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**BOARD OF TRUSTEES OF THE INDIANA PUBLIC EMPLOYEES' RETIREMENT FUND**

**Resolution No. 2010-11-01**

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 1.2-2-1](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-2-1](#) Definitions**

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

**Affected:** [IC 5-10.2](#); [IC 5-10.3-2-1](#); [IC 5-10.3-7](#)

Sec. 1. As used in this title, unless the context otherwise clearly requires:

"After the member's retirement", for purposes of [IC 5-10.2-4-8\(b\)](#), means when a member separates from employment.

"Annuity savings account" (~~ASA~~) consists of the member's contributions whether paid by the member or picked up by the employer, additional annuity contributions, and interest credits on these contributions.

"Board" means the board of trustees of the public employees' retirement fund of Indiana.

"Ceases service", for purposes of [IC 5-10.2-4-3\(e\)](#) only, means when a member stops earning creditable service.

"De ~~minus~~ **minimis** account" or "de ~~minus~~ **minimis** amount" means an inactive, retired, retired for disability, suspended, or deceased member's ASA account whereby no regular and continuing contributions are being received and the account has a balance of which the value is less than the actual cost of making a distribution of the balance to the member or the member's beneficiary.

"Full-time employee" means an employee occupying a position covered by the fund as set out in [IC 5-10.3-7](#).

"Employer" means the state for employees of the state and a participating political subdivision for its employees.

"Employer contributions" means contributions made by the state and political subdivisions to the retirement allowance account.

"ERM" means the employer reporting and maintenance system, a web-enabled software application that manages employer and member data and collects members' wages and contributions.

"Fund" means the public employees' retirement fund of Indiana.

"Gender and number" for the purpose of this title, the masculine gender shall include the feminine, and the singular the plural as the context may require.

"Governing body" means the county council, city council, trustees of a town, the township board, board of school commissioners, library board, or any board which by law is authorized to fix a rate of taxation on property of a political subdivision, or any other board which is empowered to administer the affairs of any department of a political subdivision, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Member" means persons qualifying for membership under [IC 5-10.3-7-1](#).

"Member's contribution" means contribution which each member shall, as a condition of employment, contribute to the fund, which is three percent (3%) of the member's compensation (~~basic salary~~ (as defined in [35 IAC 1.2-5-5](#)), ~~and which includes as well as~~ contributions paid by the employer ~~for on behalf of~~ the member pursuant to [IC 5-10.2-3-2](#) and [IC 5-10.3-7-9](#), and additional ~~annuity~~ contributions **paid by the member on either a pretax or posttax basis.**

~~"PERF" is the public employees' retirement fund.~~

"Political subdivision", as used in this article, means a county, city, town, township, political body corporate, public school corporation, public library, public utility of a county, city, town, township, and any department of, or associated with, a county, city, town or township, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Retirement allowance account" consists of employer contributions for pensions and separate accounts shall be maintained for contributions by the state and by each political subdivision.

"Vested status" means the status of having ten (10) years of creditable service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-2-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Jun 11, 2010: [20100728-IR-035100467ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#)*)

SECTION 2. [35 IAC 1.2-3-13](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-3-13](#) Purchase of service**

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

**Affected:** [IC 5-10.3-7](#)

Sec. 13. (a) Eligible PERF members may purchase service under [IC 5-10.3-7-4.5](#), [IC 5-10.3-7-4.6](#), [IC 5-10.3-7-4.8](#), and [IC 5-10.3-7-5](#).

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) The eligible fund member may purchase such service subject to the following:

- (1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.
- (2) Installment payments are subject to the terms of the finance agreement.
- (3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.
- (4) Any direct rollover may not exceed the actual cost of such service as established by the fund.
- (5) Payment may be made in a lump sum or in annual installments for a period not to exceed five (5) years. Any installment may bear interest at the ~~actuarial~~ interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by PERF. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.

(e) A partial service credit will be determined by PERF if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.

