

SENATE BILL No. 257

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Police and firefighter disability benefits. Provides that members of the 1925 police pension fund, 1937 firefighters' pension fund, 1953 police pension fund, and the 1977 police officers' and firefighters' pension fund who develop cancer or a heart condition that is related to the police officer's or firefighter's duties are entitled to 75% of the salary of a first class patrolman or firefighter. Provides that a death of a police officer or firefighter from cancer or a heart condition related to the police officer's or firefighter's duties is a death in the line of duty.

Effective: July 1, 1998.

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January 7, 1998, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

SENATE BILL No. 257

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-8-6-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) **Except as provided in**
3 **subsection (f)**, the 1925 fund shall be used to pay a pension in a sum
4 determined by the local board, but not exceeding:
5 (1) for a disability or disease occurring before July 1, 1982, fifty
6 percent (50%); and
7 (2) for a disability or disease occurring after June 30, 1982,
8 fifty-five percent (55%);
9 of the salary of a first class patrolman, to a member of the police
10 department who has suffered or contracted a mental or physical disease
11 or disability that renders him unable to perform the essential functions
12 of any duty in the police department, considering reasonable
13 accommodation to the extent required by the Americans with
14 Disabilities Act. If a member who becomes eligible for a disability
15 pension has more than twenty (20) years of service, he is entitled to
16 receive a disability pension equal to the pension he would have
17 received if he had retired on the date of the disability.

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1 (b) The member must have retired from active service after a
 2 physical examination by the police surgeon or another surgeon
 3 appointed by the local board. The disability must be determined solely
 4 by the local board after the examination and a hearing conducted under
 5 IC 36-8-8-12.7. A member shall be retained on active duty with full pay
 6 until he is retired by the local board because of the disability.

7 (c) After a member has been retired upon pension, the local board
 8 may, at any time, require the retired member to again be examined by
 9 the police surgeon or another surgeon appointed by the local board.
 10 After the examination the local board shall conduct a hearing under
 11 IC 36-8-8-12.7 to determine whether the disability still exists and
 12 whether the retired member should remain on the pension roll. The
 13 retired member shall be retained on the pension roll until reinstated in
 14 the service of the police department, except in case of resignation. If
 15 after the examination and hearing the retired member is found to have
 16 recovered from his disability and to be again fit for active duty, then the
 17 member shall be put on active duty with full pay and from that time is
 18 no longer entitled to payments from the 1925 fund. If the member fails
 19 or refuses to return to active duty, he waives all rights to further
 20 benefits from the 1925 fund.

21 (d) If the salary of a first class patrolman is increased or decreased,
 22 the pension payable shall be proportionately increased or decreased.
 23 However, the monthly pension payable to a member or survivor may
 24 not be reduced below:

25 ~~(A)~~ (1) the amount of the first full monthly pension received by
 26 that person; or

27 ~~(B)~~ (2) fifty-five percent (55%) of the salary of a first class
 28 patrolman;

29 whichever is greater.

30 (e) Time spent receiving disability benefits is considered active
 31 service for the purpose of determining retirement benefits until the
 32 member has a total of twenty (20) years of service.

33 **(f) A member of the police department who is unable to perform**
 34 **the member's duties in the police department because of a**
 35 **disabling cancer or heart condition that:**

36 **(1) develops and manifests itself while the member is in the**
 37 **service of the police department; and**

38 **(2) may be caused by exposure to heat, radiation, or a known**
 39 **or suspected carcinogen, or the physical stresses of the**
 40 **member's duties;**

41 **is entitled to receive a disability benefit in the amount of**
 42 **seventy-five percent (75%) of the salary of a first class patrolman.**

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1 SECTION 2. IC 36-8-6-10.1, AS AMENDED BY P.L.40-1997,
 2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 1998]: Sec. 10.1. (a) If a member dies in the line of duty after
 4 August 31, 1982, the surviving spouse is entitled to an additional
 5 monthly benefit, during the spouse's lifetime, equal to the difference
 6 between:

- 7 (1) the benefit to which the member would have been entitled on
 8 the date of the member's death, but no less than fifty percent
 9 (50%) of the monthly wage received by a first class patrolman;
 10 and
 11 (2) the amount received by the spouse under section 9.8(c) of this
 12 chapter.

