SENATE BILL No. 12

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-5.5; IC 5-10.2; IC 33-38; IC 33-39-7; IC 36-8-8.

Synopsis: PERF and TRF administrative matters. Removes a provision requiring the teachers' retirement fund (TRF) to maintain separate accounts for each employer within the retirement allowance account of the 1996 account. Permits a member of the public employees' retirement fund (PERF) or TRF who is eligible for an early retirement to withdraw the member's annuity savings account without applying for a retirement benefit. Requires, after December 31, 2011, that an employer of participants in: (1) the state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement fund; (2) the judges' retirement system; (3) the prosecuting attorneys' retirement fund (PARF); and (4) the 1977 police officers' and firefighters' pension and disability fund (1977 Fund); submit contributions, reports, and records electronically. Authorizes the PERF board of trustees to establish due dates for contributions, reports, and records submitted by an employer. Permits an administrative law judge, for cause shown, to order the waiver or extension of the 180-day limit in which the PERF board of trustees is required to issue a final order after the date the PERF board receives a local board's initial disability determination or the PERF director initiates a review of a default disability award for a 1977 Fund member. Makes technical corrections to remove references to the auditor of state in connection with the administration of PERF. Codifies P.L.33-2006, Section 4, concerning PARF and repeals the noncode provision. Makes technical corrections in conformity with amendments in P.L.22-1998 to the 1977 Fund that reduced from 55 to 52 the age at which a fund member reaches regular retirement status. (The introduced version of this bill was prepared by the pension management oversight commission.)

Effective: Upon passage; July 1, 2011.

C o p y

Boots

January 5, 2011, read first time and referred to Committee on Pensions and Labor.

Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 12

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

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

SECTION 1. IC 5-10-5.5-8, AS AMENDED BY P.L.180-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) Except as provided in subsection (c), every participant shall contribute four percent (4%) of the participant's annual salary to the participants' savings fund.

(b) Contributions shall be made in the form of payroll deductions from each and every payment of salary received by the participant. Every participant shall, as a condition precedent to becoming a participant, consent to the payroll deductions.

(c) An employer may pay all or a part of the contributions for the participant. All contributions made by an employer under this subsection shall be treated as pick-up contributions under Section 414(h)(2) of the Internal Revenue Code.

(d) After December 31, 2011, an employer shall submit the contributions paid by or on behalf of a participant under this section by electronic funds transfer in accordance with section 8.5 of this chapter.

SECTION 2. IC 5-10-5.5-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2011.**

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

(c) An employer shall submit through the use of electronic funds transfer:

(1) employer contributions, determined by the board, to fund the retirement, disability, and survivor benefits described in this chapter; and

(2) contributions paid by or on behalf of a participant under section 8 of this chapter.

(d) An employer shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records required by the board under this chapter.

(e) The board shall establish by rule the due dates for all reports, records, and contributions required under this chapter.

SECTION 3. IC 5-10.2-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) The retirement allowance account of the public employees' retirement fund consists of the retirement fund, exclusive of the annuity savings account. For the public employees' retirement fund, separate accounts within the retirement allowance account shall be maintained for contributions made by the state and by each political subdivision.

(b) The retirement allowance account of the pre-1996 account consists of the pre-1996 account, exclusive of the annuity savings account.

(c) The retirement allowance account of the 1996 account consists of the 1996 account, exclusive of the annuity savings account. ~~For the 1996 account, separate accounts within the retirement allowance account shall be maintained for contributions made by the state, by each school corporation, and by each institution.~~

SECTION 4. IC 5-10.2-3-6.5, AS AMENDED BY P.L.99-2010, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6.5. (a) A member who meets all of the following requirements may elect to withdraw the entire amount in the member's annuity savings account: ~~before the member is eligible to do so at retirement under IC 5-10.2-4-2:~~

(1) The member has attained vested status in the fund.

C o p y

(2) The member has terminated employment with the applicable fund and is not currently employed in a covered position.

(3) The member has not performed any service in a position covered by the fund for at least thirty (30) days after the date the member terminates employment.

(4) The member makes the election described in this subsection:

(A) after December 31, 2008, if the member is a member of the public employees' retirement fund; or

(B) after June 30, 2009, if the member is a member of the Indiana state teachers' retirement fund.

(5) Except as provided in subsection (b), the member is not eligible for:

(A) before July 1, 2011, a reduced or unreduced retirement; **or**

(B) after June 30, 2011, an unreduced retirement;

under IC 5-10.2-4 on the date the fund receives notice of the election described in this subsection.

(b) The requirement described in subsection (a)(5) does not apply to a member of the public employees' retirement fund who:

(1) was eligible for a reduced or unreduced retirement; and

(2) received a distribution under this section;

after December 31, 2008, and before January 1, 2010.

