

## **IC 36-8-7.5**

### **Chapter 7.5. 1953 Police Pension Fund (Indianapolis)**

#### **IC 36-8-7.5-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The addition of section 22 of this chapter by P.L.223-1986 applies only to fund members who die after March 10, 1986.

(2) The amendments made to section 13.8 of this chapter by P.L.28-2008 apply only to benefits payable with respect to a member of the 1953 police pension fund who dies after June 30, 2008.

*As added by P.L.220-2011, SEC.670.*

#### **IC 36-8-7.5-1**

##### **Application of chapter; officers eligible for benefits**

Sec. 1. (a) This chapter applies to pension benefits for members of police departments hired before May 1, 1977, by a consolidated city.

(b) A police officer with twenty (20) years of service is covered by this chapter and not by IC 36-8-8 if:

(1) the officer was hired before May 1, 1977;

(2) the officer did not convert under IC 19-1-17.8-7 (repealed September 1, 1981);

(3) the officer was not a member of the 1953 fund because:

(A) the officer's employment was on a temporary or emergency status under a statute in effect before February 25, 1953;

(B) the officer failed to pass a five (5) year physical requirement under such a statute; or

(C) the officer was a war veteran without pension status;

(4) the officer submitted to a physical medical examination, if required by the local board, and the results were satisfactory; and

(5) the officer was accepted by the local board as a member of the 1953 fund upon payment of all dues required for the officer's entire time as a member of the police department.

(c) A police officer is covered by this chapter and not by IC 36-8-8 if the officer:

(1) was hired before May 1, 1977; and

(2) did not convert under IC 19-1-17.8-7 (repealed September 1, 1981).

(d) A police officer is covered by this chapter and not by IC 36-8-8 if the officer:

(1) was hired before May 1, 1977;

(2) did not convert under IC 19-1-17.8-7 (repealed September 1, 1981);

(3) is a regularly appointed member of the police department;

(4) is a member of the 1953 fund;

(5) was employed on a temporary or emergency status before regular employment; and

(6) paid into the 1953 fund by not later than January 1, 1968, all dues for the period the officer was on temporary or emergency status.

(e) A police officer who:

(1) is covered by this chapter before consolidation under IC 36-3-1-5.1; and

(2) becomes a member of the consolidated law enforcement department through consolidation under IC 36-3-1-5.1;

is covered by this chapter after the effective date of the consolidation, and the officer's service as a member of the consolidated law enforcement department is considered active service under this chapter.

(f) In computing the length of active service rendered by any police officer for the purpose of determining the expiration of a period of twenty (20) years of active service, all of the following periods are counted:

(1) All of the time the officer performed the duties of the officer's position in active service.

(2) Vacation time or periods of leave of absence with whole or part pay.

(3) Periods of leave of absence without pay that were necessary on account of physical or mental disability.

(4) Periods of disability for which the officer will receive or has received any disability benefit.

(g) In computing the term of service there is not included any of the following:

(1) Periods during which the police officer was or is suspended or on leave of absence without pay.

(2) Periods during which the officer was not in active service on account of the officer's resignation from the department.

(3) Time served as a special police officer, a merchant police officer, or private police officer.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.104-1983, SEC.6; P.L.3-1990, SEC.131; P.L.227-2005, SEC.45.*

### **IC 36-8-7.5-1.5**

#### **Qualification of 1953 fund under Internal Revenue Code; benefit limitations**

Sec. 1.5. (a) As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The 1953 fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the 1953 fund. In order to meet those requirements, the 1953 fund is subject to the following provisions, notwithstanding any other provision of

this chapter:

(1) The local board shall distribute the corpus and income of the 1953 fund to members and their beneficiaries in accordance with this chapter.

(2) No part of the corpus or income of the 1953 fund may be used or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under this chapter.

(4) If the 1953 fund is terminated, or if all contributions to the 1953 fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the 1953 fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the 1953 fund is subject to the following provisions:

(A) The life expectancy of a member, the member's spouse, or the member's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.

(B) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The local board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The local board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(c) Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the

benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988. This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code, other than Section 415(b)(2)(G) of the Internal Revenue Code, applied without regard to Section 415(b)(2)(F) of the Internal Revenue Code (before its repeal on June 7, 2001, by P.L. 107-16) to anyone who did not first become a participant before January 1, 1990.

*As added by P.L. 55-1989, SEC. 57. Amended by P.L. 4-1990, SEC. 17; P.L. 42-2011, SEC. 83.*

#### **IC 36-8-7.5-1.7**

##### **"Americans with Disabilities Act"**

Sec. 1.7. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

*As added by P.L. 4-1992, SEC. 40.*

#### **IC 36-8-7.5-1.9**

##### **Administration of fund**

Sec. 1.9. The 1953 fund shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

*As added by P.L. 4-1992, SEC. 41.*

#### **IC 36-8-7.5-2**

##### **Establishment of fund; local board of trustees; terms; vacancies; compensation; bylaws**

Sec. 2. (a) A police pension fund to be known as the 1953 fund is established in each consolidated city.