(f) Any interest rate used will be ~~the actuarial rate of return as set forth in PERF's annual report.~~ **set as determined by PERF.** (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-13](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 3. [35 IAC 1.2-5-5](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-5-5](#) "Basic salary" or "compensation" defined**

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

**Affected:** [IC 5-10.2-4-3](#); [IC 5-10.3-7-11](#)

~~Sec. 5. For the purpose of computing benefits, basic salary includes regular wages and overtime pay only. The salary shall not be reduced by any salary reduction amounts contributed to Internal Revenue Code Section 125, 457, or 403(b) plans. Subsequent to July 1, 1987, prosecuting attorneys and deputy prosecuting attorneys paid with state funds shall have only those funds paid by the state considered for computing benefits.~~

**(a) Subject to subsection (b), "basic salary" or "compensation" means all compensation that is included as gross income as reported on the member's W-2 for covered service by a covered employer, plus the amounts stated in [IC 5-10.2-4-3](#) that are not paid directly to the member.**

**(b) Compensation of not more than two thousand dollars (\$2,000) pursuant to and in accordance with [IC 5-10.2-4-3](#)(e) may be used in the total annual compensation from which the average of the annual compensation is determined.**

**(c) A member's basic salary or annual compensation must be certified by an official of the employing unit who has knowledge of and access to the records as set forth in [IC 5-10.3-7-11](#). A member may not certify his or her basic salary or annual compensation.** (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-5](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 4. [35 IAC 1.2-5-12.1](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-5-12.1](#) De minimis accounts**

**Authority:** [IC 5-10.2-2-1](#)

**Affected:** [IC 5-10.2-3-6](#)

Sec. 12.1. (a) If, after suspension, retirement, retirement for disability, death withdrawal, or other withdrawal, an inactive member's ASA account balance is below the ~~de minimus~~ **minimis** amount as such amount is determined by PERF, PERF may close the member's account and credit the residual amount to the fund without further notice.

(b) A member or the member's beneficiary may claim the amount credited to the fund, and the account may be adjusted for gains, losses, or interest earnings unless otherwise limited by statute by petitioning PERF in writing.

(c) If the credited amount is from a suspended member's account, no gains or earnings shall be credited to the member's account in accordance with [IC 5-10.2-3-6](#). (Board of Trustees of the Indiana Public Employees' Retirement Fund; [35 IAC 1.2-5-12.1](#); adopted Jun 11, 2010: [20100728-IR-035100467ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 5. [35 IAC 1.2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-6-1](#) Employer payments**

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

**Affected:** [IC 5-10.2-3-2](#); [IC 5-10.3-7-12.5](#)

Sec. 1. (a) In accordance with and pursuant to [IC 5-10.3-7-12.5](#), a quarterly report and payment of employee contributions and employer contributions shall be due in the PERF office no later than the fifteenth day following the end of each calendar quarter. Specifically, January 15, April 15, July 15, and October 15 each year. ~~(the "due dates")~~. If the fifteenth day following the end of the quarter falls on a Saturday, Sunday, or a legal holiday, the due date becomes the next working day. It shall be the responsibility of the local official to employ such method of delivery to insure that the report and payment will reach the PERF office ~~443 West Market Street, Indianapolis, Indiana 46204~~, on or before the due date.

(b) Notwithstanding subsection (a), as allowed in [IC 5-10.3-7-12.5](#), once PERF gives reasonable notice to covered employers and after installation of the ERM system, the PERF board of trustees herein sets the due date for contributions as seven (7) days after a covered employer's payroll unless otherwise approved by the board.

**(c) Any payments not made on the due date may at PERF's discretion accrue interest at a rate equal to the rate established in section 5.5(e) [sic] of this rule.**

~~(e)~~ (d) Any employer who fails to submit required contributions and reports within thirty (30) days of the due date will be subject to a penalty as set forth in [IC 5-10.3-7-12.5](#). If the thirtieth day following the due date falls on a Saturday, Sunday, or legal holiday, the due date becomes the next working day.