(c) A member who elects to withdraw the entire amount in the member's annuity savings account under subsection (a) shall provide notice of the election on a form provided by the board.

(d) The election to withdraw the entire amount in the member's annuity savings account is irrevocable.

(e) The board shall pay the amount in the member's annuity savings account as a lump sum.

(f) Except as provided in subsection (g), a member who makes a withdrawal under this section is entitled to receive, when the member becomes eligible to receive **and applies for** a retirement benefit under IC 5-10.2-4, a retirement benefit equal to the pension provided by employer contributions computed under IC 5-10.2-4.

(g) A member who:

(1) transfers creditable service earned under the fund to another governmental retirement plan under section 1(i) of this chapter; and

(2) withdraws the member's annuity savings account under this section to purchase the service;

may not use the transferred service in the computation of a retirement benefit payable under subsection (f).

C o p y

SECTION 5. IC 33-38-6-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. As used in this chapter, IC 33-38-7, and IC 33-38-8, "electronic funds transfer" has the meaning set forth in IC 4-8.1-2-7(f).**

SECTION 6. IC 33-38-6-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 21. (a) When drawing a salary warrant for a participant, the auditor of state and the county auditor shall deduct from the amount of the warrant the participant's contribution, if any, to the fund in the amount certified in the vouchers or an order issued by the director.

(b) The auditor of state and the county auditor shall draw a warrant to the fund for the total contributions withheld from the participants each month. The warrant drawn to the fund together with a list of participants and the amount withheld from each participant shall be transmitted immediately to the director.

~~(c) The auditor of state shall draw warrants upon the treasurer of state, payable from the fund, for purposes provided for in this chapter, upon the presentation of vouchers or an order signed by the director of the board in accordance with resolutions of the board.~~

(c) After December 31, 2011, the auditor of state and the county auditor shall submit the contributions paid by or on behalf of a participant under this section by electronic funds transfer in accordance with section 21.5 of this chapter.

SECTION 7. IC 33-38-6-21.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 21.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2011, under this chapter, IC 33-38-7, and IC 33-38-8.**

(b) An employer shall submit through the use of electronic funds transfer:

(1) employer payments made to fund the retirement, disability, and survivor benefits described in this chapter, IC 33-38-7, and IC 33-38-8; and

(2) contributions paid by or on behalf of a participant under section 21 of this chapter, IC 33-38-7-10, or IC 33-38-8-11.

(c) An employer shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records required by the board under this chapter, IC 33-38-7, or IC 33-38-8.

(d) The board shall establish by rule the due dates for all reports, records, and contributions required under this chapter,

C o p y

IC 33-38-7, or IC 33-38-8.

SECTION 8. IC 33-38-6-23, AS AMENDED BY P.L.99-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) The board of trustees of the public employees' retirement fund shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under IC 33-38-7 and IC 33-38-8.

(2) In accordance with the powers and duties granted it in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter and IC 33-38-7 and IC 33-38-8.

(4) Authorize deposits.

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

(d) The powers and duties of:

(1) the director and the actuary of the board; **and**

(2) the attorney general; ~~and~~

~~(3) the auditor of state;~~

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

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

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

SECTION 9. IC 33-38-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) A person who completed at least eight (8) years of service as a judge before July 1, 1953, may become a participant in the fund and be subject to this chapter if the person qualifies for benefits under section 11 of this chapter. A person who is a judge on July 1, 1953, shall become a participant in the fund and be subject to this chapter, beginning on July 1, 1953, unless twenty (20) days before July 1, 1953, the judge files with the board a written notice of election not to participate in the fund.

(b) A person who:

(1) becomes a judge after July 1, 1953, and before September 1, 1985; and

(2) is not a participant in the fund;

C o p y

becomes a participant in the fund and is subject to this chapter, beginning on the date the person becomes a judge, unless within twenty (20) days after that date the judge files with the board a written notice of election not to participate in the fund. An election filed under this subsection is irrevocable.

(c) A person who irrevocably:

(1) elects not to participate in the fund; or

(2) withdraws from the fund under section 13 of this chapter;

is ineligible to participate and to receive benefits under this chapter.

(d) Participation of a judge in the fund continues until the date on which the judge:

(1) becomes an annuitant;

(2) dies; or

(3) accepts a refund;

but a person is not required to pay into the fund during any period that the person is not serving as a judge, except as otherwise provided in this chapter.

(e) A participant is considered to have made a one (1) time irrevocable salary reduction agreement of six percent (6%) of each payment of salary that a participant would otherwise have received for services as a judge.

