
HOUSE BILL No. 1240

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Appeal process for public safety medical expenses. Specifies that a police officer or firefighter who suffers an injury or illness in performance of the person's duty and whose request for payment of care is denied by a city may appeal the denial to the local pension board that has jurisdiction over the police officer or firefighter. Requires the local pension board to conduct a hearing on the appeal using the same board procedures for conducting a hearing on determinations of disability or impairment for purposes of the pension fund. Provides that the determination of the local pension board after a hearing is final and may be appealed to the court.

Effective: July 1, 2012.

Morris

January 9, 2012, read first time and referred to Committee on Veterans Affairs and Public Safety.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1240



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 36-8-4-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) A city shall pay for the care
3 of a police officer or firefighter who suffers an injury while performing
4 the person's duty or contracts illness caused by the performance of the
5 person's duty, including an injury or illness that results in a disability
6 or death presumed incurred in the line of duty under IC 5-10-13. This
7 care includes:
8 (1) medical and surgical care;
9 (2) medicines and laboratory, curative, and palliative agents and
10 means;
11 (3) X-ray, diagnostic, and therapeutic service, including during
12 the recovery period; and
13 (4) hospital and special nursing care if the physician or surgeon
14 in charge considers it necessary for proper recovery.
15 (b) Expenditures required by subsection (a) shall be paid from the
16 general fund of the city.
17 (c) A city that has paid for the care of a police officer or firefighter



1 under subsection (a) has a cause of action for reimbursement of the
 2 amount paid under subsection (a) against any third party against whom
 3 the police officer or firefighter has a cause of action for an injury
 4 sustained because of or an illness caused by the third party. The city's
 5 cause of action under this subsection is in addition to, and not in lieu
 6 of, the cause of action of the police officer or firefighter against the
 7 third party.

8 **(d) A police officer or firefighter whose request for payment of**
 9 **care under subsection (a) is denied by a city may appeal the denial**
 10 **to the local board (as defined in IC 36-8-8-2.1) that has jurisdiction**
 11 **over the police officer or firefighter. The local board shall conduct**
 12 **a hearing on the appeal under IC 36-8-8-12.7. The determination**
 13 **of the local board after a hearing is final and may be appealed to**
 14 **the court. This subsection does not:**

15 **(1) apply to or abrogate a contract or agreement in effect on**
 16 **July 1, 2012; or**

17 **(2) preclude arbitration on a provision in a contract or**
 18 **agreement referred to in subdivision (1).**

19 SECTION 2. IC 36-8-8-12.7, AS AMENDED BY P.L.29-2006,
 20 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2012]: Sec. 12.7. (a) This section applies to hearings
 22 conducted by local boards concerning:

23 **(1) determinations of impairment under this chapter; or**

24 **(2) determinations of disability under IC 36-8-5-2(g), IC 36-8-6,**
 25 **IC 36-8-7, and IC 36-8-7.5; or**

26 **(3) an appeal of a denial of a request for payment of care**
 27 **under IC 36-8-4-5.**

28 (b) At least five (5) days before the hearing, the local board shall
 29 give notice to the fund member and the safety board of the time, date,
 30 and place of the hearing.

31 (c) The local board must hold a hearing not more than ninety (90)
 32 days after the fund member requests the hearing.

33 (d) At the hearing, the local board shall permit the fund member and
 34 the safety board to:

35 (1) be represented by any individual;

36 (2) through witnesses and documents, present evidence;

37 (3) conduct cross-examination; and

38 (4) present arguments.

39 (e) At the hearing, the local board shall require all witnesses to be
 40 examined under oath, which may be administered by a member of the
 41 local board.

