

TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

ARTICLE 1. PUBLIC EMPLOYEES' RETIREMENT FUND (REPEALED)

(Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 am: 2 IR 681)

ARTICLE 1.1. PUBLIC EMPLOYEES' RETIREMENT FUND (REPEALED)

(Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086)

ARTICLE 1.2. PUBLIC EMPLOYEES' RETIREMENT FUND

Rule 1. General Provisions

35 IAC 1.2-1-1 Administration

Authority: IC 5-10.3-3-8

Affected: IC 5-10.1; IC 5-10.2; IC 5-10.3-2-1

Sec. 1. The public employees' retirement fund of Indiana, created under IC 5-10.3-2-1 (hereinafter referred to as the fund or PERF) shall be administered by its board of trustees (hereinafter referred to as the board), which includes the implementation of IC 5-10.1, IC 5-10.2, and IC 5-10.3. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-1-2 Delegation of authority; powers and duties of executive secretary

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-2-1

Sec. 2. The executive secretary is the executive officer of the fund's affairs and operations, makes eligibility and other determinations on applications made to the board, makes periodic reports to the board, and performs all other duties assigned by the board. The executive secretary shall cause all applicants and other necessary persons to be notified promptly of any determinations made concerning such applications. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-1-3 General powers

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 3. The board may employ all necessary employees, attorneys, and consultants to carry out the powers and duties of the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265)*

Rule 2. Definitions

35 IAC 1.2-2-1 Definitions

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-2; IC 5-10.3-2-1; IC 5-10.3-7

Sec. 1. As used in the rules *[this article]*, unless the context otherwise clearly requires:

"Annuity savings account" 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.

"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.

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

"Gender and number" for the purpose of these rules *[this article]*, 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 contributions paid by the employer for the member pursuant to IC 5-10.2-3-2 and IC 5-10.3-7-9, and additional annuity contributions.

"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*)

Rule 3. Creditable Service

35 IAC 1.2-3-1 Creditable service

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3; IC 5-10.3

Sec. 1. All creditable service is determined by IC 5-10.2-3 and these rules *[this article]*. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-3-2 Reemployment after termination of employment; suspension of membership; withdrawal of contributions

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-5; IC 5-10.3

Sec. 2. To cancel previous suspension, after termination of employment and withdrawal of contributions or by operation of IC 5-10.2-3-5, and qualify prior service as creditable service the individual must be reemployed in a PERF covered position for a period of not less than six (6) consecutive months; however, if the employee shows to the satisfaction of the board that there was bona fide intent to return to employment and comply with this rule and the employee was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of the reemployment, then such six (6) month requirement shall be waived. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-3-3 School employees

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 3. A member who is employed in a PERF covered position by a school corporation, state school, university, school city or town, or school corporation shall receive one (1) year of service credit if employed during the full regular school term or contract

period for that member's position. Nothing less than full compliance with this rule will give such year of creditable service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

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 member shall receive full service credit for each period of continuous full-time employment in a covered position, beginning with the date of hire and ending with the last date of employment in such covered position, and for which employer contributions have been made. Total service credit shall be computed in whole months only. Any period of less than *[sic.]* thirty (30) days in such total will not count as creditable service. (*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*)

35 IAC 1.2-3-5 Leave of absence

Authority: IC 5-10.3-3-8; IC 5-10.3-7-8

Affected: IC 5-10.2; IC 5-10.3-7-6

Sec. 5. (a) As used in this section, "FMLA" refers to the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) and all applicable regulations and amendments.

(b) A member shall receive credit for the period of time during which the member is granted a leave of absence under IC 5-10.3-7-6 and for which applicable employer contributions have been made as follows:

(1) Except as otherwise required by the FMLA, the credit shall be allowed only if a copy of the grant of the leave of absence is filed with PERF within ninety (90) days from the date the leave was authorized by the employer. No leave granted retroactively by the employer will be considered as creditable service.

(2) A leave of absence will be treated as creditable service only if the member returns to employment for a period of not less than six (6) consecutive months; however, if the member shows to the satisfaction of the board that there was a bona fide intent to return to employment and comply with this rule and the member was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of return to employment, then this six (6) month requirement shall be waived.

(c) This section and IC 5-10.3-7-6 shall be administered in a manner consistent with the FMLA.

(d) If the member is compensated while on an FMLA covered leave, the statutory contributions must be maintained. A member may make contributions as provided in IC 5-10.3-7-6(b) during an unpaid FMLA leave, although such contributions would not result in credit for service for benefit purposes unless such leave would also qualify for such credit under IC 5-10.3-7-6(a). The member's employer is not required to make contributions with respect to an unpaid FMLA leave.

(e) In calculating credit for vesting and eligibility purposes, time spent on an FMLA protected leave shall be counted, including any time spent receiving disability benefits while on such leave.

(f) A member seeking credit for an FMLA leave must provide documentary evidence demonstrating that the statutory requirements have been satisfied. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; filed May 7, 1998, 4:15 p.m.: 21 IR 3326; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-3-6 Reinstatement

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 6. A member whose service is involuntarily terminated and who is later reinstated as a result of a court determination and order or administrative final determination and order may be eligible for PERF credit if proper supporting documents are filed with PERF and approved by the board or the executive secretary and employer contributions are made. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-6; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-3-7 Service credit for injured employees

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 7. Creditable service shall be earned by a member injured during the scope of his employment and paid benefits under the Workmen's Compensation Act or the State Personnel Act; however, no service credit will be given for a period of time during which PERF disability benefits were paid. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-7; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-3-8 Unused sick leave

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 8. No creditable service shall be given after a member's last physical day at work for unused sick leave time that may or may not be paid to the member, the member's beneficiary, or estate. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-8; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; filed Mar 1, 2000, 7:48 a.m.: 23 IR 1606; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-3-9 Optional service

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 9. Employees of participating school corporations who occupy PERF covered positions normally requiring performance of service of less than one thousand (1,000), but more than six hundred (600) hours a year and who opt to become members of the fund, shall be credited only for service from the date such option was made. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-9; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-3-10 Military service

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-7-5

Sec. 10. In addition to the creditable service allowed by IC 5-10.3-7-5 for military service, a member is also entitled to creditable service as set forth at 38 U.S.C. 4301, et seq., the Uniformed Services Employment and Reemployment Rights Act of 1994. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-10; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265)*

35 IAC 1.2-3-11 Comprehensive Employment Training Act (CETA)

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 11. Comprehensive Employment Training Act (CETA) employees who leave CETA employment and subsequently enter employment in a PERF covered position shall not receive service credit for prior CETA employment, even if the position is essentially the same. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-11; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-3-12 Purchase of prior bureau of motor vehicles commission service

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-1; IC 5-10.3-7

Sec. 12. (a) Under IC 5-10.2-3-1 and IC 5-10.3-7-2, employees of the bureau of motor vehicles commission (BMVC) are not

entitled to automatic coverage or service credit prior to July 1, 1999, for service with the BMVC, because of their coverage in a retirement plan established by the BMVC. However, under IC 5-10.3-7-8, the board believes it would be reasonable to allow employees to purchase any BMVC service from the later of:

- (1) January 1, 1987, the date the BMVC established its retirement plan; or
- (2) the date the individual became an employee of the BMVC;

through June 30, 1999, the date the BMVC terminated its retirement plan. For purposes of this section, BMVC service does not include service in any license branch prior to becoming a BMVC employee, or service at a license branch prior to the conversion of that license branch to the BMVC. Service in a license branch that is not BMVC service shall not be eligible for service purchase under this rule nor shall it be credited to any employee without purchase.

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

(c) The employees may purchase such service subject to the following:

(1) Any such purchase may be made via a direct cash payment, a direct rollover under IC 5-10.3-7-9.5, or a combination of both.

(2) Any direct rollover may not exceed the actual cost of such service as established by the board.

(3) Any direct cash payment may be made in a lump sum or in installments for a period not to exceed five (5) years. Any installment shall bear interest at the actuarial interest rate effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the board may limit any payments in a manner necessary to comply with these limits.

(d) This section also applies to former employees of the BMVC with BMVC service who are employed in a PERF-covered position at the time they purchase such service.

(e) In no event shall any BMVC service prior to July 1, 1999, be credited under IC 5-10.3-7-7.5 because of the exclusion under IC 5-10.3-7-2(4) unless purchased in accordance with this section.

(f) The restriction contained in IC 5-10.3-7-4.5(d) does not apply to a purchase made under this section. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-12; filed Dec 11, 2000, 2:12 p.m.: 24 IR 946; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

Rule 4. Members of the Fund

35 IAC 1.2-4-1 Members of the fund

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-7

Sec. 1. Members of the fund are determined by IC 5-10.3-7-1 through IC 5-10.3-7-3, inclusive, and these rules *[this article]*. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-4-2 Comprehensive Employment Training Act (CETA) administrators

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 2. Employees involved in the administration of CETA programs may be covered by PERF. Regular CETA employment is not such employment that may be covered by PERF. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-4-3 School bus drivers

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 3. An employee who is a school bus driver is eligible at his option to participate in PERF if:

- (1) the school bus is wholly owned by the school corporation;
- (2) the school board by its resolution covers the position of school bus driver; and
- (3) the position normally requires the performance of service of more than six hundred (600) hours during the school term; however, if subdivisions (1) through (2) are met and the position normally requires performance of services of one thousand (1,000) hours or more, such employee shall be in PERF. For the member who makes such option, creditable service shall be granted only from the date such option was made and contributions received from the employer.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)

35 IAC 1.2-4-4 Students excluded

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 4. Full-time students in a post secondary or higher educational institution are not eligible for PERF if employed under a:

- (1) work study program;
- (2) co-op program;
- (3) tuition assistance program; or
- (4) general student assistance program.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)

35 IAC 1.2-4-5 Prosecuting attorneys and deputy prosecuting attorneys

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 5. (a) All prosecuting attorneys and deputy prosecuting attorneys whose compensation was paid from state or county funds prior to July 1, 1987, are entitled to service credit and deemed to be members of the fund as set forth in these rules (35 IAC 1.2) *[this article]* unless and until the auditor of Indiana and the designated county officials certify to PERF that such position normally required:

- (1) less than one thousand (1,000) hours of service annually on or after July 1, 1982;
- (2) between six hundred (600) hours and one thousand (1,000) hours prior to July 1, 1982, and the employee did not exercise the option to become a member of the fund; or
- (3) less than six hundred (600) hours and the employee was hired before July 1, 1982.

