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, 2013.
INTRODUCED

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

HOUSE BILL No. 1531

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:

SECTION 1. IC 36-8-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) A city shall pay for the care of a police officer or firefighter who suffers an injury while performing the person's duty or contracts illness caused by the performance of the person's duty, including an injury or illness that results in a disability or death presumed incurred in the line of duty under IC 5-10-13. This care includes:

1. medical and surgical care;
2. medicines and laboratory, curative, and palliative agents and means;
3. X-ray, diagnostic, and therapeutic service, including during the recovery period; and
4. hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery.

(b) Expenditures required by subsection (a) shall be paid from the general fund of the city.

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

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

(1) apply to or abrogate a contract or agreement in effect on
July 1, 2013; or
(2) preclude arbitration on a provision in a contract or
agreement referred to in subdivision (1).

SECTION 2. IC 36-8-8-12.7, AS AMENDED BY P.L.35-2012,
SECTION 129, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2013]: Sec. 12.7. (a) This section applies to
hearings conducted by local boards concerning:

(1) determinations of impairment under this chapter; or
(2) determinations of disability under IC 36-8-5-2(g), IC 36-8-6,
IC 36-8-7, and IC 36-8-7.5; or
(3) an appeal of a denial of a request for payment of care
under IC 36-8-4-5.

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

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

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

(1) be represented by any individual;
(2) through witnesses and documents, present evidence;
(3) conduct cross-examination; and
(4) present arguments.

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

(f) The local board shall, at the request of the fund member or the
safety board, issue:

   1. subpoenas;
   2. discovery orders; and
   3. protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

   (i) If the local board:
       1. does not hold a hearing within the time required under subsection (c); or
       2. does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment. The system board shall review an impairment determined under this subsection as provided in section 13.1 of this chapter.

(j) The local board may on its own motion issue:

   1. subpoenas;
   2. discovery orders; and
   3. protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of:
(1) determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5; or
(2) appealing a denial of a request for payment of care under IC 36-8-4-5;

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

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

(1) must be made in writing;
(2) must state the class of impairment and the degree of impairment that is claimed by the fund member;
(3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and
(4) must be filed with the local board and the system board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations.

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

(1) retained in the separate medical file created for the member; and
(2) treated as a confidential medical record.

(q) If a local board determines that a fund member described in section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the system board concerning whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter. The local board shall forward its recommendation to the system board.

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

(s) The fund member, the safety board, or the local board may object in writing to the system board's initial determination under subsection
(r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the system board's initial determination becomes final. If a timely written objection is filed, the system board shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.