42 (f) The local board shall, at the request of the fund member or the

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- 1 safety board, issue:
- 2 (1) subpoenas;
- 3 (2) discovery orders; and
- 4 (3) protective orders;
- 5 in accordance with the Indiana Rules of Trial Procedure that govern
- 6 discovery, depositions, and subpoenas in civil actions.
- 7 (g) The local board shall have the hearing recorded so that a
- 8 transcript may be made of the proceedings.
- 9 (h) After the hearing, the local board shall make its determinations,
- 10 including findings of fact, in writing and shall provide copies of its
- 11 determinations to the fund member and the safety board not more than
- 12 thirty (30) days after the hearing.
- 13 (i) If the local board:
- 14 (1) does not hold a hearing within the time required under
- 15 subsection (c); or
- 16 (2) does not issue its determination within the time required under
- 17 subsection (h);
- 18 the fund member shall be considered to be totally impaired for
- 19 purposes of section 13.5 of this chapter and, if the issue before the local
- 20 board concerns the class of the member's impairment, the member shall
- 21 be considered to have a Class 1 impairment. The PERF board shall
- 22 review an impairment determined under this subsection as provided in
- 23 section 13.1 of this chapter.
- 24 (j) The local board may on its own motion issue:
- 25 (1) subpoenas;
- 26 (2) discovery orders; and
- 27 (3) protective orders;
- 28 in accordance with the Indiana Rules of Trial Procedure that govern
- 29 discovery, depositions, and subpoenas in civil actions.
- 30 (k) At the hearing, the local board may exclude evidence that is
- 31 irrelevant, immaterial, unduly repetitious, or excludable on the basis of
- 32 evidentiary privilege recognized by the courts.
- 33 (l) At the hearing, the local board may request the testimony of
- 34 witnesses and the production of documents.
- 35 (m) If a subpoena or order is issued under this section, the party
- 36 seeking the subpoena or order shall serve it in accordance with the
- 37 Indiana Rules of Trial Procedure. However, if the subpoena or order is
- 38 on the local board's own motion, the sheriff of the county in which the
- 39 subpoena or order is to be served shall serve it. A subpoena or order
- 40 under this section may be enforced in the circuit or superior court of
- 41 the county in which the subpoena or order is served.
- 42 (n) With respect to a hearing conducted for purposes of:

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1 (1) determining disability under IC 36-8-6, IC 36-8-7, or
2 IC 36-8-7.5; or

3 (2) **appealing a denial of a request for payment of care under**
4 **IC 36-8-4-5;**

5 the determination of the local board after a hearing is final and may be
6 appealed to the court.

7 (o) With respect to a hearing conducted for purposes of determining
8 impairment or class of impairment under this chapter, the fund member
9 may appeal the local board's determinations. An appeal under this
10 subsection:

11 (1) must be made in writing;

12 (2) must state the class of impairment and the degree of
13 impairment that is claimed by the fund member;

14 (3) must include a written determination by the chief of the police
15 or fire department stating that there is no suitable and available
16 work; and

17 (4) must be filed with the local board and the PERF board's
18 director no later than thirty (30) days after the date on which the
19 fund member received a copy of the local board's determinations.

20 (p) To the extent required by the Americans with Disabilities Act,
21 the transcripts, records, reports, and other materials generated as a
22 result of a hearing, review, or appeal conducted to determine an
23 impairment under this chapter or a disability under IC 36-8-6,
24 IC 36-8-7, or IC 36-8-7.5 must be:

25 (1) retained in the separate medical file created for the member;
26 and

27 (2) treated as a confidential medical record.

28 (q) If a local board determines that a fund member described in
29 section 13.3(a) of this chapter has a covered impairment, the local
30 board shall also make a recommendation to the 1977 fund advisory
31 committee concerning whether the covered impairment is an
32 impairment described in section 13.3(c) of this chapter or whether it is
33 an impairment described in section 13.3(d) of this chapter. The local
34 board shall forward its recommendation to the 1977 fund advisory
35 committee.

36 (r) The 1977 fund advisory committee shall review the local board's
37 recommendation not later than forty-five (45) days after receiving the
38 recommendation and shall then issue an initial determination of
39 whether the disability is in the line of duty or not in the line of duty.
40 The 1977 fund advisory committee shall notify the local board, the
41 safety board, and the fund member of its initial determination.

42 (s) The fund member, the safety board, or the local board may object

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1 in writing to the 1977 fund advisory committee's initial determination
2 under subsection (r) not later than fifteen (15) days after the initial
3 determination is issued. If a written objection is not filed, the 1977 fund
4 advisory committee's initial determination becomes final. If a timely
5 written objection is filed, the 1977 fund advisory committee shall issue
6 a final determination after a hearing. The final determination must be
7 issued not later than one hundred eighty (180) days after the date of
8 receipt of the local board's recommendation.

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