(b) The 1953 fund shall be managed by a board of trustees (referred to as the "local board" in this chapter) having nine (9) trustees, as follows:

(1) The city executive, the county treasurer, and the city police chief.

(2) One (1) retired member of the police department.

(3) Five (5) active members of the police department.

(c) The trustee under subsection (b)(2) shall be elected at a meeting of the retired members of the 1953 fund. The trustees under subsection (b)(3) shall be elected at a meeting of the active members of the police department. The trustees are elected for terms of three (3) years, beginning on January 1 following the election, and succeeding those trustees whose terms of office expire on that date.

(d) If a vacancy occurs on the local board among those trustees elected by the police department, the remaining trustees of the local board shall fill the vacancy for the unexpired term of the trustee causing the vacancy, from the same class of members, active or retired, as was the trustee causing the vacancy.

(e) Any trustee of the local board elected as an active member of the police department automatically ceases to be a member of the local board if he ceases, for any reason, to be an active member of the police department and the vacancy shall be filled as provided in subsection (d).

(f) The trustees receive no compensation for their services and shall be paid only their necessary and actual expenses, including travel expenses, out of the fund in the custody of the treasurer, for acting upon matters related to the 1953 fund. The submission of expenses by any local board member and the authorization by the local board at regular meeting is sufficient authorization to the treasurer for payment.

(g) The local board may make all necessary bylaws for:

- (1) meetings of the trustees;
- (2) the manner of their election, including the counting and canvassing of the votes;
- (3) the collection of all money and other property due or belonging to the 1953 fund;
- (4) all matters connected with the care, preservation, and disbursement of the fund; and
- (5) all other matters connected with the proper execution of this chapter.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-3**

#### **Officers of local board; powers and duties; secretary's bond; reports**

Sec. 3. (a) The city executive is president of the local board, the police chief is its vice president, the county treasurer is its treasurer, and the local board shall elect a secretary. The secretary shall be paid out of the 1953 fund a sum for his services as fixed by the local board.

(b) The treasurer:

- (1) has custody of all property, money, and securities belonging to the 1953 fund and shall collect the principal and interest on them;
- (2) is liable on his bond as a county officer for the faithful accounting of all money and securities belonging to the 1953 fund that come into his hands;
- (3) shall keep a separate account showing at all times the true condition of the 1953 fund; and
- (4) shall, upon the expiration of his term of office, account to the local board for all money and securities coming into his hands, including the proceeds of them, and turn over to his successor all money and securities belonging to the fund remaining in his hands.

(c) The secretary shall:

- (1) keep a true account of the proceedings of the local board when acting upon matters relating to the 1953 fund;
- (2) keep a correct statement of the accounts of each member

with the 1953 fund;

(3) give the local board a monthly account of his acts and services as secretary;

(4) turn over to his successor all books and papers pertaining to his office; and

(5) perform any other duties imposed upon him by the local board.

(d) The secretary shall, in the manner prescribed by IC 5-4-1, execute a bond conditioned upon the faithful discharge of his duties.

(e) The secretary and treasurer shall make complete and accurate reports of their trusts to the local board on the first Monday in February of each year, copies of which shall be filed with the city fiscal officer. The books of the secretary and treasurer must be open at all times to examination by members of the local board.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-4**

##### **Management of revenue of fund by local board**

Sec. 4. (a) The local board shall ensure and confirm that:

(1) all amounts specified in this chapter to be applied to the 1953 fund, from any sources, are collected and applied to the fund;

(2) the various sums to be deducted from the salaries of the police officers concerned are deducted and are paid into the 1953 fund;

(3) the various sums to be contributed by the police special service district are so contributed and are received into the 1953 fund;

(4) any revenue in form of interest upon money invested or upon money due to the 1953 fund is received and placed into the fund; and

(5) all other money that should accrue to the 1953 fund is collected and paid into it.

(b) The local board shall have an audit of the accounts of the 1953 fund done at least once each biennium, by a person or persons competent to perform the audit, if the state board of accounts fails to examine the affairs of the fund during the period.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-5**

##### **Applications to local board for annuities, pensions, and benefits**

Sec. 5. (a) The local board shall consider and pass upon all applications for annuities, pensions, and benefits.

(b) The local board shall authorize the payment of any annuity, pension, or benefit, whether granted under this chapter or under any other statute superseded by this chapter.

(c) The local board may inquire into the validity of any grant of annuity, pension, or benefit paid from or payable out of the 1953 fund, whether the grant has been or is made in accordance with this chapter or with a statute in effect before February 25, 1953.