13 If the surviving spouse remarried before September 1, 1983, and
 14 benefits ceased on the date of remarriage, the benefits for the surviving
 15 spouse shall be reinstated on July 1, 1997, and continue during the life
 16 of the surviving spouse.

17 (b) The children of a spouse receiving benefits under this section
 18 may not receive more than a total of thirty percent (30%) of the
 19 monthly wage received by a first class patrolman. However, this
 20 limitation does not apply to the children of a spouse receiving benefits
 21 under this section who are physically or mentally disabled.

22 (c) For purposes of this section, "dies in the line of duty" means
 23 death that occurs as a direct result of personal injury or illness resulting
 24 from:

- 25 (1) any action that the member, in the member's capacity as a
 26 police officer, is obligated or authorized by rule, regulation,
 27 condition of employment or service, or law to perform in the
 28 course of controlling or reducing crime or enforcing the criminal
 29 law; or

30 **(2) cancer or a heart condition that:**

31 **(A) develops and manifests itself while the member is in the**
 32 **service of the police department; and**

33 **(B) may be caused by exposure to heat, radiation, or a**
 34 **known or suspected carcinogen, or the physical stresses of**
 35 **the member's duties.**

36 SECTION 3. IC 36-8-7-12.1, AS AMENDED BY P.L.40-1997,
 37 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 1998]: Sec. 12.1. (a) Benefits paid under this section are
 39 subject to section 2.5 of this chapter.

40 (b) The sum that shall be paid to permanently disabled members and
 41 to the surviving spouses, children, and parents of deceased members is
 42 as follows:



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- 1 (1) **Except as provided in subdivision (4)**, upon retirement with
2 disability during service, a member is entitled to receive in
3 monthly installments an amount equal to fifty-five percent (55%)
4 of the salary of a fully paid first class firefighter in the unit at the
5 time of the payment of the pension.
- 6 (2) If a member dies while in active service or after retirement:
7 (A) the surviving spouse is entitled to receive an amount fixed
8 by ordinance but not less than:
9 (i) for the surviving spouse of a member who dies before
10 January 1, 1989, thirty percent (30%) of the salary of a fully
11 paid first class firefighter in the unit at the time of the
12 payment of the pension; and
13 (ii) for the surviving spouse of a member who dies after
14 December 31, 1988, an amount per month, during the
15 spouse's life, equal to the greater of thirty percent (30%) of
16 the monthly pay of a first class firefighter or fifty-five
17 percent (55%) of the monthly benefit the deceased member
18 was receiving or was entitled to receive on the date of the
19 member's death (these amounts shall be proportionately
20 increased or decreased if the salary of a first class firefighter
21 is increased or decreased); however, if the deceased member
22 was not entitled to a benefit because the member had not
23 completed twenty (20) years of service, for the purposes of
24 computing the second amount under this item, the member's
25 benefit shall be considered to be fifty percent (50%) of the
26 monthly salary of a first class firefighter in the unit at the
27 time of payment of the pension;
28 (B) the member's children who are:
29 (i) under eighteen (18) years of age; or
30 (ii) less than twenty-three (23) years of age if the children
31 are enrolled in and regularly attending a secondary school or
32 are full-time students at an accredited college or university;
33 are each entitled to receive an amount fixed by ordinance but
34 not less than twenty percent (20%) of the salary of a fully paid
35 first class firefighter in the unit at the time of the payment of
36 the pension; and
37 (C) each parent of a deceased member who was eligible for a
38 pension is entitled to receive jointly an amount equal to thirty
39 percent (30%) of the salary of a fully paid first class firefighter
40 in the unit at the time of the payment of the pension.
- 41 (3) If a member dies in the line of duty after August 31, 1982, the
42 surviving spouse is entitled to an additional monthly benefit,

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1 during the spouse's lifetime, equal to the difference between the
 2 benefit to which the member would have been entitled on the date
 3 of the member's death, but not less than fifty percent (50%) of the
 4 monthly wage received by a fully paid first class firefighter and
 5 the amount received by the spouse under subdivision (2)(A). If
 6 the spouse remarried before September 1, 1983, and benefits
 7 ceased on the date of remarriage, the benefits for the surviving
 8 spouse shall be reinstated on July 1, 1997, and continue during
 9 the life of the surviving spouse. The children of a spouse
 10 receiving benefits under this subdivision may not receive more
 11 than a total of thirty percent (30%) of the monthly wage received
 12 by a fully paid first class firefighter. However, this limitation does
 13 not apply to the children of a spouse receiving benefits under this
 14 subdivision who are physically or mentally disabled. For purposes
 15 of this subdivision, "dies in the line of duty" means death that
 16 occurs as a direct result of personal injury or illness resulting
 17 from:

