
HOUSE BILL No. 1048

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8-8-13.4; IC 36-8-8-24.8; IC 36-8-8.5-14.

Synopsis: 1977 fund. Allows a certain member or survivor of a member of the 1977 police officers' and firefighters' pension and disability fund (1977 fund) who applied for disability prior to 1990 and is receiving a disability benefit to apply to a local board for a recommendation as to whether the member's disability occurred in the line of duty. Provides that the local board shall make a recommendation of its findings to the 1977 fund advisory committee. Provides that the 1977 fund advisory committee shall make an initial determination of whether the member's disability occurred in the line of duty. Provides that if the 1977 fund advisory committee fails to timely provide an initial determination, the default determination will be made by the public employees' retirement fund's (PERF) medical authority. Provides that the PERF board makes a final determination of whether the member's disability occurred in the line of duty. Establishes procedures to appeal: (1) a recommendation by the local board; (2) an initial determination by the 1977 fund advisory committee; or (3) an initial default determination made by the PERF medical authority. Provides that a certain member or survivor of a member may apply to the local board within two years of the PERF board providing notice that it has received a favorable ruling from the Internal Revenue Service. Provides that the PERF board shall provide notice to certain 1977 fund members of the Internal Revenue Service's ruling within 30 days of its receipt. Provides that an active member of the 1977 fund who has entered the deferred retirement option plan (DROP) before July 1, 2011, may elect to receive a partial lump sum distribution. Provides that if a 1977 fund

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Effective: Upon passage; July 1, 2011.

Niezgodski, Burton

January 5, 2011, read first time and referred to Committee on Veterans Affairs and Public Safety.



Digest Continued

member who has entered the DROP before July 1, 2011, elects a partial lump sum distribution: (1) the 1977 fund member shall exit the DROP; and (2) the 1977 fund member's retirement benefits are calculated as if the 1977 fund member had never entered the DROP. Provides that a 1977 fund member who enters the DROP after June 30, 2011, may not elect to receive a partial lump sum distribution. (The introduced version of this bill was prepared by the pension management oversight commission.)

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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.

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HOUSE BILL No. 1048

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

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

1 SECTION 1. IC 36-8-8-13.4 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2011]: **Sec. 13.4. (a) This section applies only to a fund member
 4 or survivor of a fund member who is receiving a disability benefit
 5 under section 13.3(b) of this chapter.**
 6 **(b) A fund member or survivor of a fund member described in
 7 subsection (a) may file an application, in accordance with this
 8 section, requesting a determination that:**
 9 **(1) the member's covered impairment, as determined under
 10 section 13.3(b) of this chapter, was:**
 11 **(A) the direct result of:**
 12 **(i) a personal injury that occurred while the fund
 13 member was on duty;**
 14 **(ii) a personal injury that occurred while the fund
 15 member was off duty and was responding to an offense**



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or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member was trained, in the case of a firefighter; or (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

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

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
- (iii) the disease can be traced to the fund member's employment as the proximate cause); or

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

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

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

(c) A fund member or survivor of a fund member who files an application under this section has the burden of presenting sufficient evidence to support a finding that the member's covered impairment, as determined under section 13.3(b) of this chapter, satisfies the standard provided in subsection (b)(1). Such evidence may include any documents, materials, or other evidence provided in connection with the original hearing and determination of a covered impairment as determined under section 13.3(b) of this chapter, including any transcript from that proceeding. A fund member or a survivor of a fund member may include with an

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1 application any additional probative evidence that is relevant to
 2 the determination under subsection (b)(1). The local board may
 3 establish reasonable procedures with respect to the application
 4 process and may engage a medical authority to provide opinions
 5 relevant to making its determination. The local board may hold a
 6 hearing with respect to an application filed under this section if the
 7 fund member or survivor of a fund member shows good cause that
 8 documents or other probative evidence sufficient to make the
 9 showing required under this subsection is not reasonably
 10 obtainable and that holding a hearing would be reasonably likely
 11 to provide such probative evidence. If the local board conducts a
 12 hearing, it shall be subject to the provisions of section 12.7 of this
 13 chapter relating to the conduct of hearings on the determinations
 14 of covered impairments under this chapter.

15 (d) The local board shall make its recommendation, including
 16 findings of fact, in writing and shall provide copies of its
 17 recommendation to the fund member or survivor of the fund
 18 member, the 1977 fund advisory committee, and the PERF board
 19 no later than thirty (30) days after the:

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

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

27 (f) The 1977 fund advisory committee shall review the local
 28 board's recommendation, or the considered recommendation
 29 under subsection (e), not later than forty-five (45) days after
 30 receiving the recommendation and shall then issue an initial
 31 determination of whether the covered impairment is one described
 32 under subsection (b)(1). The 1977 fund advisory committee shall
 33 notify the PERF board, the local board, and the fund member or
 34 survivor of the fund member of its initial determination, and the
 35 PERF board or its designee will issue a final determination to the
 36 local board and the fund member or survivor of the fund member.
 37 If no objection is made to the initial determination under
 38 subsection (g) or (h), the PERF board must issue a final
 39 determination not later than thirty (30) days after receiving an
 40 initial determination.

41 (g) The fund member or survivor of the fund member or the
 42 local board may object in writing to the 1977 fund advisory

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1 committee's initial determination under subsection (f) not later
 2 than fifteen (15) days after the initial determination is issued by
 3 filing an objection with the PERF board. If a written objection is
 4 not filed, the 1977 advisory committee's initial determination
 5 becomes final. If a timely written objection is filed, the PERF
 6 board shall issue a final determination after a hearing. Unless an
 7 administrative law judge orders a waiver or an extension of the
 8 period for cause shown, the final determination must be issued not
 9 later than one hundred eighty (180) days after the date of receipt
 10 of the local board's recommendation.