(f) The auditor of state and the county auditor shall pay and credit to the fund the amounts described in subsection (e) as provided in IC 33-38-6-21 and IC 33-38-6-22. **After December 31, 2011, the auditor of state and the county auditor shall submit the contributions paid by or on behalf of a participant under subsection (e) by electronic funds transfer in accordance with IC 33-38-6-21.5.** However, no amounts shall be paid on behalf of a participant for more than twenty-two (22) years.

SECTION 10. IC 33-38-8-11, AS AMENDED BY P.L.122-2008, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) A participant shall make contributions to this fund of six percent (6%) of each payment of salary received for services as judge or, after December 31, 2010, as a judge or full-time magistrate. However, the employer may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(b) Participants' contributions, other than participants' contributions paid by the employer, shall be deducted from the monthly salary of each participant by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-38-6-21 and IC 33-38-6-22. **After December 31, 2011, the auditor of state and the county**

C o p y

auditor shall submit the contributions paid by or on behalf of a participant under subsection (a) by electronic funds transfer in accordance with IC 33-38-6-21.5. However, a contribution is not required:

(1) because of any salary received after the participant has contributed to the fund for twenty-two (22) years; or

(2) during any period that the participant is not serving as judge or, after December 31, 2010, as a judge or full-time magistrate.

SECTION 11. IC 33-39-7-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.1. The amendments made to sections 15, 16, and 19 of this chapter by P.L.33-2006 apply to a participant in the fund who:**

(1) is serving on July 1, 2006; or

(2) begins service after July 1, 2006;

in a position described in section 8 of this chapter.

SECTION 12. IC 33-39-7-11, AS AMENDED BY P.L.99-2010, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The board shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under this chapter.

(2) In accordance with the powers and duties granted the board in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter.

(4) Authorize deposits.

(c) A determination by the board may be appealed under IC 4-21.5.

(d) The powers and duties of:

(1) the director and the actuary of the board; **and**

(2) the attorney general; ~~and~~

~~(3) the auditor of state;~~

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

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

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

SECTION 13. IC 33-39-7-12 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) Except as provided in subsection (b), each participant shall make contributions to the fund as follows:

(1) A participant described in section 8(a)(1) of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after December 31, 1989.

(2) A participant described in section 8(a)(2) or 8(a)(3) of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after June 30, 1994.

A participant's contributions shall be deducted from the participant's monthly salary by the auditor of state and credited to the fund.

(b) The state may pay the contributions for a participant.

(c) After December 31, 2011, the auditor of state shall submit the contributions paid by or on behalf of a participant under this section by electronic funds transfer in accordance with section 12.5 of this chapter.

SECTION 14. IC 33-39-7-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 12.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2011, under this chapter.**

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

(c) The state shall submit through the use of electronic funds transfer contributions paid by or on behalf of a participant under section 12 of this chapter.

(d) The state shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records required by the board under this chapter.

(e) The board shall establish by rule the due dates for all reports, records, and contributions required under this chapter.

SECTION 15. IC 36-8-8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1.5. As used in this chapter, "electronic funds transfer" has the meaning set forth in IC 4-8.1-2-7(f).**

SECTION 16. IC 36-8-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Each employer shall annually on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, **or an alternate date established by the rules of the PERF board,** pay into the 1977 fund an amount determined by the PERF board:

C o p y

(1) for administration expenses; and

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

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

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

SECTION 17. IC 36-8-8-8, AS AMENDED BY P.L.180-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) Each fund member shall contribute during the period of the fund member's employment or for thirty-two (32) years, whichever is shorter, an amount equal to six percent (6%) of the salary of a first class patrolman or firefighter. However, the employer may pay all or a part of the contribution for the member. The amount of the contribution, other than contributions paid on behalf of a member, shall be deducted each pay period from each fund member's salary by the disbursing officer of the employer. The employer shall send to the PERF board each year on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, **or an alternate date established by the rules of the PERF board,** a certified list of fund members and a warrant issued by the employer for the total amount deducted for fund members' contributions.

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

(1) the list described in subsection (a) in a uniform format through a secure connection over the Internet or through other electronic means specified by the PERF board; and

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

~~(b)~~ **(c)** Except as provided in section 7.2 of this chapter, if a fund member ends the fund member's employment other than by death or disability before the fund member completes twenty (20) years of active service, the PERF board shall return to the fund member in a lump sum the fund member's contributions plus interest as determined by the PERF board. If the fund member returns to service, the fund member is entitled to credit for the years of service for which the fund

C o p y

member's contributions were refunded if the fund member repays the amount refunded to the fund member in either a lump sum or a series of payments determined by the PERF board.