**(e) An employer who has elected to pick up the mandatory employee contributions of its employees must do so by resolution in accordance with [IC 5-10.2-3-2\(d\)](#). An employer who wants to rescind its election to pick up the mandatory employee contributions must do so in writing with approval of its governing body. The change will be effective the quarter following the date PERF receives and approves the change.** *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-1](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Jun 11, 2010: [20100728-IR-035100467ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))*

SECTION 6. [35 IAC 1.2-6-5.5](#) IS AMENDED TO READ AS FOLLOWS:

### **[35 IAC 1.2-6-5.5](#) Adjustments**

**Authority:** [IC 5-10.2-2-1.5](#)

**Affected:** [IC 5-10.2-2-11](#); [IC 5-10.2-3-2](#); [IC 5-10.3](#); [IC 6-8.1-10-1](#)

~~Sec. 5.5. (a) When there has been an overpayment of picked up member contributions or after tax member contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).~~

~~(b) When there has been an underpayment of picked up member contributions or after tax member contributions, the principal amount of the underpayment will be billed to the employer. The principal amount of the underpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).~~

~~(c) When there has been an overpayment of employer contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).~~

~~(d) When there has been an underpayment of the employer contribution the principal amount of the underpayment will be billed to the employer. The principal amount may be adjusted for earnings/interest at the interest rate defined in subsection (e).~~

**(a) When the employer submits the correct contributions to a member's ASA, but PERF posts the contributions to an incorrect account, the principal amount will be removed from the incorrect account. The principal amount adjusted at the interest rate defined in subsection (b) will be posted to the correct account.**

**(e) (b)** For purposes of this section, the interest rate shall be determined by the executive director **annually**, and shall not exceed the rate of interest set each year within [IC 6-8.1-10-1\(c\)](#). *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-5.5](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Sep 16, 2010: [20100929-IR-035100611ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))*

SECTION 7. [35 IAC 1.2-6-8](#) IS AMENDED TO READ AS FOLLOWS:

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**35 IAC 1.2-6-8 Annuity savings account contributions received by PERF subsequent to processing of retirement benefit**

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

Affected: [IC 5-10.2-4-2](#)

Sec. 8. (a) Notwithstanding a member's election to receive an annuity provided by the amounts credited to the member's annuity savings account at retirement, annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed may be distributed to the member in a lump-sum payment.

(b) Pursuant to [IC 5-10.2-4-2](#)(b)(2), a member electing to **fully or partially** annuitize the member's annuity savings account in contemplation of **separation from service and** retirement, **excluding state long-term disabilitants**, will have the entire amount in the member's annuity savings account moved into a fixed value account, set at the same rate as the guaranteed fund. Once the annuity savings account is moved into a fixed value account in contemplation of retirement, the election cannot be changed. In addition, any annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed shall be held in a fixed value account, set at the same rate as the guaranteed fund, until such time as that amount is distributed to the member. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-8](#); adopted Dec 21, 2007: [20080109-IR-035080003ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#)*)

SECTION 8. [35 IAC 1.2-6-10](#) IS ADDED TO READ AS FOLLOWS:

**35 IAC 1.2-6-10 Withholding of payments**

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

Affected: [IC 4-21.5](#); [IC 5-10.2](#); [IC 5-10.3](#)

**Sec. 10. Benefit payments may be withheld under any of the following circumstances:**

**(1) To offset the overpayment of benefits to a member or beneficiary until the overpayment is repaid to the fund.**

**(2) Pending investigation after three (3) consecutive monthly benefit checks have been returned by the United States Postal Service as undeliverable.**

(*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-10](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#)*)

SECTION 9. [35 IAC 1.2-7-2](#) IS AMENDED TO READ AS FOLLOWS:

