

BOARD OF TRUSTEES OF THE INDIANA PUBLIC EMPLOYEES' RETIREMENT FUND

Resolution No. 2011-04-03

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 1.2-3-4](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-3-4](#) Full service credit

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

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

Sec. 4. (a) ~~General rule~~— Except as otherwise specifically required by law, for all service credit calculations performed on or after January 1, 2007, service credit shall be granted in quarterly increments, with a member entitled to one (1) quarter of creditable service for each calendar quarter in which the member is employed at least one (1) full day in a full-time, PERF-covered position, and for which employer contributions have been made. Notwithstanding any provision to the contrary, service credit shall not be granted for any period of employment if such grant of service credit would result in a member receiving more than one (1) month of service credit for the same calendar month.

(b) **A member's** first and last quarter of PERF-covered employment, notwithstanding ~~the general rule under subsection (a), immediately above,~~ for those quarters in which a member commenced or completed employment in a PERF-covered position, service shall be granted in monthly increments, with a member entitled to one (1) month of creditable service for each month in which ~~he~~ **the member** was employed at least one (1) full day in a full-time, PERF-covered position, and for which employer contributions have been made.

~~(c) Employer contributions required to fund a member's covered service must be received by PERF prior to full service credit being granted for that member.~~

(c) Notwithstanding subsections (a) and (b), once PERF implements ERM, all service credit calculations shall be granted in monthly increments, with a member entitled to one (1) month of creditable service for each calendar month in which the member is employed at least one (1) full day in a full-time, PERF-covered position, and for which employer contributions are made. Notwithstanding any provision to the contrary, service credit shall not be granted for any period of employment if such grant of service credit would result in a member receiving more than one (1) month of service credit for the same calendar month.

(d) This rule applies only to members earning service credit through their employment in PERF-covered positions, and does not apply to members of the other retirement funds administered by PERF. Such funds shall continue to perform service credit calculations in the manner such calculations were performed as of December 1, 2006, unless subsequently amended by law. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-3-4](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Oct 20, 2006: [20061101-IR-035060500ONA](#); adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 2. [35 IAC 1.2-4-7](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 1.2-4-7](#) Prosecuting attorneys' retirement fund highest annual salary defined

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 33-39-7-11](#)

Affected: [IC 33-39-7-16](#)

Sec. 7. The highest annual salary means the sum of the highest completed four (4) quarters of salary that was paid to the participant before retirement. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-4-7](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 3. [35 IAC 1.2-4-8](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 1.2-4-8](#) Prosecuting attorneys' retirement fund death benefit calculation

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 33-39-7-11](#)

Affected: [IC 33-39-7-19](#)

Sec. 8. The death benefit payable to the surviving spouse of a member of the prosecuting attorneys' retirement fund under [IC 33-39-7-19](#) is an annual benefit, payable in monthly installments. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-4-8](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 4. [35 IAC 1.2-5-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-2](#) Disability benefits; eligibility

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

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

Sec. 2. (a) To be eligible to receive disability benefits, the member must be receiving salary **or employer-provided income protection benefits or on leave under the Family and Medical Leave Act** on the date the Social Security Administration determines the member becomes disabled.

(b) A member may continue to receive PERF disability benefits so long as the member is entitled to receive Social Security benefits, including periods of trial employment or rehabilitation under Social Security guidelines. However, during any such period, no service credit under PERF shall be granted. (*Board of Trustees of the Public Employees' Retirement Fund*; [35 IAC 1.2-5-2](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; filed May 7, 1998, 4:15 p.m.: 21 IR 3326; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 5. [35 IAC 1.2-5-9.1](#) IS AMENDED 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 States 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 States 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 States 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; adopted Apr 29, 2011: 20110511-IR-035110273ONA*)

SECTION 6. [35 IAC 1.2-5-13](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 1.2-5-13](#) Beneficiary designation

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

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

Sec. 13. (a) Active members may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the member's annuity savings account equally or designated by whole percentage increments upon the death of the member. ~~Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective.~~ Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.

(b) Members electing a joint survivor option at retirement shall designate only one (1) person as beneficiary for their joint survivor benefits. The beneficiary must be a named individual.

(c) Retired members who choose a retirement option other than a joint and survivor option and who do not elect to withdraw the total balance of their annuity savings account may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the unpaid balance, if any, of the member's annuity savings account upon the death of the member. Members may designate that the assets held in the account shall be divided equally or allocated by whole percentage increments to primary and contingent beneficiaries. Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective. Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.

(d) If a member has designated more than one (1) primary beneficiary, and one (1) or more of the primary beneficiaries predecease the member and the member does not complete a new beneficiary designation form, the remaining primary beneficiaries will receive an apportioned pro rata share based on the remaining primary beneficiaries' allocated percentages of the deceased primary beneficiary(ies) portion. For example, member X designates three (3) primary beneficiaries as follows: Ann 60%, Bob 30%, and Carl 10%. Ann predeceases member X, and member X does not submit a new beneficiary designation form. Member X had \$10,000 in her annuity savings account (ASA) at the time of her death. Ann's 60% share will be divided between Bob and Carl as follows: Bob \$4,500 and Carl \$1,500. Therefore, the total amount that Bob will receive from member X's ASA is \$7,500, and the total amount that Carl will receive from member X's ASA is \$2,500.