(d) The local board may effect an increase, decrease, or suspension of any grant payable from the 1953 fund whenever the grant or any part was secured or granted, or the amount fixed, as a result of misrepresentation, fraud, or error. However, a grant may not be reduced or suspended until the grantee concerned is:

- (1) notified of the proposed action; and
- (2) given an opportunity to be heard concerning the proposed action.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-6**

##### **Annual report of local board**

Sec. 6. The local board shall submit a report in the month of June of each year to the city legislative body. The report shall be made as of the close of business on December 31 of the preceding year and must contain a detailed statement of the affairs of the 1953 fund under the control of the local board. The report must show the income and disbursements of, and the assets and liabilities of each fund established and maintained within the 1953 fund during the preceding year.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-7**

##### **Employees of local board; compensation**

Sec. 7. The local board shall appoint the actuarial, medical, clerical, legal, or other employees as are necessary, and fix or approve the compensation of each of them, which shall be paid by the treasurer.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-8**

##### **Sources of fund**

Sec. 8. The 1953 fund is derived from the following sources:

- (1) From money or other property that is given to the local board for the use of the fund. The local board may take by gift, grant, devise, or bequest any money, chose in action, personal property, real property, or use the same for the purposes of the 1953 fund or for such purposes specified by the grantor.
- (2) From money, fees, and awards of every nature that are given to the police department of the municipality or to a member of the department because of service or duty performed by the department or a member. This includes fines imposed by the safety board against a member of the department, all money from gambling cases and from gambling devices as well as the proceeds from the sale of lost, stolen, and confiscated property recovered or taken into possession by members of the police department in the performance of their duties and confiscated by court order, and sold at a public sale in accordance with law.
- (3) From an assessment made during the period of his employment or for thirty-two (32) years, whichever is shorter,

on the salary of each member whom the local board has accepted and designated as a beneficiary of the 1953 fund, an amount equal to six percent (6%) of the salary of a first class patrolman. However, the employer may pay all or a part of the assessment for the member.

(4) From the income from investments of the 1953 fund.

(5) From the proceeds of a tax levied by the police special service district upon taxable property in the district, which the treasurer shall collect and credit to the 1953 fund, to be used exclusively by the 1953 fund, including the payments described in section 10.5 of this chapter.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.312-1989, SEC.3; P.L.182-2009(ss), SEC.432.*

### **IC 36-8-7.5-9**

#### **City officers; powers and duties**

Sec. 9. The proper officers of the city shall do the following:

(1) Deduct all sums that this chapter provides from the salaries of members of the police department and pay the sums to the local board in the manner that the local board specifies.

(2) On the first day of each month, notify the local board of all the following regarding members eligible for the 1953 fund that occurred during the preceding month and state the dates upon which these events occurred:

(A) New employments.

(B) Discharges.

(C) Resignations.

(D) Suspensions from the service.

(E) Deaths.

(F) Changes in salary that occurred during the preceding month.

(3) Procure for and transmit to the local board, in the form and time or times specified by the local board, all information requested by the local board concerning the service, age, salary, residence, marital condition, spouse, children, physical condition, mental condition, and death of any member of the police department.

(4) Convey to the local board all information required by the local board concerning each newly appointed member of the police department immediately after the appointment.

(5) Certify to the pension board, as of same day in the year to be fixed by the local board, the name of each member of the police department to whom this chapter applies.

(6) Keep such records concerning members of the police department as the local board may reasonably require and specify.

(7) Perform all duties without any cost to the 1953 fund.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-10**

#### **Insufficient pension fund; estimates; statement; tax levy**

Sec. 10. (a) If the local board determines that the total amount of money available for a year will be insufficient to pay the benefits, pensions, and retirement allowances the local board is obligated to pay under this chapter, the local board shall, before the date on which the budget of the police special service district is adopted, prepare an itemized estimate in the form prescribed by the state board of accounts of the amount of money that will be receipted into and disbursed from the 1953 fund during the next fiscal year. The estimated receipts consist of the items enumerated in section 8 of this chapter. The estimated disbursements consist of an estimate of the amount of money that will be needed by the local board during the next fiscal year to defray the expenses and obligations incurred and that will be incurred by the local board in making the payments prescribed by this chapter to retired members, to members who are eligible and expect to retire during the ensuing fiscal year, and to the dependents of deceased members.

(b) At the time when the estimates are prepared and submitted, the local board shall also prepare and submit a certified statement showing:

- (1) the estimated number of beneficiaries from the 1953 fund during the ensuing fiscal year in each of the various classifications of beneficiaries as prescribed in this chapter, and the names and amount of benefits being paid to those actively on the list of beneficiaries at that time;
- (2) the name, age, and length of service of each member of the police department who is eligible to and expects to retire during the ensuing fiscal year, and the monthly and yearly amounts of the payment that the member will be entitled to receive; and
- (3) the name and age of each dependent of a member of the police department who is then receiving benefits, the date on which the dependent commenced drawing benefits, and the date on which the dependent will cease to be a dependent by reason of attaining the age limit prescribed by this chapter, and the monthly and yearly amounts of the payments to which each of the dependents is entitled.