**35 IAC 1.2-7-2 Pre-trial procedures**

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

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

Sec. 2. After any matter has been assigned to an administrative law judge, a ~~pre-trial-type~~ **prehearing** conference shall ~~may~~ be held upon the motion of any party following which ~~set by the administrative law judge.~~ **The** conference shall follow Indiana Trial Rule 16 to the extent applicable. At this time the administrative law judge shall ~~may~~ encourage any informal proceedings to settle the matter to the extent allowed by law. No person shall be required to make settlement under these informal proceedings. (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-7-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#)*)

SECTION 10. [35 IAC 1.2-7-3](#) IS ADDED TO READ AS FOLLOWS:

**35 IAC 1.2-7-3 Administrative orders; proceedings; reviews**

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

Affected: [IC 2-3.5-3-4](#); [IC 4-21.5-3-5](#); [IC 4-21.5-3-28](#); [IC 5-10.2](#); [IC 5-10.3-8-5](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#)

**Sec. 3. (a) The purpose of this rule is to establish procedures to process petitioner appeals of PERF staff action, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), [IC 4-21.5-3](#).**

**(b) Pursuant to [IC 4-21.5-3-28](#), the executive director (ED) as the board's delegate is the ultimate**

authority and has set forth the following review process to be followed before a final order is issued:

- (1) PERF will issue an initial determination of its response to a questioned action.
- (2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.
- (3) Pursuant to [IC 4-21.5-3-5](#), the petitioner will have fifteen (15) days from receipt of PERF's initial determination to appeal in writing.
- (4) Upon receipt by PERF a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.
- (5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.
- (6) If an evidentiary hearing is required, PERF shall provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.
- (7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.
- (8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.
- (9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.
- (10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.
- (11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(c) This rule will apply to appeals filed pursuant to [IC 5-10.3-8-5](#), [IC 33-39-7-11](#), [IC 33-38-6-23](#), and [IC 2-3.5-3-4](#). (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-7-3](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 11. [35 IAC 1.2-7-4](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-7-4](#) PERF benefit payments pending appeal**

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

Affected: [IC 4-21.5](#); [IC 5-10.2](#); [IC 5-10.3](#); [IC 34-13-1-6](#)

Sec. 4. (a) A member who elects to exercise the right to appeal an initial determination issued by PERF, the prosecuting attorneys' retirement fund, the judges' retirement system, or the legislators' retirement system may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in [IC 34-13-1-6](#). The fund shall not pay prejudgment interest. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-7-4](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 12. [35 IAC 2-1-5](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 2-1-5](#) 1977 Fund service purchases**

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

Affected: [IC 36-8-8-8.3](#)

Sec. 5. (a) Under various provisions under [IC 36-8-8](#), eligible members of the 1977 Fund may purchase service.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) An eligible fund member may purchase such service subject to the following:

- (1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.
- (2) Installment payments are made under the terms of the finance agreement.

- (3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.
- (4) Any direct rollover may not exceed the actual cost of such service as established by the fund.
- (5) Payment may be made in a lump sum, quarterly or annual installments for a period not to exceed five (5) years. Any installment may bear interest at the actuarial interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by the 1977 Fund. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.

(e) A partial service credit will be determined by the 1977 Fund if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.

(f) Any interest rate used will be ~~the actuarial rate of return as set forth in PERF's annual report.~~ **set as determined by PERF.** (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-5](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 13. [35 IAC 2-5-2](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 2-5-2](#) Transfer from disability to regular retirement**

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

**Affected:** [IC 36-8-8-12.4](#)

Sec. 2. (a) A fund member hired for the first time before January 1, 1990, and who did not file an election under [IC 36-8-8-12.4](#) with the PERF board prior to January 1, 1991, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status.

