

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 549 be amended to read as follows:

- 1 Page 15, line 10, after "be" insert "**an active or retired police**
- 2 **officer or firefighter who is**".
- 3 Page 15, line 10, delete "public employees" and insert "**1977 police**
- 4 **officers' and firefighters' pension and disability fund**".
- 5 Page 15, delete lines 11 through 12.
- 6 Page 24, strike line 37.
- 7 Page 24, line 38, strike "is established. The".
- 8 Page 24, line 38, delete "system".
- 9 Page 24, line 38, strike "board shall consult with the".
- 10 Page 24, strike lines 39 through 42.
- 11 Page 25, strike lines 1 through 15.
- 12 Page 25, line 16, strike "continues until".
- 13 Page 25, line 16, delete "the member's".
- 14 Page 25, line 16, strike "successor is qualified. A member of".
- 15 Page 25, line 17, strike "the committee who no longer holds the
- 16 position that qualified".
- 17 Page 25, line 17, after "him" delete "the".
- 18 Page 25, line 18, delete "member".
- 19 Page 25, line 18, strike "for appointment under subdivision (1), (2),
- 20 (3), or (4) forfeits".
- 21 Page 25, line 19, delete "the member's".
- 22 Page 25, line 19, strike "membership on the committee. The
- 23 governor shall".
- 24 Page 25, strike lines 20 through 26.
- 25 Page 25, line 27, delete "system".
- 26 Page 25, line 27, strike "board.", begin a new paragraph and insert:
- 27 "**(c) Any reference or cross-reference to the 1977 fund advisory**
- 28 **committee in the Indiana Code shall be treated after June 30, 2011,**
- 29 **as a reference or cross-reference to the system board.**
- 30 SECTION 28. IC 36-8-8-13.1, AS AMENDED BY P.L.29-2006,

1 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2011]: Sec. 13.1. (a) If:

- 3 (1) the local board has determined under this chapter that a
4 covered impairment exists and the safety board has determined
5 that there is no suitable and available work within the department,
6 considering reasonable accommodation to the extent required by
7 the Americans with Disabilities Act; or
8 (2) the fund member has filed an appeal under section 12.7(o) of
9 this chapter;

10 the local board shall submit the local board's determinations and the
11 safety board's determinations to the **PERF system** board's director.

12 (b) Whenever a fund member is determined to have an impairment
13 under section 12.7(i) of this chapter, the **PERF system** board's director
14 shall initiate a review of the default award not later than sixty (60) days
15 after the director learns of the default award.

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

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

- 38 (1) In the case of a review initiated under subsection (a)(1):
39 (A) the determinations of the local board and the chief of the
40 police or fire department are considered to be the initial
41 determination; and
42 (B) for purposes of section 13.5(d) of this chapter, the fund
43 member is considered to be totally impaired.
44 (2) In the case of an appeal submitted under subsection (a)(2), the
45 statements made by the fund member under section 12.7(o) of this
46 chapter are considered to be the initial determination.

- 1 (3) In the case of a review initiated under subsection (b), the
2 initial determination is the impairment determined under section
3 12.7(i) of this chapter.
- 4 (e) The fund member, the safety board, or the local board may
5 object in writing to the director's initial determination within fifteen
6 (15) days after the determination is issued. If no written objection is
7 filed, the initial determination becomes the final order of the **PERF**
8 **system** board. If a timely written objection is filed, the **PERF system**
9 board shall issue the final order after a hearing. The final order shall be
10 issued not later than one hundred eighty (180) days after the date of
11 receipt of the local board's determination or the date the **PERF system**
12 board's director initiates a review under subsection (b). The following
13 provisions apply if a final order is not issued within one hundred eighty
14 (180) days and if the delay is not attributable to the fund member or the
15 chief of the police or fire department:
- 16 (1) In the case of a review initiated under subsection (a)(1):
- 17 (A) the determinations of the local board and the chief of the
18 police or fire department are considered to be the final order;
19 and
- 20 (B) for purposes of section 13.5(d) of this chapter, the fund
21 member is considered to be totally impaired.
- 22 (2) In the case of an appeal submitted under subsection (a)(2), the
23 statements made by the fund member under section 12.7(o) of this
24 chapter are considered to be the final order.
- 25 (3) In the case of a review initiated under subsection (b), the
26 impairment determined under section 12.7(i) of this chapter is
27 considered to be the final order.
- 28 (f) If the **PERF system** board approves the director's initial
29 determination, then the **PERF system** board shall issue a final order
30 adopting the initial determination. The local board and the chief of the
31 police or fire department shall comply with the initial determination.
32 If the **PERF system** board does not approve the initial determination,
33 the **PERF system** board may receive additional evidence on the matter
34 before issuing a final order.
- 35 (g) Appeals of the **PERF system** board's final order may be made
36 under IC 4-21.5.
- 37 (h) The transcripts, records, reports, and other materials compiled
38 under this section must be retained in accordance with the procedures
39 specified in section 12.7(p) of this chapter.
- 40 SECTION 29. IC 36-8-8-13.6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.6. (a) As used in this
42 chapter, "Class 3 excludable condition" means a condition that is
43 included on the list of excludable medical conditions established by the
44 **PERF system** board under subsection (b).
- 45 (b) The **PERF system** board shall adopt rules ~~under IC 4-22-2~~ to
46 establish a list of excludable medical conditions.