(c) After the amounts of receipts and disbursements shown in the itemized estimate are fixed and approved by the executive, fiscal officer, legislative body and other bodies, as provided by law for other municipal funds, the total receipts shall be deducted from the total expenditures stated in the itemized estimate, and the amount of the excess shall be paid by the police special service district in the same manner as other expenses of the district are paid. The legislative body shall levy a tax and the money derived from the levy shall, when collected, be credited exclusively to the 1953 fund, including the payments described in section 10.5 of this chapter. The tax shall be levied in the amount and at the rate that is necessary to produce sufficient revenue to equal the deficit. Notwithstanding any other law, neither the county board of tax adjustment nor the department of local government finance may reduce the tax levy.

*As added by Acts 1982, P.L. 77, SEC.9. Amended by P.L.90-2002,*

*SEC.490; P.L.1-2003, SEC.101; P.L.224-2007, SEC.126; P.L.146-2008, SEC.779; P.L.182-2009(ss), SEC.433.*

### **IC 36-8-7.5-10.5**

#### **Use of certain amounts in 1953 fund**

Sec. 10.5. (a) This section applies to a balance in the 1953 fund that:

- (1) accrued from property taxes;
- (2) is not necessary to meet the pension, disability, and survivor benefit payment obligations of the 1953 fund because of amendments to IC 5-10.3-11-4.7 in 2008; and
- (3) is determined under subsection (c).

(b) A local board may authorize the use of money in the 1953 fund to pay any or all of the following:

- (1) The costs of health insurance or other health benefits provided to members, survivors, and beneficiaries of the 1953 fund.
- (2) The consolidated city's employer contributions under IC 36-8-8-6.
- (3) The contributions paid by the consolidated city for a member under IC 36-8-8-8(a).

(c) The maximum amount that may be used under subsection (b) is equal to the sum of the following:

- (1) the unencumbered balance of the 1953 fund on December 31, 2008; plus
- (2) the amount of property taxes:
  - (A) imposed for an assessment date before January 16, 2008, for the benefit of the 1953 fund; and
  - (B) deposited in the 1953 fund after December 31, 2008.

*As added by P.L.182-2009(ss), SEC.434.*

### **IC 36-8-7.5-11**

#### **Investments of local board**

Sec. 11. (a) The local board shall determine how much of the 1953 fund may be safely invested and how much should be retained for the needs of the fund. The investment shall be made in interest bearing direct obligations of the United States, obligations or issues guaranteed by the United States, bonds of the state of Indiana or any political subdivision, or street, sewer, or other improvement bonds of the state of Indiana or any political subdivision. However, the local board may not invest in obligations issued by the consolidated city, the county, or any political subdivision in the county. Any securities shall be deposited with and remain in the custody of the treasurer of the local board, who shall collect the interest due on them as it becomes due and payable. The local board may sell any of the securities belonging to the 1953 fund and borrow money upon the securities as collateral whenever in the judgment of the local board this action is necessary to meet the cash requirements of the 1953 fund.

(b) The revenues derived from the tax levy authorized by section

10(c) of this chapter may not be invested but shall be used for the exclusive purpose of paying the pensions and benefits that the local board is obligated to pay. These revenues are in addition to all money derived from the income on the investments of the board.

(c) Investments under this section are subject to section 1.5 of this chapter.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.55-1989, SEC.58.*

### **IC 36-8-7.5-12**

#### **Voluntary retirement pension; emergency services**

Sec. 12. (a) Benefits paid under this section are subject to section 1.5 of this chapter.

(b) The 1953 fund shall be used to provide a member of the police department who retires from active duty after twenty (20) or more years of active duty an annual pension equal to fifty percent (50%) of the salary of a first class patrolman in the police department, plus:

(1) for a member who retires before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of the first class patrolman's salary for each six (6) months of service;

of the retired member over twenty (20) years. The pension may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman. The pensions shall be computed on an annual basis but shall be paid in twelve (12) equal monthly installments. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased.

(c) If a member retires upon his voluntary application after twenty (20) years or more of active service, he then relinquishes all rights to other benefits or pensions for disability during the time of his retirement.

(d) After retirement the member is not required to render further services on the police department and is no longer subject to the rules of the police department, unless a national emergency has been declared by the local board, on application by the executive, the safety board, and the police chief of the city. Upon declaration of such an emergency, the retired member, if physically able, shall return to active duty under the rank he attained at the time of his retirement, and if he refuses to return to active duty upon being declared physically fit, he forfeits his right to receive his pension until the time he returns to active duty and again is retired or discharged from service.