(b) Upon attaining fifty-two (52) years of age, a member receiving Class 1 or Class 2 impairment benefits shall be entitled to receive a retirement benefit equal to the greater of:

- (1) the benefit payable to a member with twenty (20) years of service; or
- (2) a benefit calculated on the total years of service and salary, as of the year the member attains fifty-two (52) years of age, that the member would have earned had the member remained in active service until attaining fifty-two (52) years of age.

(c) Upon attaining ~~fifty-five (55)~~ **fifty-two (52)** years of age, a member receiving Class 3 impairment benefits, who has at least four (4) years of service or who is receiving a Class 3 impairment benefit that equals or exceeds thirty percent (30%) of the monthly salary of a first class police officer or firefighter in the year of the local board's determination of impairment, shall continue to receive the same amount of disability benefits when the member is transferred from disability to regular retirement status.

**(d) An eligible member may apply for disability benefits regardless of age. If it is determined that a member of the pre-1990 disability plan has a line-of-duty impairment, or a member of the 1990 disability plan has a class 1 or class 2 impairment, the member will begin receiving a lifetime impairment benefit. If a member of the pre-1990 disability plan has a nonline-of-duty impairment, or a member of the 1990 disability plan has a class 3 impairment, and the member has already attained fifty-two (52) years of age, the member's disability retirement will be immediately converted to a regular retirement.** (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-2](#); filed Aug 6, 1981, 2:30 p.m.: 4 IR 1806; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 14. [35 IAC 2-5-5.2](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 2-5-5.2](#) 1977 police officers' and firefighters' pension and disability fund benefit payments pending appeal**

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

Affected: [IC 4-21.5](#); [IC 34-13-1-6](#); [IC 36-8-8-12.5](#); [IC 36-8-8-13.5](#)

Sec. 5.2. (a) A member who elects to exercise the right to appeal an adverse decision issued by the 1977 police officers' and firefighters' pension and disability fund may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in [IC 34-13-1-6](#). The fund shall not pay prejudgment interest.

(c) When a member appeals an initial determination of disability benefits and the member prevails, the increase is awarded retroactive to the date of the initial determination. No interest on any retroactive disability payments will be owed. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 2-5-5.2](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 15. [35 IAC 2-5-8](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 2-5-8](#) Withholding of payments**

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

Affected: [IC 4-21.5](#); [IC 36-8-8-12.5](#); [IC 36-8-8-13.5](#)

Sec. 8. Benefit payments may be withheld under any of the following circumstances:

(1) To offset the overpayment of benefits to a member or beneficiary until the overpayment is repaid to the fund.

(2) Pending investigation after three (3) consecutive monthly benefit checks have been returned by the United States Postal Service as undeliverable.

(*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 2-5-8](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 16. [35 IAC 2-5-9](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 2-5-9](#) Administrative orders; proceedings; reviews**

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

Affected: [IC 2-3.5-3-4](#); [IC 4-21.5-3-5](#); [IC 4-21.5-3-28](#); [IC 5-10.2](#); [IC 5-10.3-8-5](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#)

Sec. 9. (a) The purpose of this rule is to establish procedures to process petitioner appeals of the 1977 police officers' and firefighters' pension and disability fund staff action, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), [IC 4-21.5-3](#).

(b) Pursuant to [IC 4-21.5-3-28](#), the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:

(1) The 1977 police officers' and firefighters' pension and disability fund will issue an initial determination of its response to a questioned action.

(2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.

(3) Pursuant to [IC 4-21.5-3-5](#), the petitioner will have fifteen (15) days from receipt of the 1977 police officers' and firefighters' pension and disability fund's initial determination to appeal in writing.

(4) Upon receipt by the 1977 police officers' and firefighters' pension and disability fund, a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.

(5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.

(6) If an evidentiary hearing is required, the 1977 police officers' and firefighters' pension and disability fund shall provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.

(7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.



(8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner

(9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.

(10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.