18 (A) any action that the member, in the member's capacity as a
 19 firefighter, is obligated or authorized by rule, regulation,
 20 condition of employment or service, or law to perform while
 21 on the scene of an emergency run (including false alarms) or
 22 on the way to or from the scene; or

23 (B) cancer or a heart condition that:

24 (i) develops and manifests itself while the member is in
 25 the service of the fire department; and

26 (ii) may be caused by exposure to heat, radiation, or a
 27 known carcinogen, or the physical stresses of the
 28 member's duties.

29 (4) A member who is unable to perform the member's duties
 30 in the fire department because of a disabling cancer or heart
 31 condition that:

32 (A) develops and manifests itself while the member is in the
 33 service of the fire department; and

34 (B) may be caused by exposure to heat, radiation, or a
 35 known or suspected carcinogen, or the physical stresses of
 36 the member's duties;

37 is entitled to receive a disability benefit in the amount of
 38 seventy-five percent (75%) of the salary of a first class
 39 firefighter.

40 If the local board finds upon the submission of satisfactory proof that
 41 a child eighteen (18) years of age or older is mentally or physically
 42 incapacitated, is not a ward of the state, and is not receiving a benefit

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1 under subdivision (2)(B)(ii), the child is entitled to receive the same
2 amount as is paid to the surviving spouse of a deceased firefighter, as
3 long as the mental or physical incapacity continues. A sum paid for the
4 benefit of a child or children shall be paid to the remaining parent, if
5 alive, as long as the child or children reside with and are supported by
6 the parent. If the parent dies, the sum shall be paid to the lawful
7 guardian of the child or children.

8 (c) A member who has been in service twenty (20) years, upon
9 making a written application to the fire chief, may be retired from all
10 service with the department without a medical examination or
11 disability. Except as provided in subsection (g), the local board shall
12 authorize the payment to the retired member of fifty percent (50%) of
13 the salary of a fully paid first class firefighter of the unit at the time of
14 the payment of the pension, plus:

15 (1) for a member who retires before January 1, 1986, two percent
16 (2%) of that salary for each year of service; or

17 (2) for a member who retires after December 31, 1985, one
18 percent (1%) of that salary for each six (6) months of service;
19 over twenty (20) years. However, the pension in one (1) year may not
20 exceed an amount greater than seventy-four percent (74%) of the salary
21 of a fully paid first class firefighter. The pension of the dependents of
22 retired members is the same if the member dies after retirement as it is
23 for dependents of members who die in the service or after retirement
24 with disability.

25 (d) A member who is discharged from the fire department after
26 having served at least twenty (20) years is entitled to receive the
27 amount equal to the amount that the member would have received if
28 the member retired voluntarily. If a member dies after retirement and
29 leaves a surviving spouse or dependent child or children, they are
30 entitled to receive the amount provided for the dependents of members
31 who have died in the service of the fire department.

32 (e) All pensions in a class are on an equal basis. The local board
33 may not depart from this chapter in authorizing the payment of
34 pensions.

35 (f) The monthly pension payable to a member or survivor may not
36 be reduced below the amount of the first full monthly pension received
37 by that person.

38 (g) The monthly pension payable to a member who is transferred
39 from disability to regular retirement status may not be reduced below
40 fifty-five percent (55%) of the salary of a fully paid first class
41 firefighter in the unit at the time of the payment of the pension.

42 (h) A benefit payable under this section shall be paid in not less than

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1 twelve (12) monthly installments.