11 (h) If the 1977 fund advisory committee fails to issue an initial
 12 determination within forty-five (45) days after receiving the local
 13 board's recommendation, the default determination on whether the
 14 covered impairment is one described under subsection (b)(1) will
 15 be the determination made by PERF's medical authority. An
 16 objection to this determination may be filed in accordance with the
 17 provisions of subsection (g).

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

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

30 (k) This section expires July 1, 2021.

31 SECTION 2. IC 36-8-8-24.8, AS ADDED BY P.L.99-2010,
 32 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 UPON PASSAGE]: Sec. 24.8. (a) This section does not apply to a fund
 34 member who elects to enter the DROP (as defined in IC 36-8-8.5-4)
 35 under IC 36-8-8.5 after June 30, 2011.

36 (b) This subsection applies to a fund member who enters the
 37 DROP (as defined in IC 36-8-8.5-4) before July 1, 2011, and:

38 (1) does not, before July 1, 2011, exit the DROP as provided
 39 in IC 36-8-8.5-14; or

40 (2) before July 1, 2011, exits the DROP without retiring.

41 A fund member to whom this subsection applies may elect to
 42 receive a partial lump sum distribution under this section. If a fund

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1 **member makes an election under this subsection and has not exited**
 2 **the DROP, the fund member shall exit the DROP on the date the**
 3 **fund member's election under this subsection is effective. The**
 4 **retirement benefits of a fund member who makes an election under**
 5 **this subsection are calculated as if the fund member had never**
 6 **entered the DROP.**

7 ~~(b)~~ (c) Benefits paid under this section are subject to section 2.5 of
 8 this chapter.

9 ~~(c)~~ (d) As used in this section, "partial lump sum distribution"
 10 means the amount calculated under subsection ~~(f)~~: (g).

11 ~~(d)~~ (e) After June 30, 2010, a fund member may elect to receive at
 12 retirement a partial lump sum distribution if the fund member meets all
 13 of the following requirements on the date of the election:

14 (1) The fund member is in active service.

15 (2) The fund member qualifies for a retirement fund benefit
 16 payment under section 10(b) of this chapter.

17 ~~(e)~~ (f) A fund member's election under subsection ~~(d)~~: (e):

18 (1) must be in writing;

19 (2) must be filed with the PERF board, on a form prescribed by
 20 the PERF board; and

21 (3) is irrevocable.

22 ~~(f)~~ (g) The partial lump sum distribution for a fund member who
 23 makes an election described in subsection ~~(d)~~ (e) is determined in
 24 STEP TWO of the following formula:

25 STEP ONE: Determine the lesser of the following:

26 (A) The fund member's years of service for which the fund
 27 member has received service credit in the fund.

28 (B) Thirty-two (32).

29 STEP TWO: Multiply the STEP ONE amount by the fund
 30 member's monthly benefit calculated under section 11(b) of this
 31 chapter.

32 ~~(g)~~ (h) The monthly benefit of a fund member who receives a partial
 33 lump sum distribution under this section is actuarially reduced by
 34 subtracting an amount determined by dividing the partial lump sum
 35 distribution amount determined in subsection ~~(f)~~ (g) by a rate,
 36 determined by the actuary for the fund, that is:

37 (1) based on the age of the fund member and, if applicable, the
 38 age of the fund member's spouse at the time the fund member
 39 elects to take the partial lump sum distribution; and

40 (2) computed to result in a monthly benefit amount that has an
 41 actuarial present value that approximates the partial lump sum
 42 distribution amount.

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1 ~~(h)~~ **(i)** A fund member who makes an election described in
2 subsection ~~(d)~~ **(e)** must elect to receive the partial lump sum
3 distribution determined in subsection ~~(f)~~ **(g)** as:

- 4 (1) a lump sum paid not later than thirty (30) days after the fund
5 member's retirement date; or
- 6 (2) three (3) equal annual payments commencing not later than
7 thirty (30) days after the fund member's retirement date and
8 thereafter paid on the anniversary of the fund member's retirement
9 date.

10 ~~(i)~~ **(j)** This section expires July 1, 2012.

11 SECTION 3. IC 36-8-8.5-14, AS AMENDED BY P.L.148-2007,
12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: Sec. 14. (a) Subject to subsection (b), a member
14 who enters the DROP established by this chapter shall exit the DROP
15 at the earliest of:

- 16 (1) the member's DROP retirement date;
- 17 (2) thirty-six (36) months after the member's DROP entry date;
- 18 (3) the mandatory retirement age applicable to the member, if
19 any; ~~or~~
- 20 (4) the date the member retires because of a disability as provided
21 under section 16.5(d) of this chapter; ~~or~~

22 **(5) the date determined under IC 36-8-8-24.8.**

23 (b) A member of the 1925 fund, the 1937 fund, or the 1953 fund
24 who enters the DROP established by this chapter must exit the DROP
25 on the date the authority of the board of trustees of the public
26 employees' retirement fund to distribute from the pension relief fund
27 established under IC 5-10.3-11-1 to units of local government
28 (described in IC 5-10.3-11-3) amounts determined under
29 IC 5-10.3-11-4.7 expires.

30 SECTION 4. **An emergency is declared for this act.**

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