(11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(c) This rule will apply to appeals filed pursuant to [IC 5-10.3-8-5](#), [IC 33-39-7-11](#), [IC 33-38-6-23](#), and [IC 2-3.5-3-4](#). (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-9](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))

SECTION 17. [35 IAC 2-10-2](#) IS AMENDED TO READ AS FOLLOWS:

### [35 IAC 2-10-2](#) Preexisting excludable medical conditions

Authority: [IC 36-8-8-5](#); [IC 36-8-8-13.6](#)

Affected: [IC 36-8-8-13.5](#)

Sec. 2. (a) As determined by the PERF board or the PERF board's designee and based on the results of the general medical history and the physical examination of the candidate, the preexisting conditions identified in subsection (b) will result in the candidate being ineligible under certain circumstances for the Class 3 impairment benefits established in [IC 36-8-8-13.5](#)(e).

(b) Each of the following preexisting conditions constitutes an excludable condition under [IC 36-8-8-13.5](#) and [IC 36-8-8-13.6](#):

- (1) A history of myocardial infarction.
- (2) Angina pectoris or other evidence of coronary artery disease.
- (3) ~~Genenial~~ **Congenital** heart disease.
- (4) Hypertrophy or dilation of the heart as evidenced by examination.
- (5) Pericarditis, endocarditis, or myocarditis unless the examining physician determines that the condition is now stable and unlikely to recur.
- (6) Arrhythmias.
- (7) Diabetes. A candidate with a history of hyperglycemia or glucosuria or albuminuria must be considered to have an excludable condition unless a report from the physician that treated the candidate can be obtained which assures the absence of diabetes mellitus.
- (8) Pancreatitis.
- (9) A history of a chronic bowel disorder such as Crohn's disease and ulcerative colitis. A candidate with a history of a bowel obstruction within the preceding ten (10) years shall be considered to have an excludable condition unless the candidate is able to obtain a letter from the treating physician to the examining physician explaining the nature of the obstruction and what was done to cure it.
- (10) Any hepatitis, chronic or acute, with impairment of liver function.
- (11) Cirrhosis or varices.
- (12) Inguinal or femoral hernia, hiatal hernia, if symptomatic, or ventral hernia, if symptomatic.
- (13) Interabdominal tumor or mass.
- (14) Any previous gastric resection unless there is sound x-ray evidence provided that there is little chance of recurrence of the condition which caused the first surgery.
- (15) Active gastric or duodenal ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed. A history of a gastric or duodenal ulcer shall be treated the same as any such active ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed.
- (16) Any evidence of rectal or prostatic malignancy.
- (17) Evidence of existing renal calculus or ureterovesical calculus, if symptomatic.
- (18) A person who has had a nephrectomy but with a functional remaining kidney will not be considered to have an excludable condition, provided there is no evidence of reduced renal function in the remaining kidney.
- (19) Any chronic nephritis or nephrosis, hydronephrosis, pyelonephrosis, pyelitis, pyelonephritis, or polycystic disease of the kidneys.
- (20) Urinary tract disease, whether or not the urinary tract has any significant abnormalities at this time, or whether any organic disease is present, or other related disorders adversely affecting the kidneys, excluding urinary tract infections.
- (21) A history of kidney stones. If there is a history of kidney stones, urological consultation must be sought in order to provide an estimate of the likelihood of the recurrence of long term incapacitating symptoms. A

candidate exhibiting a high likelihood of recurrence must be considered to have an excludable condition.