SECTION 18. IC 36-8-8-12, AS AMENDED BY P.L.34-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

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

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the PERF board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable period in which a fund member with a disability is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

(1) a plan or policy of insurance providing benefits for loss of time because of disability;

(2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's employer has made payroll deductions, including a group life policy providing installment payments for disability, a group annuity contract, or a pension or retirement annuity plan other than the fund established by this chapter;

(3) the federal Social Security Act (42 U.S.C. 401 et seq.), the Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States Department of Veterans Affairs, or another federal, state, local, or other governmental agency;

(4) worker's compensation payable under IC 22-3; and

(5) a salary or wage, including overtime and bonus pay and extra or additional remuneration of any kind, the fund member receives or is entitled to receive from the member's employer.

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

C o p y

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

(1) delivered, issued for delivery, amended, or renewed after April 9, 1979; and

(2) described in subsection (c)(1) or (c)(2);

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

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

(1) the member's years of active service; plus

(2) if applicable, the period, not to exceed twenty (20) years, during which the member received disability benefits.

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

(1) under section 13.3(d) of this chapter; or

(2) based on a determination under this chapter that the fund member has a Class 3 impairment;

shall be transferred from disability to regular retirement status when the member becomes ~~fifty-five (55)~~ **fifty-two (52)** years of age.

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

(1) under section 13.3(c) of this chapter; or

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

is entitled to receive a disability benefit for the remainder of the fund member's life in the amount determined under the applicable sections of this chapter.

SECTION 19. IC 36-8-8-13.1, AS AMENDED BY P.L.29-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.1. (a) If:

(1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or

(2) the fund member has filed an appeal under section 12.7(o) of this chapter;

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

(b) Whenever a fund member is determined to have an impairment under section 12.7(i) of this chapter, the PERF board's director shall

C o p y

initiate a review of the default award not later than sixty (60) days after the director learns of the default award.

(c) After the PERF board's director receives the determinations under subsection (a) or initiates a review under subsection (b), the fund member must submit to an examination by a medical authority selected by the PERF board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The PERF board shall adopt rules under IC 4-22-2 to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the PERF board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

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

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the initial determination; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.

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

(e) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the PERF board. If a timely written objection is filed, the PERF board shall issue the final order after a hearing. **Unless an administrative law judge orders a waiver or an extension of the period for cause shown,** the

C o p y

final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination or the date the PERF board's director initiates a review under subsection (b). The following provisions apply if a final order is not issued within ~~one hundred eighty (180) days~~ **the time limit described in this subsection** and if the delay is not attributable to the fund member or the chief of the police or fire department:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.

(3) In the case of a review initiated under subsection (b), the impairment determined under section 12.7(i) of this chapter is considered to be the final order.

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

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

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

SECTION 20. IC 36-8-8-18, AS AMENDED BY P.L.148-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18. (a) Except as provided in subsection (b), if a unit becomes a participant in the 1977 fund, credit for prior service by police officers (including prior service as a full-time, fully paid town marshal or full-time, fully paid deputy town marshal by a police officer employed by a metropolitan board of police commissioners) or by firefighters before the date of participation may be given by the PERF board only if:

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

C o p y

PERF board; and

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

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

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

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

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

(A) The unit contributes to the 1977 fund the amount necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary earned by a first class firefighter at the time the unit becomes a participant in the 1977 fund, or the firefighter becomes a member of the 1977 fund, or if no such salary designation exists, the actual salary earned by the firefighter. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before

C o p y

becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical technician under section 7(g) of this chapter.

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

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

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

(c) This subsection applies to a unit that:

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

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

A firefighter who continues uninterrupted service with a unit covered by this subsection and who participated in the township or municipality 1937 fund is entitled to receive service credit for such service in the 1977 fund. However, credit for such service is limited to the amount accrued by the firefighter in the 1937 fund or the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter becomes ~~fifty-five (55)~~ **fifty-two (52)** years of age, whichever is less.

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

C o p y

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

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

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

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

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

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

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

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

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

SECTION 21. IC 36-8-8-18.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18.1. (a) As used in this section, "police officer" includes a former full-time, fully paid town marshal or full-time, fully paid deputy town marshal who is employed as a police officer by a metropolitan board of police commissioners.

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

(1) A minimum benefit applies to members electing to transfer or being transferred to the 1977 fund from PERF. The minimum benefit, payable at age ~~fifty-five (55)~~ **fifty-two (52),** for such a member equals the actuarial equivalent of the vested retirement benefit payable to the member upon normal retirement under

C o p y

IC 5-10.2-4-1 as of the day before the transfer, based solely on:

(A) creditable service;

(B) the average of the annual compensation; and

(C) the amount credited to the annuity savings account;

of the transferring member as of the day before the transfer under IC 5-10.2 and IC 5-10.3.

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

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

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

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

SECTION 22. P.L.33-2006, SECTION 4, IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 23. **An emergency is declared for this act.**

C o p y