-3.5-3-4](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#); [IC 36-8-8-5](#)
Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.3](#); [IC 33-39-7](#); [IC 36-8](#)

Sec. 4. For distributions made after December 31, 2007, the fund shall allow a member to elect a direct rollover of eligible rollover distributions to a Roth IRA, subject to the rules that apply to rollovers from a traditional IRA to a Roth IRA. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-4; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 42. [35 IAC 10-1-5](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 10-1-5](#) Rollovers by nonspouse beneficiaries

Authority: [IC 2-3.5-3-4](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#); [IC 36-8-8-5](#)
Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.3](#); [IC 33-39-7](#); [IC 36-8](#)

Sec. 5. For distributions made after December 31, 2007, the fund shall provide a nonspouse beneficiary who is eligible to receive a distribution from the fund with the option to roll over the eligible rollover distribution amounts via a trustee-to-trustee transfer to an individual retirement account under Code Section 408(a) or individual annuity under Code Section 408(b), which will be treated as an inherited IRA. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-5; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

SECTION 43. [35 IAC 12-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 12-1-1](#) Definitions

Authority: [IC 2-3.5-3-4](#); [IC 5-10-5.5-3](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#); [IC 36-8-8-5](#)
Affected: [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.2](#); [IC 5-10.3](#); [IC 33-39-7](#); [IC 36-8](#)

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "EGTRRA" means Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all

applicable regulations and amendments related thereto.

(d) "Fund" or "funds" means the following:

- (1) Legislators' retirement system.
- (2) Public employees' retirement fund.
- (3) State excise police, **gaming agent, gaming control officer** and conservation enforcement officers' retirement plan.
- (4) Judges' retirement system.
- (5) 1977 police officers' and firefighters' pension and disability fund.
- (6) Prosecuting attorneys retirement fund.
- (7) Local public safety funds funded through the pension relief fund.

(e) "IRS" means the Internal Revenue Service.

(f) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 12-1-1](#); filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#)*)

SECTION 44. THE FOLLOWING ARE REPEALED: [35 IAC 1.2-4-2](#); [35 IAC 1.2-6-3](#); [35 IAC 4-4-1](#).

DATED: 11/9/2007

Ken Cochran

Chairman Board of Trustees Public Employees' Retirement Fund

Resolution adopted by a vote of: 6 in favor and 0 opposed on this 9th day of November, 2007.

Ken Cochran

Chairman Board of Trustees Public Employees' Retirement Fund

Posted: 12/05/2007 by Legislative Services Agency

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