(b) Effective July 1, 1987, prosecuting attorneys and deputies who are paid wholly or in part by state funds shall be members of PERF. All deputy prosecuting attorneys paid solely by other than state funds are eligible to be members of PERF if their positions are covered by the resolution of the governing body of the political subdivision and the other requirements for eligibility are met as set forth in these rules (35 IAC 1.2) *[this article]* and the statutes. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-4-6 Members of the general assembly (Expired)

Sec. 6. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

Rule 5. Retirement and Disability Benefits

35 IAC 1.2-5-1 Retirement options

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-4-2; IC 5-10.2-4-7; IC 5-10.3

Sec. 1. (a) A member who retires or becomes eligible for a disability retirement cannot change the retirement option nor may

a member who chooses a lump sum payment under IC 5-10.2-4-2(a) changes *[sic.]* this choice nor may the beneficiary designation on the application for benefits be changed under joint and survivorship options 30, 40, or 50, after the first day of the month that benefit payments are scheduled to begin. It is immaterial whether or not a check has been sent, received, or negotiated. (See also section 13 of this rule.)

(b) Under IC 5-10.2-4-7, in the event that the increased retirement benefit under the integration with Social Security option prior to Social Security eligibility is calculated to be greater than an amount which is the actuarial equivalent of the retirement benefit under the normal guaranteed retirement benefit payable as a life annuity which ceases on the date of the member's death or, if later, the member's Social Security age of eligibility, then the increased retirement benefit shall be limited to such actuarial equivalent and there will be no retirement benefit payable after the age of Social Security eligibility. (In no event shall fewer than sixty (60) payments be made.)

(c) The integration with Social Security option and the cash refund annuity option may each be made only with the normal guaranteed retirement benefit.

(d) None of the retirement benefit payment options may be made in connection with any other such retirement benefit payment option. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

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) The member must be receiving salary 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*)

35 IAC 1.2-5-3 Disability without Social Security eligibility (Repealed)

Sec. 3. (*Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed May 7, 1998, 4:15 p.m.: 21 IR 3333*)

35 IAC 1.2-5-4 Disability alternatives

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 4. (a) A member who is eligible for early retirement and who has on file with the board a copy of application to Social Security for Social Security disability benefits may file for early retirement and retain his right to disability benefits. Under such circumstances, when the member notifies the PERF board that he qualifies for Social Security disability benefits, early retirement benefits shall cease and disability benefits shall begin.

(b) A member who has five (5) years of creditable service and who is not eligible for early retirement and has on file with the board a copy of a request to Social Security for a disability determination may request a lump sum withdrawal of his annuity account without prejudice to his right to disability benefits under PERF should the Social Security Administration approve the request for disability within three (3) years from the date of the member's termination from employment. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-5 Basic salary defined

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

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. (*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*)

35 IAC 1.2-5-6 Reemployment

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-4; IC 5-10.3-2-1

Sec. 6. (a) Reemployment terms are set forth at IC 5-10.2-4-8 through IC 5-10.2-4-10.

(b) Under IC 5-10.2-4-8, if the position in which the member is reemployed has an annual salary, which is more than the "exempt amount", then retirement benefit payments shall stop beginning the first of the month following the date that the member's year-to-date earnings from the reemployed position have exceeded the exempt amount. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-6; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265*)

35 IAC 1.2-5-7 Service for disability and survivor benefits

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-7; IC 5-10.2-4-6; IC 5-10.3

Sec. 7. "In service", under IC 5-10.2-3-7 through IC 5-10.2-3-8, and "in active service" under IC 5-10.2-4-6, means that the member was in an employer-employee relationship as determined by the employer within established rules of the employer. Benefits for disability shall be paid beginning with the later of:

(1) that point in time when such employer-employee relationship no longer exists as determined by the employer; or

(2) the onset of disability as determined by the Social Security Administration.

In determining whether a member has achieved eligibility for disability benefits, periods of leave under the Family and Medical Leave Act (as defined in 35 IAC 1.2-3-5) shall be included. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-7; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-8 Combined service in teachers' and public employees' retirement funds

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 8. Creditable service in the Indiana state teachers retirement fund and PERF may be combined to meet the five (5) year eligibility requirements for disability benefits. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-8; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-9 Dependent beneficiaries

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-7; IC 5-10.3

Sec. 9. (a) A survivor benefit under IC 5-10.2-3-7 can be paid only to one (1) of the following three (3) categories of dependent beneficiaries:

(1) Surviving spouse.

(2) Child of the deceased member.

(3) Parent of the deceased member.

PERF shall use the same dependency test used by Health and Human Service for Social Security.

(b) A child of a deceased member is eligible to receive survivor benefits until his eighteenth birthday or during a continuing period of mental or physical disability which extends beyond such birthday and which meets Social Security guidelines, subject to

annual review. Persons confined in a mental institution need not be reexamined regularly, but the PERF board may rely upon statements from the administrator of the institution.

(c) If the total amount of survivor benefits paid to a dependent beneficiary does not exceed the member's total contributions plus accumulated interest, the difference shall be paid to the dependent beneficiary in a lump sum after termination of benefit payments. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-9; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-5-10 Designated dependent beneficiary

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 10. If member was married for less than three (3) years at the time of his death, the surviving spouse may qualify for monthly benefits as a "designated dependent beneficiary" if the spouse can prove dependency under Social Security guidelines and was so designated for at least six (6) months. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-10; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-5-11 Benefits payable upon death

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 11. In any instance where retirement or disability benefits cease upon the death of the payee, if the payee was alive on the first day of the month a benefit will be paid for such month. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-11; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

35 IAC 1.2-5-12 Minimum disability retirement benefit

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-4; IC 5-10.3

Sec. 12. (a) The minimum monthly disability retirement benefit specified in IC 5-10.2-4-6(b) is one hundred dollars (\$100) only if the member chooses an annuity under IC 5-10.2-4-4(b) and the retirement benefit guarantee determined under IC 5-10.2-4-2(a), subject to the provisions of IC 5-10.2-4-2(b).

(b) Should the member choose a lump sum distribution of the amount in his annuity savings account under IC 5-10.2-4-2 and/or a retirement benefit payment option under IC 5-10.2-4-7, the minimum disability retirement benefit shall be the actuarial equivalent of the one hundred dollars (\$100) under subsection (a) as determined by the rules of the board. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-12; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897)*

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 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. 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. (*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*)

35 IAC 1.2-5-14 Five year guaranteed benefits

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 14. If member elects five (5) year guaranteed benefits and does not live to exhaust them and his beneficiary does not live out the remainder of the five (5) years, then such remaining benefits accrue to the estate of the beneficiary and not to the estate of the member. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-14; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-15 No guarantee option

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 15. Under the no guarantee option, if the member dies prior to the first day of the month that benefits are scheduled to begin, the account reverts to an active status and the beneficiary receives the account as though the member had died in active service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-15; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-16 Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 16. Former PERF members who have transferred to the teachers insurance and annuity association-college retirement equities fund are not eligible for PERF disability benefits which are limited to PERF members in active service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-16; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-17 Birth date; proof required

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 17. No member shall receive a retirement benefit from the fund until one (1) of the following proofs of birth is submitted (This rule also covers other instances where birth dates are necessary to determinations made for other benefits.):

- (1) A birth certificate from the public health department where the birth was recorded at time of birth.
- (2) A copy of a birth certificate required at a uniform baptism, such as those required by the Lutheran and Catholic churches.
- (3) A court decree obtained pursuant to IC 34-4-3 [*IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.*] and certified by the clerk of the court.
- (4) If any applicant for retirement benefits cannot obtain any of the above, said applicant shall file with the board all evidence he may have relative to this actual date of birth, and upon such evidence the board may act in fixing a birth date for computing his retirement benefits.

(*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-17; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-5-18 Minors and other incompetent persons

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3; IC 29-3

Sec. 18. Minors and other incompetent beneficiaries are governed by Indiana guardianship law set forth in IC 29-3, Indiana Probate Code. However, payments may be made to minor beneficiaries pursuant to the Uniform Transfers to Minors Act. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-18; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266*)

35 IAC 1.2-5-19 Proration of retirement costs

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 19. (a) A member with service credit from more than one (1) employer shall have his retirement reserve cost prorated based on months of service among all his or her employers.

(b) Any employer may object to this basis of proration by written objection made within fifteen (15) days from receipt by the employer of notification of each such proration.

(c) The board of trustees may, if evidence of substantial inequity is presented by such objecting employer, use the following basis for reaching a result.

(d) The annual compensation for each calendar year or part thereof shall be divided by the annual average consumer price index figure (1967 = \$100) of the U.S. Bureau of Labor Statistics for each such year to determine a weighted salary for each year or part thereof.