(e) The designated beneficiary's right to a benefit vests upon the death of the member. A change of beneficiary designation must be made in a manner and form approved by the board and must be filed with the fund before the time and date of death of the member. If the beneficiary designation was received by the fund on or before the time and date of death of the member, and is otherwise acceptable, it shall be deemed to have met this requirement. A beneficiary designation for the ASA or RSA must be witnessed by an individual other than the member's designated beneficiary. Timely electronic beneficiary designations submitted through the fund's website in a form and manner approved by the board shall be deemed to have met the requirements of this rule. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-13; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Jun 11, 2010: 20100728-IR-035100467ONA; adopted Apr 29, 2011: 20110511-IR-035110273ONA*)

SECTION 7. [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. 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 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) **5.5(b)** of this rule.

(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](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 8. [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](#); [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#)

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

Sec. 5.5. (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.

(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](#)(e). **[IC 6-8.1-10-1\(b\)](#)**.

(c) Prior to the passage of [35 IAC 1.2-5-23](#), any member whose ASA lump sum full or partial distribution was not negotiated within one hundred eighty (180) days will receive interest on the amount of the payment beginning on the one hundred eighty-first day after the distribution was made at the interest rate defined in subsection (b). (*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](#); adopted Dec 17, 2010: [20101229-IR-035100777ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 9. [35 IAC 2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-1-3](#) Effective date

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 36-8-8-5](#)

Affected: [IC 36-8-8-7](#); [IC 36-8-8-5](#)

Sec. 3. ~~Effective Date.~~ (a) Enrollment and pension fund rights begin on the later of the actual hire date on the membership record document or the admission approval date of the 1977 Fund.

(b) If an otherwise qualified active member's enrollment effective date is or was delayed due to error or omission by the local board or hiring authority:

(1) the member or the member's employer may purchase at the actuarial cost such service that would

have been credited to the 1977 Fund but for the error or omission; and
(2) the age restriction is waived if the member was age eligible for the 1977 Fund at the time of application.

The determination as to whether there was an error or omission causing delay is in the sole discretion of the board. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-3](#); filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 10. [35 IAC 2-1-4.5](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 2-1-4.5](#) Leave of absence

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 36-8-8-5](#)

Affected: [IC 36-8-8-6](#)

Sec. 4.5. No service credit shall be given for accrued but unused sick leave whether or not the member received compensation for such unused sick leave. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-4.5](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 11. [35 IAC 2-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[35 IAC 2-2-2](#) Interest on employees' contribution accounts

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 36-8-8-5](#)

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

~~Sec. 2. Employee Contribution Interest Crediting.~~ When crediting interest on employee contribution accounts, the 1977 Fund shall **do the following:**

(1) Credit interest on the prior fiscal year-end balance.

(2) **Except as provided in subdivision (3),** cease crediting interest to accounts which have no activity after five (5) years after the last contribution posting, and, which have total service credit of less than twenty (20) years.

(3) **If there is no activity on an account because the member is no longer in a covered position, but does not separate from employment with the member's employer, interest shall begin or continue being credited to the member's account until the money is distributed in accordance with [IC 36-8-8](#) or fifty (50) years after leaving the covered position. No interest shall be credited under this subdivision prior to the effective date of this subdivision.**

(4) Not credit interest at a rate greater than the investment income earned.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-2-2](#); filed May 9, 1979, 11:31 a.m.: 2 IR 681; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 12. [35 IAC 2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

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

Authority: [IC 5-10.3-3-7](#); [IC 5-10.3-3-8](#); [IC 36-8-8-5](#)

Affected: [IC 36-8-4-11](#); [IC 36-8-8-7](#)

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 one (1) covered employment position to another covered employment position must be reexamined under the baseline medical examination.

~~(b)~~ **(c) 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.**

(d) Members who directly transfer from covered employment with one (1) local unit to covered employment with another local unit shall not be subjected to the maximum age limits under [IC 36-8-8-7\(a\)](#).

(e) For purposes of this section, "directly transfer" and "directly transfers" 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 occurs within the reinstatement period set forth in [IC 36-8-4-11](#).

(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](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

SECTION 13. [35 IAC 4-2-3](#) IS ADDED TO READ AS FOLLOWS:

[35 IAC 4-2-3](#) Calculation of creditable service

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

Affected: [IC 5-10-5.5-7](#); [IC 5-10-5.5-10](#)

Sec. 3. (a) Total service credit is the sum of all creditable service including partial years.

(b) Notwithstanding (a) [subsection (a)], a member's benefit is calculated on whole and not partial years. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 4-2-3](#); adopted Apr 29, 2011: [20110511-IR-035110273ONA](#))

DATED: April 29, 2011

Kendall W. Cochran

Chairman of the Board of Trustees

Indiana Public Employees' Retirement Fund

Resolution adopted by 6 affirmative, 0 negative votes.

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