- (22) Any proteinuria which is a result of renal disease.
  - (23) Any malformation of the urinary tract organs, congenital or acquired.
  - (24) Polycystic kidney.
  - (25) Any current fistula, either congenital or acquired, including tracheostomy.
  - (26) Any history of subarachnoid hemorrhage, cerebral aneurysm, or any cerebral vascular disease including any previous stroke within the preceding ten (10) years.
  - (27) Hydrocephalus.
  - (28) Abnormalities from recent head injury, such as severe cerebral concussion or contusion.
  - (29) Any acute or chronic pathological condition in either eye or the adnexa of the eye.
  - (30) Nystagmus of the eye, uncorrected strabismus, glaucoma, and aphakia, whether it is unilateral or bilateral, and active chorioretinitis should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
  - (31) Cataract, retinitis pigmentosa, and any papilledema or tumor.
  - (32) Any retinal exudate, hemorrhage or edema, or detachment of the retina.
  - (33) Inflammatory disease of the retina, the globe, or the other structures within the globe.
  - (34) Heterophoria, hyperphoria, esophoria, or exophoria should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
  - (35) Bronchiectasis.
  - (36) Bronchial asthma.
  - (37) Emphysema or chronic obstructive pulmonary disease.
  - (38) Pulmonary fibrosis.
  - (39) Pleurisy with effusion or empyema.
  - (40) Any spontaneous pneumothorax unless the examining physician determines that the condition is not likely to persist or recur.
  - (41) Any evidence or history of tuberculosis, sarcoidosis, or congenital cystic disease of the lung, active histoplasmosis, or any other lung pathology unless the examining physician determines that the condition is now stable and unlikely to recur.
  - (42) Tumor or cyst of the lung, pleura, or mediastinal.
  - (43) Any disease of the blood forming organs or of the blood.
  - (44) Anemia with the hemoglobin lower than twelve (12) grams per hundred cubic centimeters.
  - (45) Polycythemia, leukemia, or any other progressive diseases of the blood system.
  - (46) Hemophilia or other bleeding disorder.
  - (47) High blood pressure, evidenced by any of the following:
    - (A) Any blood pressure reading above one hundred fifty (150) millimeters mercury (for systolic).
    - (B) Any blood pressure reading above ninety (90) millimeters mercury (for diastolic).
    - (C) Use of antihypertensive medication.
- However, if systolic and diastolic readings without medication are produced at levels lower than one hundred fifty (150) millimeters mercury (for systolic) and ninety (90) millimeters mercury (for diastolic) on three (3) consecutive days, high blood pressure shall not be an excludable condition.
- (48) If peripheral edema is present, the cause shall be determined and the disqualifying disorder identified.
  - (49) Aneurysm and arteriovenous malformation.
  - (50) Any active disease of bones and joints, including active arthritis, osteomyelitis, or marked deformity of the spinal column, including, but not limited to, the following:
    - (A) History of laminectomy.
    - (B) Amputation or deformity of a joint or limb.
    - (C) Joint reconstruction.
    - (D) Ligamentous instability.
    - (E) Joint replacement.
  - (51) Herniation of an intervertebral disk.
  - (52) Neurofibromatosis.
  - (53) Neuropathy or neuralgia, including sciatica.
  - (54) Recurrent syncope.
  - (55) Any seizure disorder within the preceding ten (10) years.
  - (56) Parkinsonian syndrome (includes Parkinson's disease).
  - (57) Huntington's disease (chorea).
  - (58) Ankylosing rheumatoid spondylitis.
  - (59) Malignant melanoma or, if it had been removed, any evidence of metastatic disease.
  - (60) Hodgkin's disease, lymphadenopathy, lymphomas, or lymphosarcomas.
  - (61) Addison's disease, splenomegaly, or adenopathy secondary to systemic disease or metastasis.
  - (62) Disease of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.