(e) The PERF board shall prorate retirement reserve costs to participating employers on the basis of the weighted salary each has paid, or such other method that, in the judgment of the PERF board, equitably allocates the retirement reserve cost between the member's employers. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-19; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266*)

35 IAC 1.2-5-20 Early retirement reduction of benefits

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 20. When computing the age for determining the reduction percentage for early retirement, any fractions of a month shall not count. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-20; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

Rule 6. Miscellaneous

35 IAC 1.2-6-1 Quarterly reports

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 1. (a) 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, Suite 800, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204, on or before the due date.

(b) Any employer who fails to make payments by the dates specified may be assessed a penalty. The penalty will be determined by the board of trustees. (*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*)

35 IAC 1.2-6-2 Admission to the fund

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-2-1; IC 5-10.3-6-1

Sec. 2. (a) Admission to the fund by a political subdivision shall be governed by IC 5-10.3-6-1(b).

(b) In addition, any political subdivision whose existence is subject to termination or whose funding is dependent upon sources external to it must demonstrate to the board's satisfaction that any problems which might arise are fully addressed and resolved or it will not be admitted. The board's consideration and determination will be guided in part by the political subdivision's demonstrated ability to meet all obligations to the fund, both current and ongoing.

(c) A township trustee will not be considered as the governing body of a township for purposes of the fund and the board will not approve any ordinance or resolution coming solely from such township trustees. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-6-3 Enlargement of PERF coverage

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3-6-2

Sec. 3. (a) A political subdivision admitted to the fund or desiring to enlarge its participation in PERF to cover additional positions may do so by the following:

(1) A preliminary survey shall be requested and completed unless a survey is not required pursuant to IC 5-10.3-6-2.

(2) Ordinance or resolution of the governing body specifying by departmental, occupational, or other definable classifications the employees who will be added.

(3) Such ordinance or resolution must be filed with, and approved by, the board of trustees.

(4) The effective date of enlargement or admission is either January 1, or July 1, after the date of approval.

(5) The ordinance or resolution must be filed with the board prior to the effective date.

(b) No retirement benefit resulting from positions included in the enlargement or admission may be paid until six (6) months after the effective date of enlargement or admission. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1267*)

35 IAC 1.2-6-4 Deductions for health insurance and taxes; minimum amount

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 4. An eligible member may request deductions for health insurance or taxes if the deductions do not reduce the check amount below ten dollars (\$10) a month. Tax withholdings may be made in any whole dollar increment greater than five dollars (\$5). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-6-5 Interest on employer's accounts

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 5. All political subdivisions having a negative year-end account balance may be charged an appropriate interest rate as determined by the board. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-6-6 Refund of contributions

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2; IC 5-10.3

Sec. 6. A member who is on an approved leave of absence is not eligible for a refund of contributions and accumulated interest unless the reason for the leave is a layoff. In order for a member to receive a refund of his PERF contributions and accumulated interest, the member must have terminated his employment and be certified by his employer as being off the payroll and the date of termination. Refunds will be made on the fifteenth day of the month next following the month of termination, if such termination is on or prior to the fifteenth day of the month and the application for refund is received prior to the end of the month of termination. If the member becomes reemployed in a PERF covered position within thirty (30) days from the date of such termination then the effective date of the suspension of membership shall be automatically deferred and the member shall not be eligible for such refund. The member shall notify PERF immediately if the member becomes reemployed within such thirty (30) day period. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-6; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

35 IAC 1.2-6-7 Legislators' defined contribution plan loans

Authority: IC 2-3.5-5-11; IC 5-10.3-3-8

Affected: IC 2-3.5-5-11

Sec. 7. (a) Any participant in the legislators' defined contribution plan may apply on the applicable form to the fund for a loan from the legislators' defined contribution plan pursuant to this rule and such other procedures as may be established by the fund. Such loans will be available to all such participants on a uniform and nondiscriminatory basis. All loans are subject to the approval of the fund, or its designee.

(b) The maximum amount of such loan, when added to the outstanding balance of all other loans from the fund, shall not exceed the lesser of:

(1) fifty thousand dollars (\$50,000), reduced by the excess, if any, of the highest outstanding balance of loans from the fund during the one (1) year period ending on the day before the date on which the loan is made, over the outstanding balance of loans from the fund on the date on which such loan is made; or

(2) one-half (½) of the employee's accounts within the defined contribution plan of the participant under the fund.

(c) Subject to subsection (b), the minimum amount of a loan shall be one thousand dollars (\$1,000).

(d) The loan program described in this rule shall be administered by the fund. All loans shall comply with the following terms and conditions:

(1) All loans shall be subject to the approval of the fund and subject to applicable Internal Revenue Service restrictions.

(2) A participant may apply for a loan by completing the applicable forms.

(3) Each loan shall be amortized on a substantially level basis with monthly payments. Payments shall be made on the first of a month for that month. The period of repayment shall be a minimum of twelve (12) months and shall not exceed five (5) years from the loan origination date. Notwithstanding the preceding sentence, the term of the loan shall not extend beyond the earlier of:

(A) in the case of a distribution which begins after the date of the loan, the date such distribution of the employee's accounts within the defined contribution plan of the participant under the fund begins; or

(B) the date of a default on the loan.

(e) The participant receiving the loan shall make the required repayments in accordance with the loan agreement.

(f) The rate of interest shall be the prime rate per annum, as published in The Wall Street Journal on the first day of the quarter (or the earliest publication day of the quarter in the event of a publication holiday) in which a completed loan application is submitted, plus one percent (1%). A loan will carry the same interest rate throughout its term.

(g) The fund shall declare a default on a loan as of:

(1) the last day of the calendar quarter following the calendar quarter in which the participant fails to make a payment, unless the participant pays the amount due plus accrued interest prior to such date; or

(2) the date thirty (30) days after the fund in good faith deems the plan insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(h) On default, the entire amount outstanding on the participant's loan will be due and payable.

(i) On default, the fund shall report to the Internal Revenue Service the outstanding loan balance (principal and interest) as a taxable distribution to the participant, which may also be subject to an additional ten percent (10%) excise tax under the Internal Revenue Code.

(j) Each loan shall be adequately secured. The plan shall have a security interest in the employee's accounts within the defined contribution plan of the participant under the fund.

(k) Any loan to a participant shall be considered to be a separate asset of the legislators' defined contribution plan segregated for the benefit of such participant. The interest paid on the loan shall be credited to the employee's accounts within the defined contribution plan of the participant. Such portion of the employee's accounts within the defined contribution plan on loan to the participant shall not share in the allocation of gains or losses. The principal and interest paid on the loan shall be credited to such employee's accounts within the defined contribution plan as determined by the fund.

(l) A participant may not take more than two (2) loans in any calendar year.

(m) A participant may have any number of loans outstanding as long as all of the requirements of this rule are met.

(n) Any loan processing fee charged by a third party will be paid by the participant from the employee's accounts within the defined contribution plan of the participant.

(o) The loan proceeds will come from the employee's accounts within the defined contribution plan of the participant on a pro rata basis, and from the directed investment options of the participant on a pro rata basis.

(p) The participant may prepay, without penalty, the entire (or any part of the) outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (excluding cash) made payable to the fund and delivered to the fund. No reamortization will apply. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-7; filed Dec 18, 2001, 9:09 a.m.: 25 IR 1488*)

Rule 7. Administrative Proceedings

35 IAC 1.2-7-1 Administrative orders; proceedings; reviews

Authority: IC 5-10.3-3-8

Affected: IC 4-21.5; IC 5-10.2; IC 5-10.3

Sec. 1. All administrative orders, proceedings, and reviews shall be made pursuant to IC 4-21.5. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-7-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897*)

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 conference shall be held upon the motion of any party following which conference shall follow Indiana Trial Rule 16 to the extent applicable. At this time the administrative law judge shall 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*)

Rule 8. Cost-of-Living Adjustment

35 IAC 1.2-8-1 Calculation

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 1. A cost-of-living adjustment based on purchasing power replacement shall be calculated using the following elements for determinations made as of July 1:

(1) The Consumer Price Index-W from the prior March 31 shall be used.

(2) For comparative purposes, the appropriate prior years' March 31 Consumer Price Index-W numbers shall be used.

(3) Retirees will be grouped (based on their latest retirement or disability date) by twelve (12) month periods running from July 2 through the following July 1. A single net adjustment percentage shall be calculated for each such group.

(4) Minimum and maximum amounts in prior postretirement adjustments shall not be taken into account.

(5) So-called "13th checks" shall not be taken into account.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-1; filed May 18, 2001, 10:38 a.m.: 24 IR 3014)

35 IAC 1.2-8-2 Formula

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 2. (a) The elements established in section 1 of this rule shall be used in the formula in subsection (b).

(b) Compare the cumulative Consumer Price Index increase for an affected group to the cumulative postretirement cost-of-living adjustments for that group, as determined under section 1 of this rule, and increase that group's pension portion by the percentage (if any) determined by the fund actuary, as necessary to reach the minimum purchasing power established by the Indiana general assembly, for example:

(1) fifty percent (50%) for 1999; and

(2) fifty-seven and four-tenths percent (57.4%) for 2000.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-2; filed May 18, 2001, 10:38 a.m.: 24 IR 3014)

35 IAC 1.2-8-3 Increases

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 3. The increase shall be applied as of July of any year established by the general assembly, the first such year beginning July 1, 1999. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-3; filed May 18, 2001, 10:38 a.m.: 24 IR 3014)*

ARTICLE 2. POLICE AND FIREFIGHTERS' PENSION AND DISABILITY FUND (1977 FUND)

Rule 1. Membership

35 IAC 2-1-1 Application for membership

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7

Sec. 1. (a) Employee membership applications for the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) will be accepted by the state board if signed by the local board and the appointing authority.