(e) No pension, annuity, or benefit provided by this chapter is payable by the local board except upon written application by the member of the police department, or the surviving spouse or other dependent, upon the forms and with the information required by the local board.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.342-1985, SEC.4; P.L.55-1989, SEC.59.*

### **IC 36-8-7.5-12.5**

#### **Reemployment after retirement**

Sec. 12.5. (a) Not less than thirty (30) days after a member retires from a police department covered by this chapter, the member may:

- (1) be rehired by the same consolidated city that employed the member as a police officer for a position other than that of a full-time, fully paid police officer; and
- (2) continue to receive the member's pension benefit under this chapter.

(b) This section may be implemented unless the local board receives from the Internal Revenue Service a determination that prohibits the implementation.

*As added by P.L.130-2008, SEC.6.*

### **IC 36-8-7.5-13**

#### **Disability retirement; benefits; procedure for determination of disability and reinstatement; period of disability credited**

Sec. 13. (a) For a member who becomes disabled before July 1, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to:

- (1) fifty percent (50%) for a disease or disability occurring before July 1, 1991; and
- (2) fifty-five percent (55%) for a disease or disability occurring after June 30, 1991;

of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(b) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered or contracted a mental or physical disease or disability that renders the member permanently unfit for active duty in the police department, or to an active member of the police department who has been in active service for less than one (1) year who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department.

(b) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

- (1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is:
  - (A) the direct result of:

- (i) a personal injury that occurs while the fund member is on duty;
- (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or
- (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
- (iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(c) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who has been in active service for at least one (1) year and:

- (1) has suffered or incurred a disability that:
  - (A) renders the member permanently unfit for active duty in the police department; and
  - (B) is not described in subsection (b)(1); and
- (2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as

the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(d) For a member who became disabled before July 1, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(a) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered any physical or mental disability that renders the member temporarily or permanently unable to perform the member's duties as a member of the police department, or to an active member of the police department who has been in active service for less than one (1) year and who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer, until the time the member is physically and mentally able to return to active service on the police department.

(e) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) suffers or incurs a disability that renders the member temporarily unfit for active duty in the police department and that is:

(A) the direct result of:

- (i) a personal injury that occurs while the fund member is on duty;
- (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or
- (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the

exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department:

(1) who has been in active service for at least one (1) year;

(2) suffers or incurs a disability that:

(A) renders the member temporarily unfit for active duty in the police department; and

(B) is not described in subsection (e)(1); and

(3) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(g) If an application is made by an active member of the police department because of physical or mental disability for temporary benefits as provided in subsection (d), (e), or (f), the benefit is not payable until the local board determines after a hearing conducted under IC 36-8-8-12.7 that the member is unfit for active duty on the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. Before the hearing, a physician to be appointed by the local board shall examine the member and certify in writing whether in the physician's opinion the member is unfit, physically or mentally, for active duty in the police department. After the pension or benefit has been granted by the local board, the payment commences with the original date of the injury or illness causing the disability.

(h) A member who has been granted a disability benefit under this section and who fails or refuses to submit to a physical examination at any time by the local board physician has no right in the future to receive the disability benefit, and any benefit that has been granted shall be immediately canceled by the local board.

(i) The local board may, from time to time, require a member of the police department who is receiving at any time disability benefits or pensions as provided in this section to be examined by the physician appointed by the local board. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the member should continue to receive the pension or benefit. If after the examination and hearing the member is found to have recovered from the member's disability and is fit for active duty on the police department, then upon written notice to the member by the local board, the member shall be reinstated in active service, the safety board shall be informed of the action of the local board, and from that time the member is no longer entitled to payments from the 1953 fund. If the member fails or refuses to return to active duty after ordered by the local board, the member ceases to be a member of the 1953 fund and waives all rights to any further pensions or benefits provided by the 1953 fund.

(j) Notwithstanding any other provision of this chapter, no disability benefit may be paid for any disability based upon or caused by any mental or physical condition that a member had at the time the member entered or reentered the member's active service in the police department.

(k) If a member who is receiving disability benefits under subsection (a), (b), or (c) for a disease or disability occurring after June 30, 1991, is transferred from disability to regular retirement status, the member's monthly pension may not be reduced below fifty-five percent (55%) of the salary of a first class patrolman at the time of payment of the pension.

(l) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

(m) A fund member who is receiving disability benefits under subsection (d) or (f) shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(n) A fund member who is receiving disability benefits under subsection (e) is entitled to:

- (1) receive a disability benefit for the remainder of the fund member's life; and
- (2) have the amount of the disability benefit computed under section 12 of this chapter when the fund member becomes fifty-five (55) years of age.