2 SECTION 4. IC 36-8-7.5-13 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) **Except as**
4 **provided in subsection (i)**, the 1953 fund shall be used to pay a
5 pension in an annual sum equal to:

6 (1) fifty percent (50%), for a disease or disability occurring before
7 July 1, 1991; and

8 (2) fifty-five percent (55%), for a disease or disability occurring
9 after June 30, 1991;

10 of the salary of a first class patrolman in the police department,
11 computed and payable as prescribed by section 12(b) of this chapter,
12 to an active member of the police department who has been in active
13 service for more than one (1) year and who has suffered or contracted
14 a mental or physical disease or disability that render the member
15 permanently unfit for active duty in the police department, or to an
16 active member of the police department who has been in active service
17 for less than one (1) year who has suffered or received personal injury
18 from violent external causes while in the actual discharge of his duties
19 as a police officer. The pensions provided for in this subsection shall
20 be paid only so long as the member of the police department remains
21 unfit for active duty in the police department.

22 (b) The 1953 fund shall be used to pay temporary benefits in an
23 annual sum equal to thirty percent (30%) of the salary of a first class
24 patrolman in the police department, computed and payable as
25 prescribed by section 12(a) of this chapter, to an active member of the
26 police department who has been in active service for more than one (1)
27 year and who has suffered any physical or mental disability that renders
28 the member temporarily or permanently unable to perform his duties
29 as a member of the police department, or to an active member of the
30 police department who has been in active service for less than one (1)
31 year and who has suffered or received personal injury from violent
32 external causes while in the actual discharge of his duties as a police
33 officer, until the time the member is physically and mentally able to
34 return to active service on the police department.

35 (c) If an application is made by an active member of the police
36 department because of physical or mental disability for temporary
37 benefits as provided in subsection (a) or (b), the benefit is not payable
38 until the local board determines after a hearing conducted under
39 IC 36-8-8-12.7 that the member is unfit for active duty on the police
40 department, considering reasonable accommodation to the extent
41 required by the Americans with Disabilities Act. Before the hearing, a
42 physician to be appointed by the local board shall examine the member

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1 and certify in writing whether in his opinion the member is unfit,
2 physically or mentally, for active duty in the police department. After
3 the pension or benefit has been granted by the local board, the payment
4 commences with the original date of the injury or illness causing the
5 disability.

6 (d) A member who has been granted a disability benefit under
7 subsection (a) or (b) and who fails or refuses to submit to a physical
8 examination at any time by the local board physician has no right in the
9 future to receive the disability benefit, and any benefit that has been
10 granted shall be immediately canceled by the local board.

11 (e) The local board may, from time to time, require a member of the
12 police department who is receiving at any time disability benefits or
13 pensions as provided in subsection (a) or (b) to be examined by the
14 physician appointed by the local board. After the examination, the local
15 board shall conduct a hearing under IC 36-8-8-12.7 to determine
16 whether the disability still exists and whether the member should
17 continue to receive the pension or benefit. If after the examination and
18 hearing the member is found to have recovered from his disability and
19 is fit for active duty on the police department, then upon written notice
20 to the member by the local board, the member shall be reinstated in
21 active service, the safety board shall be informed of the action of the
22 local board, and from that time the member is no longer entitled to
23 payments from the 1953 fund. If the member fails or refuses to return
24 to active duty after ordered by the local board, he ceases to be a
25 member of the 1953 fund and waives all rights to any further pensions
26 or benefits provided by the 1953 fund.

27 (f) Notwithstanding any other provision of this chapter, no disability
28 benefit may be paid for any disability based upon or caused by any
29 mental or physical condition that a member had at the time he entered
30 or reentered his active service in the police department.

31 (g) If a member who is receiving disability benefits under
32 subsection (a) for a disease or disability occurring after June 30, 1991,
33 is transferred from disability to regular retirement status, the member's
34 monthly pension may not be reduced below fifty-five percent (55%) of
35 the salary of a first class patrolman at the time of payment of the
36 pension.

37 (h) To the extent required by the Americans with Disabilities Act,
38 the transcripts, reports, records, and other material compiled to
39 determine the existence of a disability shall be:

- 40 (1) kept in separate medical files for each member; and
- 41 (2) treated as confidential medical records.