(b) All application materials and other personal records containing medical information shall be treated as confidential medical information to the extent required under the Americans with Disabilities Act (as defined in 35 IAC 2-9-2(b)). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-1; filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-1-2 Prior service credit; prerequisites

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7; IC 36-8-8-8

Sec. 2. Prior service credit shall be given to any member of the 1977 Police and Firefighters' Pension and Disability Fund (1977 Fund) providing the following conditions are met:

(1) As used in this section, "prior service" means any services or duties performed as a member of the 1977 Fund after April 30, 1977.

(2) The police officer or firefighter was a member of the 1977 Fund and had contributions withheld for membership.

(3) The city, town, or township to which the police officer or firefighter is transferred or has been hired by is a member of

the 1977 Fund.

(4) The member repays, either in a lump sum or a series of payments determined by the state board, the amount of contributions plus interest which was refunded to him.

(5) For the purpose of computing benefits, prior service shall be included only once.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-2; filed May 9, 1979; 11:31 a.m.: 2 IR 681; filed Sep 8, 1982, 2:05 p.m.: 5 IR 2110; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

35 IAC 2-1-3 Effective date

Authority: IC 36-8-8-5

Affected: IC 36-8-8-7

Sec. 3. Effective Date. Enrollment and Pension Fund Rights begin on the date a full time Police Officer or Firefighter is sworn in. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-3; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-1-4 Leave of absence

Authority: IC 36-8-8-5

Affected: IC 36-8-8-6

Sec. 4. (a) As used in this article, "FMLA" refers to the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) and all applicable regulations and amendments.

(b) This section and IC 36-8-8-6 shall be administered in a manner consistent with the FMLA.

(c) If the member is compensated while on an FMLA covered leave, the statutory contributions must be maintained. A member may make contributions as provided in IC 36-8-8-6 during an unpaid FMLA leave, although such contributions would not result in credit for service for benefit purposes in any event. The member's employer is not required to make contributions with respect to an unpaid FMLA leave.

(d) In calculating credit for vesting and eligibility purposes, time spent on an FMLA protected leave shall be counted, including any time spent receiving disability benefits while on such leave.

(e) A member seeking credit for an FMLA leave must provide documentary evidence demonstrating that the statutory requirements have been satisfied. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-1-4; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

Rule 1.1. Medical Fitness Examinations (Voided)

NOTE: Voided by P.L.4-1992, SECTION 55, effective January 26, 1992 (retroactive).

Rule 2. Contributions; Withdrawal

35 IAC 2-2-1 Refund of deceased active member's contributions

Authority: IC 36-8-8-5

Affected: IC 36-8-8-8; IC 36-8-8-16

Sec. 1. Deceased Active Member's Contributions. A deceased active member's contributions plus accumulated interest will be refunded to the estate of the deceased member, if the deceased member has no survivors eligible for benefits under the fund.

If the total amount of survivor benefits paid does not exceed the member's total contribution plus accumulated interest, the difference shall be paid to the member's estate. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-2-1; filed May 9, 1979, 11:31 am: 2 IR 681; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-2-2 Interest on employees' contribution accounts

Authority: 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 State Board shall:

- (1) Credit interest on the prior fiscal year-end balance.
- (2) 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) 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 am: 2 IR 681; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

Rule 3. Retirement Benefits

35 IAC 2-3-1 Re-employment after retirement

Authority: IC 36-8-8-5

Affected: IC 36-8-8-10; IC 36-8-8-13

Sec. 1. If a re-employed member is receiving disability or retirement benefits from the 1977 Fund, benefits will terminate until the member has terminated service for the second time. The benefits will then be computed on the total years of credited service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-3-1; filed May 9, 1979, 11:31 am: 2 IR 681; filed Sep 8, 1982, 2:05 pm: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-3-2 Payment method

Authority: IC 36-8-8-5

Affected: IC 36-8-8-10; IC 36-8-8-13

Sec. 2. Retirement Benefits. The benefits shall be paid on the 15th of each month and be payable from first: the member's contribution account, and second from the employer's contribution account. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-3-2; filed Aug 6, 1981, 2:30 pm: 4 IR 1805; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

Rule 4. Funeral Benefits

35 IAC 2-4-1 Death benefits

Authority: IC 36-8-8-5

Affected: IC 36-8-8-16

Sec. 1. The death benefits under IC 36-8-8-16 for a deceased member's heirs or estate shall be paid by the state board from the employer contributions of the city, town, or township where the member was last employed. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-4-1; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-4-2 Survivor benefits; active duty

Authority: IC 36-8-8-5

Affected: IC 36-8-8-14.1

Sec. 2. (a) For purposes of IC 36-8-8-14.1, a member is on active duty if that member is in employment status with the employer and is not on leave of absence or has not been suspended from his or her duties. However, a member who is on a leave pursuant to the Family and Medical Leave Act of 1993 shall be considered to be on active duty. The state board will require a certification from the member's employer with respect to the member's status at the time of death for purposes of determining active duty.

(b) Active duty does not have the same meaning as line of duty, which is defined by IC 36-8-8-14.1(d). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-4-2; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001,*

2:21 p.m.: 25 IR 898)

Rule 5. Disability Benefits

35 IAC 2-5-1 Date of disability payments; source of funds

Authority: IC 36-8-8-5

Affected: IC 36-8-8

Sec. 1. Disability benefits shall begin on the later of an effective date determined by the local board or the date following the exhaustion of all paid leave. The benefits shall be paid on the fifteenth of the month and be payable from the employer's contributions until the member attains his or her earliest retirement age under the fund, at which time the member's contribution account shall be eliminated, just as if the member had then retired. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-1; filed Aug 6, 1980, 9:20 a.m.: 3 IR 1473; filed Aug 6, 1981, 2:30 p.m.: 4 IR 1805; filed May 7, 1998, 4:15 p.m.: 21 IR 3328; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

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-five (55) 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-five (55) years of age, that the member would have earned had the member remained in active service until attaining fifty-five (55) years of age.

(c) Upon attaining fifty-five (55) 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. (*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*)

35 IAC 2-5-3 Recurring disability benefits

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.3; IC 36-8-8-15

Sec. 3. A member who:

(1) has a covered impairment as defined in IC 36-8-8-12.3;

(2) recovers and returns to active service with the department; and

(3) within two (2) years after returning to active service has an impairment that, except for IC 36-8-8-12.3, would be a covered impairment;

is entitled to the benefit described under this section if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under IC 36-8-8-15 that would have been applicable during the member's period of reemployment. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-3; filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

35 IAC 2-5-4 Applicable disability structure; member transfers

Authority: IC 36-8-8-5

Affected: IC 36-8-8

Sec. 4. (a) For purposes of determining which disability benefit provisions apply, the state board 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 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. 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*)

35 IAC 2-5-5 1977 Police Officers' and Firefighters' Pension and Disability Fund disability procedures

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.5

Sec. 5. (a) The disability application process shall be as described as follows:

(1) The local board shall submit to the state board the following documents:

(A) A completed disability application form that includes the following:

- (i) The member's name, address, and Social Security number.
- (ii) The date of the local board's hearing.
- (iii) The date the local board determined a covered impairment exists.

The local board shall use the applicable forms developed by the state board for this purpose.

(B) The applicable form developed by the state board shall require the following:

- (i) The local board to submit its determinations, including findings of fact, with regard to the existence of a covered impairment and the class of impairment for a fund member who was hired for the first time after December 31, 1989, or who had elected coverage under IC 36-8-8-12.5 and IC 36-8-8-13.5 (Class 1 duty related injury, Class 2 duty related disease, and Class 3 all other covered impairments).
- (ii) A copy of the written job description for the member's position.
- (iii) A statement from the local board that certifies that the member cannot perform the essential functions of the job as reflected on the written job description by identifying the specific functions the member is incapable of performing.
- (iv) A statement from the appointing authority that certifies that there is no suitable and available work in the member's department for which the member is or may be capable of becoming qualified, considering reasonable accommodations to the extent required by the Americans with Disabilities Act.
- (v) The local board's findings with respect to self-inflicted injury, attempted suicide, commission of felony, or preexisting conditions.
- (vi) The local board's determination on whether the impairment resulted from an accidental injury.
- (vii) A statement that certifies that the local board's decision was communicated, in writing, to the fund member and the appointing authority.

(C) A transcript of the local board's hearing. The transcript should be signed by the person doing the transcription and by the pension secretary reflecting that the transcript is a true and accurate report of the testimony and exhibits presented during the local board's hearing.

(D) Copies of all exhibits accepted by the local pension board. These exhibits would include the medical evaluations of the fund member. Tests and examination results must be included.