*As added by Acts 1982, P.L. 77, SEC. 9. Amended by P.L. 311-1989,*

*SEC.5; P.L.226-1991, SEC.1; P.L.4-1992, SEC.42; P.L.118-2000, SEC.17; P.L.246-2001, SEC.15; P.L.185-2002, SEC.9; P.L.62-2006, SEC.5.*

### **IC 36-8-7.5-13.2**

#### **Determination whether disability in line of duty**

Sec. 13.2. (a) If a local board determines that a fund member has a temporary or a permanent disability, the local board shall also make a recommendation to the 1977 fund advisory committee concerning whether the disability is:

- (1) a disability in the line of duty (as described in section 13(b)(1) of this chapter); or
- (2) a disability not in the line of duty (a disability other than a disability described in section 13(b)(1) of this chapter).

The local board shall forward its recommendation to the 1977 fund advisory committee.

(b) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(c) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (b) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

*As added by P.L.118-2000, SEC.18.*

### **IC 36-8-7.5-13.6**

#### **Members dying other than in line of duty**

Sec. 13.6. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 14.1 of this chapter).

(b) The 1953 fund shall be used to pay an annuity, computed under subsection (g) and payable in monthly installments, to the surviving spouse of a member of the fund who dies from any cause after having served for one (1) year or more. The annuity continues during the life of the surviving spouse unless the spouse remarried before September 1, 1983. If the spouse remarried before September 1, 1983, benefits ceased on the date of remarriage. If a member of the fund died, but not in the line of duty, and the member's surviving spouse remarried before September 1, 1983, the benefits of the surviving spouse shall be reinstated on July 1, 1997, and continue

during the life of the surviving spouse.

(c) The 1953 fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed as provided in section 12(b) of this chapter and payable in monthly installments, to each dependent child of a member of the fund who dies from any cause after having served for one (1) year or more as an active member of the police department. The pension to each child continues:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. However, the pension to the child ceases if the child marries or is legally adopted by any person.

(d) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the 1953 fund is used to pay an annuity not greater than a sum equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed and payable as provided in section 12(b) of this chapter, payable monthly to the dependent parent or parents of a member of the police department who dies from any cause after having served for one (1) year or more as an active member of the police department. The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance, and support.

(e) In all cases of payment to a dependent relative of a deceased member, the local board is the final judge of the question of necessity and dependency and of the amount within the stated limits to be paid. The local board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the 1953 fund or other circumstances make this action necessary.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(g) Except as otherwise provided in this subsection, the annuity payable under subsection (b) equals one (1) of the following:

- (1) For the surviving spouse of a member who dies before January 1, 1989, thirty percent (30%) of the salary of a first class patrolman.
- (2) For the surviving spouse of a member who dies after December 31, 1988, an amount per month during the spouse's life equal to the greater of:
  - (A) thirty percent (30%) of the monthly pay of a first class

patrolman; or

(B) fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death.

However, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for the purposes of computing the amount under subdivision (2)(B) the member's benefit is considered to be fifty percent (50%) of the monthly salary of a first class patrolman. The amount provided in this subdivision is subject to adjustment as provided in subsection (f).

*As added by P.L.118-2000, SEC.19. Amended by P.L.1-2001, SEC.44.*

### **IC 36-8-7.5-13.7**

#### **Members dying in line of duty before September 1, 1982**

Sec. 13.7. (a) This section applies to a member who died in the line of duty (as defined in section 14.1 of this chapter) before September 1, 1982.

(b) The 1953 fund shall be used to pay an annuity, computed under subsection (g) and payable in monthly installments, to the surviving spouse of a member. The annuity continues during the life of the surviving spouse unless the spouse remarried before September 1, 1983. If the spouse remarried before September 1, 1983, benefits ceased on the date of remarriage. If a member of the fund died, but not in the line of duty, and the member's surviving spouse remarried before September 1, 1983, the benefits of the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(c) The 1953 fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed as provided in section 12(b) of this chapter and payable in monthly installments, to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. However, the pension to the child ceases if the child marries or is legally adopted by any person.

(d) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the 1953 fund shall be used to pay an annuity not greater than a sum equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed

and payable as provided in section 12(b) of this chapter, payable monthly to the dependent parent or parents of a member of the police department. The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance, and support.

(e) In all cases of payment to a dependent relative of a deceased member, the local board is the final judge of the question of necessity and dependency and of the amount within the stated limits to be paid. The local board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the 1953 fund or other circumstances make this action necessary.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(g) The annuity payable under subsection (b) equals thirty percent (30%) of the salary of a first class patrolman. The amount provided in this subsection is subject to adjustment as provided in subsection (f).

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

*As added by P.L.118-2000, SEC.20. Amended by P.L.1-2001, SEC.45; P.L.86-2003, SEC.6.*

### **IC 36-8-7.5-13.8**

#### **Death benefits paid to beneficiary or estate of member**

Sec. 13.8. (a) Benefits paid under this section are subject to section 1.5 of this chapter.

(b) The 1953 fund shall be used to pay twelve thousand dollars (\$12,000) to the beneficiary or estate of a member of the fund, active

or retired, who:

- (1) dies from any cause after having served for one (1) year or more as an active member of the police department; or
- (2) dies from any cause while in the actual discharge of the member's duties as a police officer after having served less than one (1) year as an active member of the police department.

