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**TITLE 35 BOARD OF TRUSTEES OF THE
PUBLIC EMPLOYEES' RETIREMENT
FUND**

LSA Document #01-217(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that all rules of the Indiana administrative agencies in force on December 31, 1995, expire on January 1, 2002. Effective 30 days after filing with secretary of state.

35 IAC 1.2-1-3

35 IAC 1.2-5-13

35 IAC 1.2-3-10

35 IAC 1.2-5-18

35 IAC 1.2-5-5

35 IAC 1.2-5-19

35 IAC 1.2-5-6

35 IAC 1.2-6-3

SECTION 1. UNDER IC 4-22-2.5-3, 35 IAC 1.2-1-3 IS READOPTED AND 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, ~~as approved by the Indiana attorney general,~~ and consultants 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*)

SECTION 2. UNDER IC 4-22-2.5-3, 35 IAC 1.2-3-10 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-3-10 Military service

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-7-5

Sec. 10. In addition to the creditable service allowed by IC 5-10.3-7-5 for military service, a member is also entitled to creditable service as set forth at ~~38 U.S.C. 2021 et seq., Veterans Reemployment Rights~~ **38 U.S.C. 4301, et seq., the Uniformed Services Employment and Reemployment Rights Act of 1994.** (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-10; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265*)

SECTION 3. UNDER IC 4-22-2.5-3, 35 IAC 1.2-5-5 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-5-5 Basic salary defined

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 5. For the purpose of computing benefits, basic salary includes regular wages and overtime pay only. The salary shall not be reduced by any ~~deferred compensation plan~~ **salary reduction amounts contributed to Internal Revenue Code Section 125, 457, or 403(b) plans.** Subsequent to July 1, 1987, prosecuting attorneys and deputy prosecuting

attorneys paid with state funds shall have only those funds paid by the state considered for computing benefits. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265*)

SECTION 4. UNDER IC 4-22-2.5-3, 35 IAC 1.2-5-6 IS READOPTED AND 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 is more than the "exempt amount", then retirement benefit payments shall stop beginning the first of the month following the date of the reemployment: **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*)

SECTION 5. UNDER IC 4-22-2.5-3, 35 IAC 1.2-5-13 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-5-13 Beneficiary designation

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 13. (a) Each member of PERF shall designate only one (1) person as a primary beneficiary and only one (1) person as a contingent beneficiary. In lieu of a named individual, the designation of a trust, estate, or legal entity will also be acceptable.; however, such designation will not allow the choice of a joint and survivor option. **Active members may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the member's annuity savings account upon the death of the member. Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective. Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.**

(b) If the primary beneficiary designated shall survive the member, he or she shall receive all benefits or funds from the member's participation in the public employees' retirement fund. If the primary beneficiary shall not survive the member, the contingent beneficiary shall receive such benefits or funds. If neither shall survive the member, the beneficiary shall be the member's estate. The member may reserve the right to change the primary or contingent beneficiary at any time prior to the first day of the month that benefits are scheduled to begin by filing a written notice of such change, duly witnessed, with the board of trustees of the public employees' retirement fund of Indiana. (See also section 1 of this rule.) **Members electing a joint survivor option at retirement shall designate only one (1) person as beneficiary for their joint survivor benefits. The beneficiary must be a named individual.**

(c) If more than one (1) beneficiary is named or if a nonspouse is named and the member dies with fifteen (15) or more years of service, then no employer financed monthly benefit will be paid. **Retired members who choose a retirement option other than a joint and survivor option and who do not elect to withdraw the total balance of their annuity savings account may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the unpaid balance, if any, of the member's annuity savings account upon the death of the member. Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective. Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.** (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-13; filed Dec*

20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266)

SECTION 6. UNDER IC 4-22-2.5-3, 35 IAC 1.2-5-18 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-5-18 Minors and other incompetent persons

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3; IC 29-3

Sec. 18. Minors and other incompetent beneficiaries are governed by Indiana guardianship law set forth in ~~IC 29-1-18~~, **IC 29-3**, Indiana Probate Code. **However, payments may be made to minor beneficiaries pursuant to the Uniform Transfers to Minors Act.** (Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-18; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266)

SECTION 7. UNDER IC 4-22-2.5-3, 35 IAC 1.2-5-19 IS READOPTED AND 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 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 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, 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)

SECTION 8. UNDER IC 4-22-2.5-3, 35 IAC 1.2-6-3 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

35 IAC 1.2-6-3 Enlargement of PERF coverage

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-6-2

Sec. 3. (a) A political ~~subdivision~~ **subdivision** admitted to the fund or desiring to enlarge its participation in PERF to cover additional positions may do so by the following:

- (1) A preliminary survey shall be requested and completed **unless a survey is not required pursuant to IC 5-10.3-6-2.**
- (2) Ordinance or resolution of the governing body specifying by departmental, occupational, or other definable classifications the employees who will be added. ~~and which must include each such position so covered.~~
- (3) Such ordinance or resolution must be filed with, and approved by, the board of trustees.
- (4) The effective date of enlargement or admission is either January 1, or July 1, after the date of approval.

(5) The ordinance or resolution must be filed with the board prior to the effective date.

(b) No retirement benefit resulting from positions included in the enlargement or admission may be paid until six (6) months after the effective date of enlargement or admission. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1267*)

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Intent to Readopt Rules Published: July 1, 2001; 24 IR 3204

Proposed Readopted Rules Published: September 1, 2001; 24 IR 4201

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Approved by Attorney General: November 20, 2001

Approved by Governor: November 30, 2001

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