- (E) Certification by the appointing authority or the local board with regard to the fund member's last day of pay (including the last payment for any type and all forms of paid leave).
- (F) Certification by the appointing authority of years of service.
- (2) Unless the application is complete, the state board will not accept the application. If the application is not accepted, the state board shall do the following:
 - (A) Determine whether the file is complete.
 - (B) Send a letter to the local board stating that either a complete file has been received or the file is incomplete and will not be accepted until the specified items have been received by the state board. If the file is incomplete, the state board will send a letter stating the file is complete after all previously specified items have been received by the state board.
 - (C) Once a completed file is accepted, the state board will give the completed file to the medical authority.
- (3) The state board or its duly authorized representative will make an initial determination within sixty (60) days from the date the complete application is received by the state board unless there is a delay attributable to the fund member or the appointing authority. This initial determination shall include a determination of which disability provisions the application has been processed. In making this determination, the state board shall treat a member as first hired using the member's first date of employment with the local unit where the member is currently employed. However, in the case of a fund member who directly transferred 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. If the application is not accepted, the state board shall do the following:
 - (A) The state board will not consider the sixty (60) day period to begin until a completed file is accepted.
 - (B) The initial determination will be mailed, by certified mail return receipt requested, to the member, the local board, and the appointing authority. Allowing three (3) days for delivery, the state board or its duly authorized representative will accept objections if the objections are received by the state board within eighteen (18) days after the date of the state board's initial determination letter.
 - (C) If the state board does not make an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the appointing authority, the local board's determination, or the fund member's statement in the case of an appeal of a local board determination, shall constitute the state board's initial determination. A letter confirming this initial determination shall be sent by the state board to the local board, the fund member, and the appointing authority.
 - (D) The letter communicating the state board's initial determination shall inform the parties of the time limit on filing objections and shall clearly state that, if no objections are filed, the initial determination shall automatically become the state board's final order.
- (4) If no objection to the state board's initial determination is filed with the state board within eighteen (18) days after the date of the state board's initial determination letter, the state board's initial determination shall become the state board's final order.
- (5) If a timely objection to the state board's initial determination is filed, the state board shall follow an internal hearing procedure. The state board shall notify the member if the appeal is not timely. Such notice will indicate that the initial determination automatically became the state board's final order that may be subject to judicial review.
- (6) After receiving a timely objection to the initial determination, the state board shall designate a hearing officer to review the case. The hearing officer must make a recommendation to the state board with regard to a final decision within three (3) weeks after the hearing. The hearing will be recorded and a transcript prepared.
- (7) Based upon the complete record and the recommendation from the hearing officer, the state board shall issue a final order. The state board may accept, but shall not be required to accept, the hearing officer's recommendation as its final order. The final order will be communicated in a letter, sent certified mail return receipt requested, to the fund member, the local board, and the appointing authority. In addition, the state board may do the following:
 - (A) The state board may request or accept additional information before issuing a final determination.
 - (B) The state board shall issue a final order within one hundred eighty (180) days from the date the complete application is received by the state board unless there is a delay attributable to the fund member or the appointing authority. If an order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the appointing authority, the initial determination statements shall constitute the state board's final order.
- (b) The review of a fund member's impairment may be initiated by the state board, the fund member, the safety board, or the local board. The review shall follow the procedure for disability applications. The cost of any medical examination required by the

local board shall be paid by the party who petitioned for review.

(c) Requirements for recovered disabilitants shall be as follows:

(1) If there is a final determination that a disabilitant has recovered, the state board shall solicit a certification from the local authorities with regard to the existence of suitable and available work on the police or fire department.

(2) Benefits will be terminated if suitable and available work on the police or fire department has been offered to the member. Benefits shall terminate in such a case regardless of the member's decision to accept or reject the employment offer from the police or fire department.

(3) A recovered member returning to the same department will not be treated as a new applicant and will not be subjected to the application process for new members in the fund.

(4) In the event a member recovers from a covered impairment, returns to active service with the police or fire department, and becomes unable to perform all suitable and available work on the police or fire department within two (2) years of returning to active duty due to a covered impairment that is based on the same condition or conditions for which disability benefits were previously paid to the member, the member shall be entitled to receive monthly disability benefits equal to the amount of the monthly disability benefits that were paid to the member at the time of the member's return to active service plus any applicable cost of living adjustments.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-5; filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

35 IAC 2-5-6 Determination of work within the fund member's department

Authority: IC 36-8-8-5

Affected: IC 36-8-8-12.3

Sec. 6. In order for the state board to make a determination with respect to a fund member's disability, the state board must receive a certification from the local safety board that there is no suitable and available work in the member's department for which the fund member is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. The state board will not process an application for disability unless the appropriate certification is included with the application for disability benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-5-6; filed May 7, 1998, 4:15 p.m.: 21 IR 3331; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

Rule 6. Quarterly Reports

35 IAC 2-6-1 Quarterly report and payment of contributions

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 1. Quarterly Reports. A quarterly report containing payments of employer and employee contributions, shall be due in the office of the State Board no later than the fifteenth (15th) day following the end of each calendar quarter, i.e., January 15, April 15, July 15, and October 15 each year.

Any employer who fails to make such payments by the due date may be assessed a penalty. The penalty will be determined by the Board of Trustees. *(Board of Trustees of the Public Employees' Retirement Fund; filed Aug 6, 1980, 9:20 am: 3 IR 1473; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

Rule 7. Salary

35 IAC 2-7-1 Report of salary levels

Authority: IC 36-8-8-5

Affected: IC 36-8-1-11; IC 36-8-8-11

Sec. 1. Annually, on or before January first each year, the Clerk-Treasurer or City Controller shall certify to the State Board within the limits of IC 36-8-1-11 what constitutes the salary of a first class patrolman or firefighter for that employer for that

calendar year. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-7-1; filed Aug 6, 1980, 9:20 am: 3 IR 1473; filed Sep 8, 1982, 2:05 pm: 5 IR 2110; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 8. Employer's Contribution

35 IAC 2-8-1 Actuarial data used in calculating total membership cost

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 1. The Actuarial Data to be used in calculating the total membership cost of participants shall include all service as a full time sworn police officer or firefighter in an Indiana police or fire force having a 1977 Police and Firefighters' Pension and Disability Fund. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-8-1; filed Aug 6, 1981, 2:30 pm: 4 IR 1806; filed Sep 8, 1982, 2:05 pm: 5 IR 2111; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

35 IAC 2-8-2 Interest on employer's account

Authority: IC 36-8-8-5

Affected: IC 36-8-8-4

Sec. 2. Interest on Employer's Account. Annual interest shall be paid each year, on the prior year-end account balance at a rate determined by the State Board, on all accounts having a positive year-end balance. All accounts having a negative year-end account balance may be charged an interest rate determined by the State Board. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-8-2; filed Aug 6, 1981, 2:30 pm: 4 IR 1806; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 9. Baseline Statewide Medical Examinations and Standards

35 IAC 2-9-1 Purpose

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-8-7

Sec. 1. (a) This rule identifies the baseline statewide physical medical standards that are applicable to all applicants who desire to become members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). The baseline statewide medical standards are designed to ensure all applicants seeking to become a police officer or firefighter are capable of successfully performing the essential functions of the job without imposing a direct threat to the health or safety of themselves, coworkers, or the public with whom they come in contact during the course of employment.

(b) The requirements in this rule and in 35 IAC 2-10, containing the Class 3 excludable conditions, were based on in-depth consideration of the essential functions of the job for police officers and firefighters.

(c) For firefighters, consideration was also given to the fact that the essential functions are performed in and affected by environmental factors, including the following:

- (1) Operate both as a member of a team and independently at incidents of uncertain duration.
- (2) Spend extensive time outside exposed to the elements.
- (3) Experience frequent transition from hot to cold and from humid to dry atmospheres.
- (4) Tolerate extreme fluctuations in temperature and perform physically demanding work in hot (up to four hundred degrees Fahrenheit (400°F)), humid (up to one hundred percent (100%)) atmospheres while wearing equipment that significantly impairs body cooling mechanisms.
- (5) Work in wet, icy, or muddy areas.
- (6) Perform a variety of tasks on slippery, hazardous surfaces, such as on roof tops or from ladders.
- (7) Work in areas where sustaining traumatic or thermal injury is possible.
- (8) Face exposure to carcinogenic dusts such as:
 - (A) asbestos; or
 - (B) toxic substances, such as:

- (i) hydrogen cyanide;
- (ii) acids;
- (iii) carbon monoxide; or
- (iv) organic solvents;

either through inhalation or skin contact.

- (9) Face exposure to infectious agents such as hepatitis B or human immunodeficiency virus (HIV).
- (10) Perform complex tasks during life-threatening emergencies.
- (11) Work for long periods of time, requiring sustained physical activity and intense concentration.
- (12) Face life or death decisions during emergency conditions.
- (13) Tolerate exposure to grotesque sights and smells associated with major trauma and burn victims.
- (14) Make rapid transitions from rest to near maximal exertion without warm-up periods.
- (15) Operate in environments:
 - (A) of high noise;
 - (B) of poor visibility;
 - (C) of limited mobility;
 - (D) at heights; and
 - (E) in enclosed or confined spaces.
- (16) Use manual or power tools in the performance of duties.
- (17) Rely on senses of sight, hearing, smell, and touch to help determine the nature of the emergency, maintain personal safety, and make critical decisions in confused, chaotic, and potentially life-threatening environments.
- (18) Wear personal protective equipment that weighs approximately fifty (50) pounds while performing the essential functions of the job.
- (19) Perform physically demanding work while wearing positive pressure breathing equipment with one and five-tenths (1.5) inches water column resistance to exhalation at a flow of forty (40) liters per minute.
- (20) Be able to communicate with people effectively.
- (d) For police officers, consideration was also given to the fact that the essential job functions are performed in and affected by environmental factors, including the following:
 - (1) Operate both as a member of a team and independently at incidents of uncertain duration.
 - (2) Face exposure to infectious agents such as hepatitis B or human immunodeficiency virus (HIV).
 - (3) Perform complex tasks during life-threatening emergencies.
 - (4) Work for long periods of time, requiring sustained physical activity and intense concentration.
 - (5) Face life or death decisions during emergency conditions.
 - (6) Tolerate exposure to grotesque sights and smells associated with major trauma.
 - (7) Make rapid transitions from rest to near maximal exertion without warm-up periods.
 - (8) Use firearms, self-defense equipment, and body armor.
 - (9) Be able to physically protect himself or herself.
 - (10) Be able to communicate with people effectively.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-1; filed May 27, 1993, 12:00 p.m.: 16 IR 2338, eff Jul 1, 1993; filed May 7, 1998, 4:15 p.m.: 21 IR 3331; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

35 IAC 2-9-2 Definitions

Authority: IC 36-8-8-5; IC 36-8-8-19
Affected: IC 36-8-3.2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and all applicable regulations and amendments, if any, related to the Americans with Disabilities Act.