Any member of the fund may name a beneficiary to receive the amount provided for upon the member's death by designating in writing in such form as is prescribed by the local board and delivered to the board. The beneficiary may be changed from time to time by the member by canceling the designation and delivering a new designation to the local board. If the member makes no designation of beneficiary, the sum provided for shall be paid to the member's estate.

*As added by P.L.200-1984, SEC.4. Amended by P.L.346-1985, SEC.1; P.L.47-1988, SEC.4; P.L.55-1989, SEC.60; P.L.197-1993, SEC.5; P.L.169-1994, SEC.4; P.L.325-1995, SEC.1; P.L.231-1997, SEC.4; P.L.40-1997, SEC.8; P.L.49-1998, SEC.6; P.L.118-2000, SEC.21; P.L.28-2008, SEC.3.*

#### **IC 36-8-7.5-13.9**

##### **Repealed**

*(Repealed by P.L.200-1984, SEC.7.)*

#### **IC 36-8-7.5-14**

##### **Repealed**

*(Repealed by P.L.50-1984, SEC.11.)*

#### **IC 36-8-7.5-14.1**

##### **Members dying in line of duty after August 31, 1982**

Sec. 14.1. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a first class patrolman. If the spouse remarried before September 1, 1983, benefits ceased on the date of remarriage. However, if a member of the police department dies in the line of duty after August 31, 1982, and the member's surviving spouse remarried before September 1, 1983, the benefits for the surviving spouse shall be reinstated on July 1, 1995, and continue during the life of the surviving spouse.

(c) The 1953 fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed as provided in section 12(b) of this chapter and payable in monthly installments, to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. However, the pension to the child ceases if the child marries or is legally adopted by any person.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total benefit to all the member's children under this subsection may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who have a physical or mental disability.

(e) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the 1953 fund shall be used to pay an annuity not greater than a sum equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed and payable as provided in section 12(b) of this chapter, payable monthly to the dependent parent or parents of a member of the police department who dies from any cause while in the actual discharge of duties as a police officer. The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance, and support.

(f) In all cases of payment to a dependent relative of a deceased member, the local board is the final judge of the question of necessity and dependency and of the amount within the stated limits to be paid. The local board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the 1953 fund or other circumstances make this action necessary.

(g) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(h) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from any action that the member, in the member's capacity as a police officer:

- (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (2) performs in the course of controlling or reducing crime or enforcing the criminal law.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(i) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

*As added by Acts 1982, P.L.214, SEC.2. Amended by P.L.364-1983, SEC.6; P.L.200-1984, SEC.5; P.L.196-1988, SEC.3; P.L.1-1989, SEC.72; P.L.52-1993, SEC.5; P.L.325-1995, SEC.2; P.L.2-1996, SEC.292; P.L.118-2000, SEC.22; P.L.1-2001, SEC.46; P.L.62-2002, SEC.3; P.L.185-2002, SEC.10; P.L.86-2003, SEC.7; P.L.99-2007, SEC.218.*

#### **IC 36-8-7.5-15**

##### **Necessity of application; dismissed member of police department**

Sec. 15. (a) No pension, annuity, or benefit provided by this chapter is payable by the local board except upon written application by the member of the police department, or the surviving spouse or other dependent, upon the forms and with the information required by the local board.

(b) The 1953 fund shall be used to pay an amount equal to the pensions, annuities, and benefits provided by this chapter in the case of retirement after twenty (20) years service, to a member of the police department and to the dependents of a member, if the member is dismissed from service for any reason other than conviction of a felony after having been in actual service for twenty (20) years. If the member is dismissed for conviction of a felony, none of the pensions or other benefits provided for in this chapter are payable to the member, his beneficiaries, or his dependents.

*As added by Acts 1982, P.L.77, SEC.9.*

#### **IC 36-8-7.5-16**

##### **Reduction in monthly pension**

Sec. 16. The monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-17**

#### **Payments to dependent children or mentally incompetent persons; benefits where member dies before payments are made; payments where member is entitled to part salary; reentry into active service**

Sec. 17. (a) If benefits are payable to a dependent child under eighteen (18) years of age or to a person adjudged mentally incompetent, the local board may, when it is to the apparent interest of the dependent child or incompetent person, waive guardianship proceedings and pay the benefit directly to the person providing for and caring for the dependent child, and to the spouse, parent, or blood relative providing for and caring for the incompetent person. The local board may, if it finds it in the best interest of any dependent child, pay any benefits due to the dependent child directly to such child regardless of any other law.

(b) A member is not entitled to receive the benefits of this chapter until the member's payments are paid in full, unless the member has suffered permanent disability or death from any cause while in actual discharge of duties as a police officer. If the member dies before the required payments are made, the surviving spouse or other dependents shall pay any balance due and are then entitled to pension benefits.