42 (i) **A member of the police department who is unable to perform**

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1 **the member's duties in the police department because of a**
 2 **disabling cancer or heart condition that:**

3 **(1) develops and manifests itself while the member is in the**
 4 **service of the police department; and**

5 **(2) may be caused by exposure to heat, radiation, or a known**
 6 **or suspected carcinogen, or the physical stresses of the**
 7 **member's duties;**

8 **is entitled to receive a disability benefits in the amount of**
 9 **seventy-five percent (75%) of the salary of a first class patrolman.**

10 SECTION 5. IC 36-8-7.5-14.1, AS AMENDED BY P.L.2-1996,
 11 SECTION 292, IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 1998]: Sec. 14.1. (a) If a member dies in the
 13 line of duty after August 31, 1982, the surviving spouse is entitled to
 14 an additional monthly benefit, during the spouse's lifetime equal to the
 15 difference between:

16 (1) the benefit to which the member would have been entitled on
 17 the date of the member's death, but not less than fifty percent
 18 (50%) of the monthly wage received by a first class patrolman;
 19 and

20 (2) the amount received by the spouse under section 13.8(c) of
 21 this chapter.

22 If the spouse remarried before September 1, 1983, benefits ceased on
 23 the date of remarriage. However, if a member of the police department
 24 dies in the line of duty after August 31, 1982, and the member's
 25 surviving spouse remarried before September 1, 1983, the benefits for
 26 the surviving spouse shall be reinstated on July 1, 1995, and continue
 27 during the life of the surviving spouse.

28 (b) The children of a spouse receiving benefits under this section
 29 may not receive more than a total of thirty percent (30%) of the
 30 monthly wage received by a first class patrolman. However, this
 31 limitation does not apply to the children of a spouse receiving benefits
 32 under this section who are physically or mentally disabled.

33 (c) For purposes of this section, "dies in the line of duty" means
 34 death that occurs as a direct result of personal injury or illness resulting
 35 from:

36 (1) any action that the member, in the member's capacity as a
 37 police officer, is obligated or authorized by rule, regulation,
 38 condition of employment or service, or law to perform in the
 39 course of controlling or reducing crime or enforcing the criminal
 40 law; or

41 **(2) cancer or a heart condition that:**

42 **(A) develops and manifests itself while the member is in the**

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service of the police department; and
(B) may be caused by exposure to heat, radiation, or a
known or suspected carcinogen, or the physical stresses of
the member's duties.

SECTION 6. IC 36-8-8-12.5, AS AMENDED BY P.L.213-1995,
SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 1998]: 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) Cancer or a heart condition that:

- (i) develops and manifests itself while the fund member is in the service of the police or fire department; and**
- (ii) may be caused by exposure to heat, radiation, or a known or suspected carcinogen, or the physical stresses of the fund member's duties.**

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

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

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

6 (C) the disease can be traced to the fund member's
7 employment as the proximate cause.

8 (3) Whether the fund member has a Class 3 impairment. A Class
9 3 impairment is a covered impairment that is not a Class 1
10 impairment or a Class 2 impairment.

11 SECTION 7. IC 36-8-8-13.5, AS AMENDED BY P.L.213-1995,
12 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 1998]: Sec. 13.5. (a) This section applies only to a fund
14 member who:

15 (1) is hired for the first time after December 31, 1989;

16 (2) chooses coverage by this section and section 12.5 of this
17 chapter under section 12.4 of this chapter; or

18 (3) is described in section 12.3(c)(2) of this chapter.

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

26 **However, a fund member who is determined to have a Class 1**
27 **impairment under section 12.5(b)(1)(D) of this chapter is entitled**
28 **to receive a monthly disability benefit in the amount of seventy-five**
29 **percent (75%) of the monthly salary of a first class patrolman or**
30 **firefighter.**

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

40 (d) For applicants hired before March 2, 1992, a fund member who
41 is determined to have a Class 3 impairment and for whom it is
42 determined that there is no suitable and available work within the fund

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1 member's department, considering reasonable accommodation to the
 2 extent required by the Americans with Disabilities Act, is entitled to a
 3 monthly base benefit equal to the product of the member's years of
 4 service (not to exceed thirty (30) years of service) multiplied by one
 5 percent (1%) of the monthly salary of a first class patrolman or
 6 firefighter in the year of the local board's determination of impairment.

