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**BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND**  
**Resolution No. 09-03**

Adopting rules related to the administration of the Fund as described herein.

WHEREAS, the Indiana Public Employees' Retirement Fund exists to provide retirement benefits to its members, their survivors, and beneficiaries;

WHEREAS, the Board of Trustees of the Indiana Public Employees' Retirement Fund, by statute, administers the Fund;

WHEREAS, the Board of Trustees, pursuant to [IC 5-10.3-3-8](#), may establish and amend rules and regulations for the administration of the Fund without adopting a rule under Indiana Code 4-22-2; and

WHEREAS, the Board of Trustees of the Indiana Public Employees' Retirement Fund wishes to adopt, amend, and/or repeal certain rules contained or to be contained in the Indiana Administrative Code related to the administration of the Fund as described herein;

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Indiana Public Employees' Retirement Fund that:

SECTION 1. [35 IAC 1.2-5-9.1](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-5-9.1](#) Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)**

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#)

Sec. 9.1. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-9.1](#); adopted Nov 20, 2009: [20091209-IR-035090927ONA](#)*)

SECTION 2. [35 IAC 2-4-3](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 2-4-3](#) Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)**

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-14.1](#)

Sec. 3. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had

resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-4-3](#); adopted Nov 20, 2009: [20091209-IR-035090927ONA](#))

SECTION 3. [35 IAC 2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 2-5-4](#) Applicable disability structure; member transfers**

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-4-11](#); [IC 36-8-8](#)

Sec. 4. (a) For purposes of determining which disability benefit provisions apply, the 1977 Fund shall interpret the phrase "hired for the first time" by using the member's first date of employment by the local unit where the member is currently employed. However, in the case of a fund member who directly transfers from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used.

(b) Members who directly transfer from covered employment with one (1) local unit to covered employment with another local unit shall not be subjected to any additional preexisting conditions or excludable conditions that may be detected at the time of such transfer.

(c) For purposes of this section, "directly transfer" and "directly transfers" ~~mean~~ **means the following:**

**(1) For those members laid off from employment pursuant to [IC 36-8-4-11](#), a transfer between covered employment with one (1) local unit to covered employment with a different local unit ~~with no more than thirty (30) days between the covered employments.~~ occurs within three (3) years of the layoff.**

**(2) For all other members, a transfer between covered employment with one (1) local unit to covered employment with a different local unit occurs within thirty (30) days.** Furthermore, "directly transfer" and "directly transfers" shall not include any situation where the member files an application for a refund of his or her contributions from the fund.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-4](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 20, 2009: [20091209-IR-035090927ONA](#))

SECTION 4. [35 IAC 4-1-2](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 4-1-2](#) Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)**

Authority: [IC 5-10-5.5-3](#); [IC 5-10.3-3-8](#)

Affected: [IC 5-10-5.5-17](#)

Sec. 2. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a

member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 4-1-2](#); adopted Nov 20, 2009: [20091209-IR-035090927ONA](#))

DATED: November 20, 2009  
Signed: Ken Cochran  
Chairman of the Board of Trustees  
Indiana Public Employees' Retirement Fund  
Resolution adopted by 6 affirmative, 0 negative votes.

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