(c) Notwithstanding any other provision of this chapter, no disability or retirement benefit of any kind provided for in this chapter may be paid to any member of the police department for any period during which the member receives or is entitled to receive all or any part of the member's salary.

(d) If any member reenters active service in the police department of any municipality after having been pensioned for any reason, the payment of the pension ceases but shall be resumed upon the resignation or discharge of the member.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.33-1989, SEC.127; P.L.1-1990, SEC.366.*

### **IC 36-8-7.5-18**

#### **Application for benefits other than for disability or voluntary retirement after 20 years**

Sec. 18. (a) In connection with an application for any pensions, annuities, or benefits other than for disability and other than voluntary retirement after twenty (20) years of active service in the police department, the local board may, if it is satisfied with the facts reported in the application made for the pension, annuity, or benefit, act upon the application and allow the pension, annuity, or benefits applied for.

(b) In connection with an application for the pensions, annuities, or benefits referred to in subsection (a), the local board may deny the application. If the local board denies the application, it may, and shall upon the written request of the applicant, hold a hearing on the application at which time it shall hear any evidence of the applicant or any other person as to the facts contained in the application, and as to any of the requirements stated in this chapter for receiving the

pension, annuity, or benefit. After the hearing the board shall decide whether the application shall be granted or denied.

(c) At any hearing held by the local board as provided in this chapter, the local board may subpoena witnesses, and examine all witnesses under oath, and any member of the local board may administer the oath to any witness at any hearing.

(d) The local board shall give due notice of the time and place of the hearing.

(e) The applicant is entitled to be present at the hearing, to be represented by counsel, to examine any witness testifying at the hearing, and to introduce any evidence upon his behalf as to any question properly before the local board. The local board shall, upon the request of the applicant, subpoena any witness requested in writing by the applicant to be present at the hearing.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-19**

#### **Attachment or garnishment of pensions, annuities, or benefits**

Sec. 19. All pensions, annuities, and benefits payable out of the 1953 fund are exempt from seizure or levy upon attachment, garnishment, execution, and all other process. Except as provided in section 23 of this chapter, pensions, annuities, and benefits are not subject to sale, assignment, or transfer by a beneficiary.

*As added by Acts 1982, P.L.77, SEC.9. Amended by P.L.10-1993, SEC.17; P.L.97-2004, SEC.129.*

### **IC 36-8-7.5-20**

#### **Benefits paid contrary to IC 36-8-7.5**

Sec. 20. Any pension, annuity, or benefit provided for in this chapter that is paid by the local board contrary to this chapter or on account of the fraud or misrepresentation by the member concerned or any other applicant shall be treated as erroneously paid, and the local board may recover the pension, annuity, or benefit in an action against the person to whom the benefit was paid or against the estate of the person. The local board may also deduct these amounts from any future pensions, annuities, or benefits properly payable to the member or his dependents.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-21**

#### **Remuneration or allowances not to be used in computation of benefits**

Sec. 21. (a) Remuneration or allowances for fringe benefits, incentive pay, holiday pay, insurance, clothing, automobiles, firearms, education, overtime, or compensatory time off may not be used in the computation of benefits under this chapter.

(b) If the remuneration or allowances described in subsection (a) were used to compute benefits for a recipient who began receiving benefits before May 2, 1977, this computation may continue only for that recipient and only during the eligibility period for benefits. The

city and the official involved are not liable for making the overpayment, and a recipient is not required to repay the overpayment.

*As added by Acts 1982, P.L.77, SEC.9.*

### **IC 36-8-7.5-22**

#### **Special lump sum death benefit in addition to other benefits**

Sec. 22. (a) As used in this section, "dies in the line of duty" has the meaning set forth in section 14.1 of this chapter.

(b) A special death benefit of seventy-five thousand dollars (\$75,000) for a fund member who dies in the line of duty before January 1, 1998, and one hundred fifty thousand dollars (\$150,000) for a fund member who dies in the line of duty after December 31, 1997, shall be paid in a lump sum by the public employees' retirement fund from the pension relief fund established under IC 5-10.3-11 to the following relative of a fund member who dies in the line of duty:

- (1) To the surviving spouse.
- (2) If there is no surviving spouse, to the surviving children (to be shared equally).
- (3) If there is no surviving spouse and there are no surviving children, to the parent or parents in equal shares.

(c) The benefit provided by this section is in addition to any other benefits provided under this chapter.

*As added by P.L.223-1986, SEC.3. Amended by P.L.225-1991, SEC.3; P.L.53-1993, SEC.4; P.L.49-1998, SEC.7.*

### **IC 36-8-7.5-23**

#### **Rollover to eligible retirement plan**

Sec. 23. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1953 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

*As added by P.L.10-1993, SEC.18.*