- (63) Nutritional deficiency disease or metabolic disorder.
- (64) Any malignant tumor of any type unless completely eradicated for at least ten (10) years.
- (65) Alcohol or drug abuse within five (5) years.
- (66) Anorexia nervosa or bulimia within three (3) years.
- (67) Auto immune disorders, including, but not limited to, the following:
  - (A) Rheumatoid arthritis and myasthenia gravis.
  - (B) Dermatomyositis.
  - (C) Scleroderma.
- (68) Lupus erythematosus.
- (69) Multiple sclerosis.
- (70) Amyotrophic lateral sclerosis (Lou Gehrig's disease).
- (71) Muscular dystrophy.
- (72) Obesity of such a degree so as to interfere with normal activities, including respiration.
- (73) Peripheral atherosclerosis or arteriosclerosis, including any of the following peripheral vascular diseases:
  - (A) Intermittent claudication.
  - (B) Buerger's disease.
  - (C) A phenomenon of repeated thrombophlebitis.
- (74) Acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) positive, as determined by a blood test.
- (75) Sexually transmitted diseases should be considered for further examination by a qualified medical specialist to determine the likelihood and degree of future impairment.
- (76) Narcolepsy or hypersomnolence due to any cause.
- (77) Heart bypass surgery within the preceding ten (10) years.
- (78) Primary pulmonary hypertension.
- (79) Organ transplant.
- (80) Pacemaker implant.
- (81) Sleep apnea syndrome.
- (82) Anxiety disorder.**
- (83) Panic disorder.**
- (84) Obsessive compulsive disorder.**
- (85) Post-traumatic stress disorder.**
- (86) Attention deficit/hyperactivity disorder.**
- (87) Tourette syndrome.**
- (88) Depressive disorder.**
- (89) Bipolar disorder.**
- (90) Personality disorder.**
- (91) Substance abuse disorder.**
- (92) Schizophrenia and other psychotic disorders.**
- (93) Anorexia nervosa.**
- (94) Miscellaneous or other significant psychiatric disorder.**
- ~~(82)~~ **(95)** Any disqualifying condition under [35 IAC 2-9-6](#) that has been accommodated by the local appointing authority.
- ~~(83)~~ **(96)** Any other significant disease/disorder.

*(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-10-2](#); filed May 27, 1993, 12:00 p.m.: 16 IR 2341, eff Jul 1, 1993; filed Mar 3, 2000, 7:45 a.m.: 23 IR 1606; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))*

SECTION 18. [35 IAC 4-3-2](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 4-3-2](#) Benefit payments pending appeal**

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

**Affected:** [IC 5-10-5.5-10](#); [IC 34-13-1-6](#)

**Sec. 2. (a) A member who elects to exercise the right to appeal an adverse decision issued by the state excise police, gaming agent, gaming control officer, and conservation enforcement officers' fund may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.**

**(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in [IC 34-13-1-6](#). The fund shall not pay prejudgment interest. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 4-3-2](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))**

SECTION 19. [35 IAC 4-3-3](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 4-3-3](#) Administrative orders; proceedings; reviews**

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

Affected: [IC 2-3.5-3-4](#); [IC 4-21.5-3-5](#); [IC 4-21.5-3-28](#); [IC 5-10.2](#); [IC 5-10.3-8-5](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#)

**Sec. 3. (a) The purpose of this rule is to establish procedures to process petitioner appeals of PERF staff actions, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), [IC 4-21.5-3](#).**

**(b) Pursuant to [IC 4-21.5-3-28](#), the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:**

**(1) PERF will issue an initial determination of its response to a questioned action.**

**(2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.**

**(3) Pursuant to [IC 4-21.5-3-5](#), the petitioner will have fifteen (15) days from receipt of PERF's initial determination to appeal in writing.**

**(4) Upon receipt by PERF a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.**

**(5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.**

**(6) If an evidentiary hearing is required, PERF will provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.**

**(7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.**

**(8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.**

**(9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.**

**(10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.**

**(11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.**

**(c) This rule will apply to appeals filed pursuant to [IC 5-10.3-8-5](#), [IC 33-39-7-11](#), [IC 33-38-6-23](#), and [IC 2-3.5-3-4](#). (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 4-3-3](#); adopted Nov 19, 2010: [20101208-IR-035100722ONA](#))**

DATED: November 19, 2010

Kendall W. Cochran

Chairman of the Board of Trustees

Resolution adopted by 5 affirmative and 0 negative votes.

Posted: 12/08/2010 by Legislative Services Agency

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