(c) "Candidate" means an individual who has successfully passed the physical agility test and, if applicable, the general aptitude test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 and received an offer of employment that is subject to the individual's successful completion of the physical and mental examinations identified in IC 36-8-3.2-6 and IC 36-8-8-19. *(Board of Trustees of the Public*

Employees' Retirement Fund; 35 IAC 2-9-2; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

35 IAC 2-9-3 Administration of rule

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-8-19

Sec. 3. Notwithstanding any other provision, this rule shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Americans with Disabilities Act. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-3; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

35 IAC 2-9-4 Components of examinations

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-8-7

Sec. 4. (a) The first component of the baseline statewide physical examination consists of a comprehensive general medical history. The comprehensive general medical history shall cover the applicant's known health problems, such as major illnesses, surgeries, medication use, and allergies. Symptom review is also important for detecting early signs of disqualifying conditions and excludable conditions. The comprehensive general medical history shall include the following:

- (1) A personal health history.
- (2) A family health history.
- (3) An immunization history.
- (4) A reproductive history.

An occupational history shall also be completed to collect information about the person's past occupational and environmental exposures.

(b) After the examining physician completes the comprehensive medical history, the physician shall conduct a general physical examination of the candidate. Requirements for the baseline statewide physical examination shall be as follows:

- (1) The baseline statewide physical examination is intended to test the following organ systems:

- (A) Dermatological system.
- (B) Ears, eyes, nose, mouth, and throat.
- (C) Cardiovascular system.
- (D) Respiratory system.
- (E) Gastrointestinal system.
- (F) Genitourinary system.
- (G) Endocrine and metabolic systems.
- (H) Musculoskeletal system.

- (2) The baseline statewide physical examination shall include the following tests:

- (A) Vital signs, such as pulse, respiration, blood pressure, and, if indicated, temperature.
- (B) Visual testing, using a Snellen chart or other comparable chart. Vision testing shall also include field of vision testing and color vision testing.
- (C) Audiometric testing. (An audiogram should be performed in a soundproof booth pursuant to the American National Standards Institute (ANSI) standard S3.1-1991 with equipment calibrated to ANSI standard S3.6-1989). If a booth is unavailable, the test room sound pressure levels should not exceed those specified in 29 CFR 1910.95 (July 1, 1992 edition).
- (D) Pulmonary function testing. Only a spirogram that is technically acceptable and demonstrates the best efforts by an individual should be used to calculate the forced vital capacity (FVC) and forced expiratory volume in one (1) second (FEV1).
- (E) Tuberculosis (Tbc) skin test. Tbc skin test shall be applied and interpreted unless the candidate has a past history of positive purified protein derivative (PPD) or pulmonary TBc.

(F) Laboratory testing must include the following:

- (i) Baseline blood testing, including complete blood count (CBC) and HIV testing.
- (ii) Biochemical test battery (SMA), including, at a minimum, glucose, BUN, creatinine, and syphilis.
- (iii) Urinalysis to detect specific illnesses.
- (iv) Drug abuse testing.
- (v) Alcohol abuse testing, if indicated.

Additional laboratory testing should be conducted as indicated.

(G) Chest x-ray. Posterior-anterior (PA) and lateral views required; other diagnostic imaging, if indicated.

(H) Twelve (12) lead electrocardiogram (resting) test.

(I) Stress test, if indicated.

(c) The local board shall determine the standards for passage of the baseline statewide mental examination. The local board may designate a community health center, a hospital, a licensed physician, or a licensed psychologist to administer the baseline statewide mental examination required under IC 36-8-8-7 and IC 36-8-8-19. The baseline mental examination shall consist of the Minnesota Multiphasic Personality Inventory. The results of the baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-4; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; filed May 7, 1998, 4:15 p.m.: 21 IR 3332; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

35 IAC 2-9-5 Local determination and transfer to PERF

Authority: IC 36-8-8-5

Affected: IC 36-8-3.2-3; IC 36-8-3.2-3.5; IC 36-8-8-7; IC 36-8-8-19

Sec. 5. (a) The examining physician shall send the results of the comprehensive general medical history and physical examination to the local board.

(b) Once the local board determines that the candidate satisfies any physical and mental standards established by the appointing authority or the local board, the baseline statewide physical examination, and the baseline statewide mental examination, the local board shall send PERF the following:

(1) Copies and certification of the results of the general medical history and baseline statewide physical examination required under IC 36-8-8-7 and IC 36-8-8-19.

(2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.

(3) Certification of the results of the baseline statewide mental examination required under IC 36-8-8-7 and IC 36-8-8-19.

(*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-5; filed May 27, 1993, 12:00 p.m.: 16 IR 2340, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

35 IAC 2-9-6 PERF determinations and disqualifying conditions

Authority: IC 36-8-8-5; IC 36-8-8-19

Affected: IC 36-8-3.5-12

Sec. 6. (a) As determined by the PERF board or the PERF board's designee, based on the results of the general medical history and the physical examination of the candidate, the existence of any of the conditions identified in subsection (b) will result in the revocation of the candidate's conditional offer of employment unless the conditions can be eliminated or effectively reduced by reasonable accommodations to the extent required under the Americans with Disabilities Act as determined by the appointing authority and certified to PERF.

(b) The following are disqualifying conditions:

(1) Vision testing as follows:

(A) Any of the following tests for far vision acuity:

(i) Binocular vision not correctable to at least 20/30.

(ii) Vision of the worse eye not correctable to at least 20/50.

(iii) Uncorrected binocular vision of worse than 20/100, with the exception that long term successful users of soft contact lenses do not have to meet this uncorrected standard.

- (B) Color vision. An inability to identify red, green, and yellow colors.
- (C) Peripheral vision. Uncorrected field of vision of worse than one hundred forty (140) degrees in the horizontal meridian in each eye.
- (2) Hearing deficit. A hearing deficit in the pure tone thresholds (five hundred (500) hertz, one thousand (1,000) hertz, two thousand (2,000) hertz, and three thousand (3,000) hertz) in the unaided worse ear:
 - (A) of more than twenty-five (25) decibels in three (3) of the four (4) frequencies;
 - (B) of more than thirty (30) decibels in any one (1) of the first three (3) frequencies; or
 - (C) an average loss within the four (4) frequencies of more than thirty (30) decibels.
- (3) Communicable diseases. Any communicable disease or condition that poses a significant risk of substantial harm to the health or safety of the candidate, coworkers, or members of the public with whom the candidate will come in contact during the course of employment.
- (4) Suddenly incapacitating diseases or conditions. Any disease or condition (physical or mental) that could incapacitate the candidate without sufficient warning to allow the candidate to take preventive measures, thereby imposing a significant risk of substantial harm to the health or safety of the candidate, coworkers, or members of the public with whom the candidate will come in contact during the course of employment (unless such disease or condition can be controlled by medication and the candidate affirms he or she takes the appropriate medication).
- (5) Alcoholism or illegal use of drugs as follows:
 - (A) Any history of alcoholism, unless the candidate has successfully rehabilitated for a period of at least one (1) year, successfully passes an examination for alcohol usage, and the candidate affirms he or she is no longer engaging in the use of alcohol and has successfully rehabilitated for a period of at least one (1) year preceding his or her application for employment.
 - (B) Any history of illegal use of drugs or evidence of drug abuse, unless the candidate has successfully rehabilitated for a period of at least one (1) year, successfully passes an examination for use of drugs or drug abuse, and the candidate affirms he or she is no longer engaging in drug abuse and has successfully rehabilitated for a period of at least one (1) year preceding his or her application for employment.
- (c) The determination of whether a candidate's condition poses a significant risk of substantial harm will be based on an objective individualized assessment of the applicant's present ability to safely perform the essential functions of the job considering reasonable accommodations to the extent required under the Americans with Disabilities Act. Factors to be considered include the following:
 - (1) The duration of the risk.
 - (2) The nature and severity of the potential harm.
 - (3) The likelihood that the potential harm will occur.
 - (4) The imminence of the potential harm.

Relevant evidence may include input from the applicant, the experience of the applicant in previous similar positions, opinions of medical doctors, rehabilitation counselors, or physical therapists who have expertise in the disability involved, or direct knowledge of the applicant. (*Board of Trustees of the Public Employees' Retirement Fund*; 35 IAC 2-9-6; filed May 27, 1993, 12:00 p.m.: 16 IR 2340, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

Rule 10. Preexisting Excludable Medical Conditions

35 IAC 2-10-1 Purpose

Authority: IC 36-8-8-5; IC 36-8-8-13.6

Affected: IC 36-8-8-13.5

Sec. 1. (a) This rule identifies the Class 3 preexisting excludable conditions which, under IC 36-8-8-13.5 and IC 36-8-8-13.6, make members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund (Fund) ineligible under certain circumstances for the Class 3 impairment benefits established in IC 36-8-8-13.5(e).

(b) The purpose of this rule is to permit the continued development and administration of the Fund in accordance with accepted principles of risk assessment. This rule is designed to protect the fiscal integrity of the Fund by identifying certain preexisting conditions that have a substantial likelihood of causing impairments that would result in a member of the Fund becoming

eligible for Class 3 impairment benefits. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-10-1; filed May 27, 1993, 12:00 p.m.: 16 IR 2341, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

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) Arteriosclerotic 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) Functional arrhythmias.
- (7) Diabetes requiring insulin or oral hypoglycemics. An individual with diabetes whose condition is effectively controlled by diet alone would not be considered to have an excludable condition. A candidate with a history of 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.
 - (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) Parkinsonism.