1 (c) To the extent required by the Americans with Disabilities Act,
 2 the **PERF system** board shall record and retain the listing of a fund
 3 member's Class 3 excludable condition in the fund member's
 4 confidential medical file.

5 SECTION 30. IC 36-8-8-19, AS AMENDED BY P.L.99-2010,
 6 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2011]: Sec. 19. (a) The baseline statewide physical
 8 examination required by section 7(a) of this chapter shall be prescribed
 9 by the **PERF system** board and shall be administered by the appointing
 10 authority, as determined by the local board, after the appointing
 11 authority extends a conditional offer for employment. The baseline
 12 statewide physical examination shall be administered by a licensed
 13 physician and must include all of the following:

- 14 (1) A general medical history.
- 15 (2) The tests identified in rules that shall be adopted by the **PERF**
 16 **system** board. ~~under IC 4-22-2.~~

17 (b) The **PERF system** board shall adopt minimum standards by rule
 18 ~~under IC 4-22-2~~ that a police officer or firefighter must meet for the
 19 baseline statewide physical examination described in subsection (a).
 20 The baseline statewide physical examination and related standards
 21 must:

- 22 (1) reflect the essential functions of the job;
- 23 (2) be consistent with business necessity;
- 24 ~~(3) be reviewed by the 1977 fund advisory board;~~ and
- 25 ~~(4)~~ (3) be evaluated by the **PERF system** board one (1) time
 26 before January 1, 2015, and every five (5) years thereafter.

27 (c) The **PERF system** board shall, in consultation with the
 28 commissioner of mental health, select the baseline statewide mental
 29 examination described in section 7(a) of this chapter. The standards for
 30 passing the baseline statewide mental examination shall be determined
 31 by the local board. The baseline statewide mental examination and
 32 related standards must:

- 33 (1) reflect the essential functions of the job;
- 34 (2) be consistent with business necessity;
- 35 ~~(3) be reviewed by the 1977 fund advisory board;~~ and
- 36 ~~(4)~~ (3) be evaluated by the **PERF system** board one (1) time
 37 before January 1, 2015, and every five (5) years thereafter.

38 The purpose of the baseline statewide mental examination is to
 39 determine if the police officer or firefighter is mentally suitable to be
 40 a member of the department. The local board may designate a
 41 community mental health center or a managed care provider (as
 42 defined in IC 12-7-2-127(b)), a hospital, a licensed physician, or a
 43 licensed psychologist to administer the examination. However, the
 44 results of a baseline statewide mental examination shall be interpreted
 45 by a licensed physician or a licensed psychologist.

46 (d) The employer shall pay for no less than one-half (1/2) the cost

1 of the examinations.

2 (e) Each local board shall name the physicians who will conduct the
3 examinations under this section.

4 (f) If a local board determines that a candidate passes the local
5 physical and mental standards, if any, established under IC 36-8-3.2-6,
6 the baseline statewide physical examination described in subsection
7 (a), and the baseline statewide mental examination described in
8 subsection (c), the local board shall send the following to ~~PERF~~:

9 **Indiana public retirement system:**

10 (1) Copies and certification of the results of the baseline statewide
11 physical examination described in subsection (a).

12 (2) Certification of the results of the physical agility examination
13 required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.

14 (3) Certification of the results of the baseline statewide mental
15 examination described in subsection (c).

16 (g) The ~~PERF system~~ board or the ~~PERF system~~ board's designee
17 shall then determine whether the candidate passes the baseline
18 statewide physical standards adopted under subsection (b). If the
19 candidate passes the baseline statewide standards, the ~~PERF system~~
20 board or the ~~PERF system~~ board's designee shall also determine
21 whether the candidate has a Class 3 excludable condition under section
22 13.6 of this chapter. The ~~PERF system~~ board or the ~~PERF system~~
23 board's designee shall retain the results of the examinations and all
24 documents related to the examination until the police officer or
25 firefighter retires or separates from the department.

26 (h) To the extent required by the federal Americans with Disabilities
27 Act, the ~~PERF system~~ board shall do the following:

28 (1) Treat the medical transcripts, reports, records, and other
29 material compiled under this section as confidential medical
30 records.

31 (2) Keep the transcripts, reports, records, and material described
32 in subdivision (1) in separate medical files for each member.

33 (i) A local board may, at the request of an appointing authority or on
34 the local board's own motion, issue subpoenas, discovery orders, and
35 protective orders in accordance with the Indiana Rules of Trial
36 Procedure to facilitate the receipt of accurate and original documents
37 necessary for the proper administration of this chapter. A subpoena or
38 order issued under this subsection:

39 (1) must be served in accordance with the Indiana Rules of Trial
40 Procedure; and

41 (2) may be enforced in the circuit or superior court with

- 1 jurisdiction for the county in which the subpoena or order is served.".
- 2 Renumber all SECTIONS consecutively.
(Reference is to SB 549 as printed January 28, 2011.)

Senator BOOTS