7 (e) For applicants hired after March 1, 1992, or described in section
 8 12.3(c)(2) of this chapter, a fund member who is determined to have a
 9 Class 3 impairment and for whom it is determined that there is no
 10 suitable and available work within the fund member's department,
 11 considering reasonable accommodation to the extent required by the
 12 Americans with Disabilities Act, is entitled to the following benefits
 13 instead of benefits provided under subsection (d):

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

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

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

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

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

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

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

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

42 (4) A fund member is not entitled to a monthly base benefit for a

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- 1 Class 3 impairment if:
- 2 (A) the fund member had a Class 3 excludable condition under
- 3 section 13.6 of this chapter at the time the fund member
- 4 entered or reentered the fund; and
- 5 (B) the Class 3 impairment is related in any manner to the
- 6 Class 3 excludable condition.
- 7 (5) If, during the first four (4) years of service with the employer:
- 8 (A) a fund member with a Class 3 excludable condition is
- 9 determined to have a Class 3 impairment; and
- 10 (B) the Class 3 impairment is attributable to an accidental
- 11 injury that is not related in any manner to the fund member's
- 12 Class 3 excludable condition;
- 13 the member is entitled to receive the benefits provided in
- 14 subdivision (1) with respect to the accidental injury. For purposes
- 15 of this subdivision, the local board shall make the initial
- 16 determination of whether an impairment is attributable to an
- 17 accidental injury. The local board shall forward the initial
- 18 determination to the director of the PERF board for a final
- 19 determination by the PERF board or the PERF board's designee.
- 20 (f) If a fund member is entitled to a monthly base benefit under
- 21 subsection (b), (c), (d), or (e), the fund member is also entitled to a
- 22 monthly amount that is no less than ten percent (10%) and no greater
- 23 than forty-five percent (45%) of the monthly salary of a first class
- 24 patrolman or firefighter in the year of the local board's determination
- 25 of impairment. The additional monthly amount shall be determined by
- 26 the PERF medical authority based on the degree of impairment.
- 27 (g) Benefits for a Class 1 impairment are payable until the fund
- 28 member becomes fifty-five (55) years of age. Benefits for a Class 2 and
- 29 a Class 3 impairment are payable:
- 30 (1) for a period equal to the years of service of the member, if the
- 31 member's total disability benefit is less than thirty percent (30%)
- 32 of the monthly salary of a first class patrolman or firefighter in the
- 33 year of the local board's determination of impairment and the
- 34 member has fewer than four (4) years of service; or
- 35 (2) until the member becomes fifty-five (55) years of age if the
- 36 member's benefit is:
- 37 (A) equal to or greater than thirty percent (30%) of the
- 38 monthly salary of a first class patrolman or firefighter in the
- 39 year of the local board's determination of impairment; or
- 40 (B) less than thirty percent (30%) of the monthly salary of a
- 41 first class patrolman or firefighter in the year of the local
- 42 board's determination of impairment if the member has at least

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1 four (4) years of service.

2 (h) Upon becoming fifty-five (55) years of age, a fund member with

3 a Class 1 or Class 2 impairment is entitled to receive the retirement

4 benefit payable to a fund member with:

5 (1) twenty (20) years of service; or

6 (2) the total years of service and salary, as of the year the member

7 becomes fifty-five (55) years of age, that the fund member would

8 have earned if the fund member had remained in active service

9 until becoming fifty-five (55) years of age;

10 whichever is greater.

11 (i) Upon becoming fifty-five (55) years of age, a fund member who

12 is receiving or has received a Class 3 impairment benefit that is:

13 (1) equal to or greater than thirty percent (30%) of the monthly

14 salary of a first class patrolman or firefighter in the year of the

15 local board's determination of impairment; or

16 (2) less than thirty percent (30%) of the monthly salary of a first

17 class patrolman or firefighter in the year of the local board's

18 determination of impairment if the member has at least four (4)

19 years of service;

20 is entitled to receive the retirement benefit payable to a fund member

21 with twenty (20) years of service.

22 (j) Notwithstanding section 12.3 of this chapter and any other

23 provision of this section, a member who:

24 (1) has had a covered impairment;

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

26 (3) within two (2) years after returning to active service has an

27 impairment that, except for section 12.3(b)(3) of this chapter,

28 would be a covered impairment;

29 is entitled to the benefit under this subsection if the impairment

30 described in subdivision (3) results from the same condition or

31 conditions (without an intervening circumstance) that caused the

32 covered impairment described in subdivision (1). The member is

33 entitled to receive the monthly disability benefit amount paid to the

34 member at the time of the member's return to active service plus any

35 adjustments under section 15 of this chapter that would have been

36 applicable during the member's period of reemployment.