- (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.
- (77) Heart bypass surgery within the preceding ten (10) years.
- (78) Primary pulmonary hypertension.
- (79) Organ transplant.
- (80) Pacemaker implant.
- (81) Any disqualifying condition under 35 IAC 2-9-6 that has been accommodated by the local appointing authority.

(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)

35 IAC 2-10-3 Statement of understanding

Authority: IC 36-8-8-5

Affected: IC 36-8-3.5-12; IC 36-8-8-13.5; IC 36-8-8-13.6

Sec. 3. An application for membership in the 1977 Police Officers' and Firefighters' Pension and Disability Fund must include a statement of understanding signed by the candidate. This statement must be presented to and signed by the candidate when a conditional offer of employment is extended. The statement must include an explanation of the effect of this rule and a provision affirming that the candidate understands the effect this rule may have on his or her eligibility for Class 3 impairment benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-10-3; filed May 27, 1993, 12:00 p.m.: 16 IR 2343, eff Jul 1, 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

ARTICLE 3. 1977 FIREFIGHTERS' PENSION AND DISABILITY FUND (REPEALED)

(Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed Sep 8, 1982, 2:05 pm: 5 IR 2118)

ARTICLE 4. CONSERVATION AND EXCISE OFFICERS' RETIREMENT FUND

Rule 1. Survivor Benefits

35 IAC 4-1-1 Death of member and beneficiary

Authority: IC 5-10-5.5-3; IC 5-10.3-3-8

Affected: IC 5-10-5.5-17

Sec. 1. Survivor Benefits. If a retired member and his beneficiary die prior to recovering contributions plus interest there is no lump sum refund payable to the estate of the last beneficiary. (*Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 am: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 2. Creditable Service

35 IAC 4-2-1 Re-employment after withdrawal of contributions

Authority: IC 5-10-5.5-3; IC 5-10.3-3-8

Affected: IC 5-10-5.5-7

Sec. 1. Creditable Service. If a participant in the fund terminates employment prior to accumulating 15 years of service and withdraws his monies in a lump sum he forfeits all service in the Plan. If the former participant is re-employed as an Excise Officer or Conservation Officer he must repay all withdrawn monies to receive credit for the prior service. (*Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 am: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

35 IAC 4-2-2 Transfers with public employees retirement fund

Authority: IC 5-10-5.5-3; IC 5-10.3-3-8

Affected: IC 5-10-5.5-7

Sec. 2. P.E.R.F. Service. Service as a Conservation Officer or Excise Officer can be transferred to P.E.R.F. Service in P.E.R.F. cannot be transferred to Conservation Officers or Excise Officers except as specifically authorized by Statute. Duplicate service cannot be granted. (*Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 am: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 3. Retirement Benefits

35 IAC 4-3-1 Retirement benefits

Authority: IC 5-10-5.5-3; IC 5-10.3-3-8

Affected: IC 5-10-5.5-10

Sec. 1. Retirement Benefits. The normal form of benefits is joint and 50% Survivor Benefit. (*Board of Trustees of the Public Employees' Retirement Fund; filed May 9, 1979, 11:31 am: 2 IR 681; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 4. Vesting of Benefits

35 IAC 4-4-1 Vesting of benefits

Authority: IC 5-10-5.5-3

Affected: IC 5-10-5.5-10

Sec. 1. Vesting. A participant is vested under this fund upon:

- (1) Accumulating fifteen (15) years of creditable service, or,
- (2) Accumulating ten (10) years of creditable service and attainment of age 60.

(Board of Trustees of the Public Employees' Retirement Fund; filed Aug 6, 1980, 9:20 am: 3 IR 1474; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)

ARTICLE 5. STATE AGENCY FOR SOCIAL SECURITY (EXPIRED)

(Expired under IC 4-22-2.5, effective January 1, 2002.)

ARTICLE 6. PENSION RELIEF FUND

Rule 1. Administrative Cost

35 IAC 6-1-1 Administrative costs

Authority: IC 5-10.3-11-2

Affected: IC 5-10.3-11

Sec. 1. The cost of administering the Pension Relief Fund shall be paid from the Pension Relief Fund. *(Board of Trustees of the Public Employees' Retirement Fund; filed Aug 6, 1980, 9:20 am: 3 IR 1479; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

Rule 2. Payments to Units of Local Government

35 IAC 6-2-1 Overpayment to units of local government; repayment

Authority: IC 5-10.3-11-2

Affected: IC 5-10.3-11-3

Sec. 1. Payments to Units of Local Government. Any unit of local government that is found to have been overpaid a Pension Relief Distribution shall be required to repay the Pension Relief Fund the total amount of the overpayment. The repayment is calculated using the same factors used in the year of the overpayment. An Interest Penalty shall be collected using the Average Interest Rate earned on the Pension Relief Fund during the fiscal year ended in which the overpayment originated. All funds repaid to the Pension Relief Fund in a calendar year shall be added to the amount to be paid in the following year's distribution. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 6-2-1; filed Aug 6, 1981, 2:30 pm: 4 IR 1808; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898)*

ARTICLE 7. HEARING PROCEDURE (REPEALED)

(Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086)

ARTICLE 8. MODEL PLAN AMENDMENTS

Rule 1. Adoption of IRS Model Amendment to Comply with the Unemployment Compensation Amendments of 1992

35 IAC 8-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(e) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

(1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.

(2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.

(3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

(4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

(A) a traditional individual retirement account or individual retirement annuity; or

(B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.

(5) Any distribution that is made upon hardship by the member.

(f) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police and conservation enforcement officers' retirement plan, judges' retirement fund, 1977 fund, the prosecuting attorneys retirement fund, and funds funded through the pension relief fund.

(g) "IRS" means the Internal Revenue Service.

(h) "UCA" refers to the federal Unemployment Compensation Amendments of 1992, P.L.102-318, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868*)

35 IAC 8-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8-6-2; IC 36-8-7-3; IC 36-8-7.5-2

Sec. 2. (a) The UCA was signed into law on July 3, 1992. The UCA expanded the permanent federal-state extended unemployment benefits program and extended the existing emergency unemployment insurance program. The sources of financing for the UCA benefit extensions include provisions affecting distributions from tax-qualified pension plans such as the funds. The provisions of the UCA were subsequently amended by EGTRRA.

(b) 35 IAC 8-2 includes the model language set forth in Revenue Procedure 93-12, issued December 30, 1992, to amend the fund to comply with the requirements of Section 401(a)(31) of the Code. 35 IAC 8-2 reflects the Model Amendment drafted by the IRS, as amended by EGTRRA. The board of trustees recognizes that some provisions included in the model amendment language are not applicable to a governmental plan as defined in Section 414(d) of the Code. As a result, those provisions that are not applicable to a governmental plan will not be applied by the board of trustees. Any local board may elect to use a different compliance mechanism should they decide, through adoption of appropriate bylaws, under IC 36-8-6-2(g)(5), IC 36-8-7-3(c), or IC 36-8-7.5-2(g)(5). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-2; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868*)

35 IAC 8-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 3. (a) The purpose of this rule is to comply with the UCA to the extent required by Section 401(a)(31) of the Code.

(b) A member of the fund may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as specified by the member.

(c) A surviving spouse who is entitled to receive an eligible rollover distribution may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible distribution paid directly to an individual retirement account or annuity as specified by the spouse. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-3; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1993; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898*)

Rule 2. Model Amendment Language

35 IAC 8-2-1 Model amendment language

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 1. (a) The amendments to this rule required by EGTRRA apply to distributions made on or after January 1, 2002. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) The following definitions apply throughout this rule:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(C) the portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

(i) a traditional individual retirement account or individual retirement annuity; or

(ii) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer; and

(D) any distribution that is made upon hardship by the member.

(2) "Eligible retirement plan" means:

(A) an individual retirement account described in Section 408(a) of the Code;

(B) an individual retirement annuity described in Section 408(b) of the Code;

(C) an annuity plan described in Section 403(a) of the Code;

(D) a qualified trust described in Section 401(a) of the Code;

(E) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or

(F) an annuity contract under Section 403(b) of the Code;

that accepts the distributee's eligible rollover distribution.

(3) "Distributee" includes an employee or former employee, as well as the employee's or former employee's surviving spouse. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, is a distributee with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-2-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1993; errata, 18 IR 2412; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3869)

ARTICLE 9. ANNUAL COMPENSATION LIMITS; IMPLEMENTATION OF ANNUAL COMPENSATION LIMITATIONS PURSUANT TO INTERNAL REVENUE CODE SECTION 401(a)(17)

Rule 1. Annual Compensation Limits

35 IAC 9-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "Fund" or "funds" means the following:

- (1) Legislators' Retirement System.
 - (2) Public Employees' Retirement Fund.
 - (3) State Excise Police and Conservation Officers' Retirement Plan.
 - (4) Judges' Retirement System.
 - (5) 1977 Police Officers' and Firefighters' Pension and Disability Fund.
 - (6) Prosecutors' Retirement Fund.
 - (7) Local public safety funds funded through the Pension Relief Fund.
- (d) "IRS" means the Internal Revenue Service.

(e) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-1; filed May 31, 1996, 4:00 p.m.: 19 IR 2854*) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

35 IAC 9-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 2. (a) OBRA '93 was signed into law on August 10, 1993. Among other things, OBRA '93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified plan. This annual compensation limit applies to a plan in two (2) ways as follows:

(1) A plan may not base contributions or benefits on annual compensation in excess of the limit.