37 SECTION 8. IC 36-8-8-14.1, AS AMENDED BY P.L.40-1997,

38 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

39 JULY 1, 1998]: Sec. 14.1. (a) Benefits paid under this section are

40 subject to section 2.5 of this chapter.

41 (b) If a fund member dies while receiving retirement or disability

42 benefits, the following apply:

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

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

5 (B) until the child reaches twenty-three (23) years of age if the
 6 child is enrolled in and regularly attending a secondary school
 7 or is a full-time student at an accredited college or university;
 8 whichever period is longer. However, if the board finds upon the
 9 submission of satisfactory proof that a child who is at least
 10 eighteen (18) years of age is mentally or physically incapacitated,
 11 is not a ward of the state, and is not receiving a benefit under
 12 subdivision (1)(B), the child is entitled to receive an amount each
 13 month that is equal to the greater of thirty percent (30%) of the
 14 monthly pay of a first class patrolman or first class firefighter or
 15 fifty-five percent (55%) of the monthly benefit the deceased
 16 member was receiving or was entitled to receive on the date of the
 17 member's death as long as the mental or physical incapacity of the
 18 child continues. Benefits paid for a child shall be paid to the
 19 surviving parent as long as the child resides with and is supported
 20 by the surviving parent. If the surviving parent dies, the benefits
 21 shall be paid to the legal guardian of the child.

22 (2) The member's surviving spouse is entitled to a monthly benefit
 23 equal to sixty percent (60%) of the fund member's monthly
 24 benefit during the spouse's lifetime. If the spouse remarried before
 25 September 1, 1983, and benefits ceased on the date of remarriage,
 26 the benefits for the surviving spouse shall be reinstated on July 1,
 27 1997, and continue during the life of the surviving spouse.

28 If a fund member dies while receiving retirement or disability benefits,
 29 there is no surviving eligible child or spouse, and there is proof
 30 satisfactory to the local board, subject to review in the manner
 31 specified in section 13.1(b) of this chapter, that the parent was wholly
 32 dependent on the fund member, the member's surviving parent is
 33 entitled, or both surviving parents if qualified are entitled jointly, to
 34 receive fifty percent (50%) of the fund member's monthly benefit
 35 during the parent's or parents' lifetime.

36 (c) If a fund member dies while on active duty or while retired and
 37 not receiving benefits, the member's children and the member's spouse,
 38 or the member's parent or parents, are entitled to receive a monthly
 39 benefit determined under subsection (b). If the fund member did not
 40 have at least twenty (20) years of service or was not at least fifty-five
 41 (55) years old, the benefit is computed as if the member:

42 (1) did have twenty (20) years of service; and

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- 1 (2) was fifty-five (55) years of age.
- 2 (d) If a fund member dies in the line of duty after August 31, 1982,
- 3 the member's surviving spouse is entitled to an additional monthly
- 4 benefit during the spouse's lifetime, equal to the difference between the
- 5 benefit payable under subsection (b)(2) and the benefit to which the
- 6 member would have been entitled on the date of the member's death,
- 7 but not less than the benefit payable to a member with twenty (20)
- 8 years service at fifty-five (55) years of age. If the spouse remarried
- 9 before September 1, 1983, and benefits ceased on the date of
- 10 remarriage, the benefits for the surviving spouse shall be reinstated on
- 11 July 1, 1997, and continue during the life of the surviving spouse. For
- 12 purposes of this subsection, "dies in the line of duty" means death that
- 13 occurs as a direct result of personal injury or illness resulting from:
- 14 (1) any action that the member, in the member's capacity as a
- 15 police officer, is obligated or authorized by rule, regulation,
- 16 condition of employment or service, or law to perform in the
- 17 course of controlling or reducing crime or enforcing the criminal
- 18 law; ~~or~~
- 19 (2) any action that the member, in the member's capacity as a
- 20 firefighter, is obligated or authorized by rule, regulation,
- 21 condition of employment or service, or law to perform while on
- 22 the scene of an emergency run (including false alarms) or on the
- 23 way to or from the scene; **or**
- 24 **(3) cancer or a heart condition that:**
- 25 **(A) develops and manifests itself while the member is in the**
- 26 **service of the police or fire department; and**
- 27 **(B) may be caused by exposure to heat, radiation, or a**
- 28 **known or suspected carcinogen, or the physical stresses of**
- 29 **the member's duties.**

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