(2) The amount of an employee's annual compensation that may be taken into account in applying certain specified nondiscrimination rules under the Code is subject to the annual compensation limit.

(b) Prior to its amendment by OBRA '93, the annual compensation limit under Section 401(a)(17) of the Code was two hundred thousand dollars (\$200,000), adjusted for cost-of-living increases (two hundred thirty-five thousand eight hundred forty dollars (\$235,840) for 1993), Section 401(a)(17) of the Code was amended by OBRA '93 to reduce the annual compensation limit to one hundred fifty thousand dollars (\$150,000), and to modify the manner in which cost-of-living adjustments are made to the annual compensation limit.

(c) OBRA '93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA '93. Under the grandfather rule, the annual compensation limit contained in OBRA '93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA '93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-2; filed May 31, 1996, 4:00 p.m.: 19 IR 2854*) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

35 IAC 9-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 3. The purpose of this rule is to comply with OBRA '93 as it amended Section 401(a)(17) of the Code. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-3; filed May 31, 1996, 4:00 p.m.: 19 IR 2855*) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

35 IAC 9-1-4 Text

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 4. The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

(1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

(2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. 401(a)(17) of the Code.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 9-1-4; filed May 31, 1996, 4:00 p.m.: 19 IR 2855; errata filed Jul 12, 1996, 12:30 p.m.: 19 IR 3471) NOTE: Expiration postponed by Executive Orders #02-22, December 20, 2002, and #03-53, December 30, 2003.

ARTICLE 10. ROLLOVERS AND TRUSTEE-TO-TRUSTEE TRANSFERS

Rule 1. Acceptance of Rollovers and Trustee-to-Trustee Transfers

35 IAC 10-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "Direct rollover" means a payment from an eligible retirement plan specified by the member to the fund.

(e) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(f) "Eligible retirement plan" means:

(1) an individual retirement account described in Section 408(a) of the Code;

(2) an individual retirement annuity described in Section 408(b) of the Code;

(3) an annuity plan described in Section 403(a) of the Code;

(4) a qualified trust described in Section 401(a) of the Code;

(5) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or

(6) an annuity contract under Section 403(b) of the Code;

that accepts the distributee's eligible rollover distribution.

(g) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

(1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.

(2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.

(3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

(4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

(A) a traditional individual retirement account or individual retirement annuity; or

(B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.

(5) Any distribution that is made upon hardship by the member.

(h) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police and conservation enforcement officers' retirement plan, judges' retirement fund, prosecuting attorneys retirement fund, and the 1977 fund.

(i) "IRS" means the Internal Revenue Service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-1; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870*)

35 IAC 10-1-2 Rollover for purchase of service

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 2. The fund may accept any portion of an eligible rollover distribution in payment of all or a portion of a member's purchase of service credit authorized under the fund's statutes. The fund may accept an eligible rollover distribution paid directly to the system in a direct rollover. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-2; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870*)

35 IAC 10-1-3 Trustee-to-trustee transfer

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 3. The fund may accept a direct trustee-to-trustee transfer from a deferred compensation plan under Code Section 457(b) or a tax-sheltered annuity under Code Section 403(b) for the purchase of permissive service credit, as defined in Code Section 415(n)(3)(A), or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-3; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870*)

ARTICLE 11. ADDITIONAL CONTRIBUTIONS

Rule 1. Elective Payroll Deductions for Additional Contributions

35 IAC 11-1-1 Payroll deduction for additional contributions

Authority: IC 5-10.3-3-8

Affected: IC 5-10.2-3-2

Sec. 1. (a) The purpose of this rule is to provide a pickup of member contributions by participating employers under Section 414(h)(2) of the Internal Revenue Code of 1986 for additional employee contributions made to the member's annuity savings account under IC 5-10.2-3-2(c) and IC 5-10.2-3-2(d). Employers may elect to participate in the pickup of additional employee contributions by a resolution adopting the provisions of this rule.

(b) A member in active covered employment (with an electing employer) who elects to make contributions to the member's annuity savings account in addition to the contributions required under IC 5-10.2-3-2(b) may do so through a binding, irrevocable payroll deduction authorization.

(c) A member in active covered employment, having executed a binding, irrevocable payroll deduction authorization with respect to any such additional contributions, is not entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the board of trustees of the public employees' retirement fund. Such contributions shall be remitted to the public employees' retirement fund in the same manner as all other contributions and shall be credited to the member's annuity savings account. The salary the employer will use to calculate such contributions will be the same as the salary the employer reports to the board of trustees for purposes of determining a member's mandatory contribution and benefit calculation. Such contributions, although designated as employee contributions, will be paid by the employer in lieu of contributions by the employee. The contributions so assumed shall be treated as tax-deferred employer pickup contributions pursuant to Section 414(h)(2) of the Internal Revenue Code, subject to a favorable letter ruling by the Internal Revenue Service.

(d) A member in active covered employment may elect to pay all or part of any additional contribution through payroll deduction. This election is available for two (2) years, beginning on September 1 following the plan year in which the employee

completes five (5) years of creditable service and ending on August 31 of the second calendar year following the opening of the election period. The amounts to be deducted and the duration of the deduction shall be specified on the authorization form prescribed by the board, and the amounts and duration shall be irrevocable and binding once made. Prepayment of amounts covered by the authorization is not permitted. However, nothing in this rule shall prevent a member from paying any amounts not covered by the authorization with after-tax dollars, up to the statutory maximum. The investment of the additional contributions shall be made in the same manner and percentage as the investment of the member's mandatory contributions.

(e) If a member terminates and then returns to covered employment with a different employer, when the member has five (5) or more years of creditable service credited or reccredited under Indiana statutes, the member shall be entitled to execute a new binding irrevocable payroll deduction authorization within a two (2) year election period, beginning on September 1 following the plan year in which the employee completes or is reccredited with five (5) years of creditable service and ending on August 31 of the second calendar year following the opening of the election period. If a member terminates and then returns to covered employment with the same employer, the member's binding irrevocable payroll deduction authorization, if any, shall be immediately effective upon rehire.

(f) No payroll deduction shall begin unless and until the active member executes the payroll deduction authorization on a form prescribed by the board, which must be received within the election period defined in subsection (d). The board will send the form to the treasurer or other disbursing officer of the employer. After receiving the binding, irrevocable payroll deduction authorization, the treasurer or other disbursing officer of each employer shall add such contributions to the contributions deducted from the member's regular compensation each pay day. The employer shall treat these deductions as picked up contributions.

(g) All such payroll deductions, including the amounts and the duration specified, shall be binding and irrevocable upon the member's execution of the prescribed form. A member may execute and submit the payroll deduction authorization with the election period defined in subsection (d), effective as of the next possible payroll date within the election period. However, such deductions will cease only upon any of the following events:

- (1) The member's death.
- (2) The termination of the member's employment.

Distribution of the additional contributions shall be made in the same manner as distributions from the member's annuity savings account. In no event shall the member receive a return of the payroll deductions made under this rule except pursuant to the normal disbursement procedures of IC 5-10.2.

(h) Members with at least five (5) years of creditable service as of June 30, 2003, may elect to make additional contributions to their annuity savings accounts through a payroll deduction pursuant to this provision between September 1, 2003, and August 31, 2005. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 11-1-1; filed Dec 4, 2003, 3:10 p.m.: 27 IR 1164*)

ARTICLE 12. ANNUAL COMPENSATION LIMIT

Rule 1. Limits

35 IAC 12-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "EGTRRA" means Economic Growth and Tax Relief Reconciliation Act of 2001, P.L.107-16, and all applicable regulations and amendments related thereto.

(d) "Fund" or "funds" means the following:

- (1) Legislators' retirement system.
- (2) Public employees' retirement fund.
- (3) State excise police and conservation enforcement officers' retirement plan.
- (4) Judges' retirement system.
- (5) 1977 police officers' and firefighters' pension and disability fund.
- (6) Prosecuting attorneys retirement fund.

(7) Local public safety funds funded through the pension relief fund.

(e) "IRS" means the Internal Revenue Service.

(f) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, and all applicable regulations and amendments related thereto. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-1; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871*)

35 IAC 12-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 2. (a) OBRA '93 was signed into law on August 10, 1993. Among other things, OBRA '93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified plan. The annual compensation limit was subsequently amended by EGTRRA effective for plan years beginning after December 31, 2001. A plan may not base contributions or benefits on annual compensation in excess of this annual compensation limit.

(b) Prior to its amendment by OBRA '93, the annual compensation limit under Section 401(a)(17) of the Code was two hundred thousand dollars (\$200,000), adjusted for cost-of-living increases (two hundred thirty-five thousand eight hundred forty dollars (\$235,840) for 1993). Section 401(a)(17) of the Code was amended by OBRA '93 to reduce the annual compensation limit to one hundred fifty thousand dollars (\$150,000), and to modify the manner in which cost-of-living adjustments are made to the annual compensation limit. EGTRRA subsequently amended this annual compensation limit to two hundred thousand dollars (\$200,000), as modified by cost of living adjustments.

(c) OBRA '93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA '93. Under the grandfather rule, the annual compensation limit contained in OBRA '93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA '93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-2; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871*)

35 IAC 12-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 3. The purpose of this rule is to comply with OBRA '93 and EGTRRA as those acts amended Section 401(a)(17) of the Code. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-3; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871*)

35 IAC 12-1-4 Text

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-38-6-23; IC 33-39-7-11; IC 36-8-8-5

Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-39-7; IC 36-8

Sec. 4. The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

(1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

(2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. Effective for years beginning after December 31, 2001, the annual

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compensation limit under Code Section 401(a)(17), as amended by EGTRRA, will be effective with respect to noneligible participants.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-4; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871)

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