

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 188

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AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 36-8-8-12, AS AMENDED BY P.L.99-2007, SECTION 219, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

(b) If an active fund member has a covered impairment, as determined under sections 12.3 through 13.1 of this chapter, the member is entitled to receive the benefit prescribed by section 13.3 or 13.5 of this chapter. A member who has had a covered impairment and returns to active duty with the department shall not be treated as a new applicant seeking to become a member of the 1977 fund.

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the PERF board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable period in which a fund member with a disability is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

- (1) a plan or policy of insurance providing benefits for loss of time because of disability;

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- (2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's employer has made payroll deductions, including a group life policy providing installment payments for disability, a group annuity contract, or a pension or retirement annuity plan other than the fund established by this chapter;
- (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States Department of Veterans Affairs, or another federal, state, local, or other governmental agency;
- (4) worker's compensation payable under IC 22-3; and
- (5) a salary or wage, including overtime and bonus pay and extra or additional remuneration of any kind, the fund member receives or is entitled to receive from the member's employer.

For the purposes of this subsection, a retired fund member is considered eligible for benefits from subdivisions (1) through (5) whether or not the member has made application for the benefits.

(d) Notwithstanding any other law, a plan, policy of insurance, fund, or other arrangement:

- (1) delivered, issued for delivery, amended, or renewed after April 9, 1979; and
- (2) described in subsection (c)(1) or (c)(2);

may not provide for a reduction or alteration of benefits as a result of benefits for which a fund member may be eligible from the 1977 fund under subsection (c).

(e) Time spent receiving disability benefits, **not to exceed twenty (20) years**, is considered active service for the purpose of determining retirement benefits. ~~until the fund member has a total of twenty (20) years of service. A fund member's retirement benefit shall be based on:~~

- (1) the member's years of active service; plus**
- (2) if applicable, the period, not to exceed twenty (20) years, during which the member received disability benefits.**

(f) A fund member who is receiving disability benefits:

- (1) under section 13.3(d) of this chapter; or
- (2) based on a determination under this chapter that the fund member has a Class 3 impairment;

shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(g) A fund member who is receiving disability benefits:

- (1) under section 13.3(c) of this chapter; or
- (2) based on a determination under this chapter that the fund

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member has a Class 1 or Class 2 impairment;  
is entitled to receive a disability benefit for the remainder of the fund member's life **in the amount determined under the applicable sections of this chapter.**

SECTION 2. IC 36-8-8-13.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 12.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) A fund member who is determined to have a Class 1 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits

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instead of benefits provided under subsection (d):

- (1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.
- (2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:
  - (A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;
  - (B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and
  - (C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.
- (3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:
  - (A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and
  - (B) the Class 3 impairment occurs before the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.
- (4) A fund member is not entitled to a monthly base benefit for a Class 3 impairment if:
  - (A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and
  - (B) the Class 3 impairment is related in any manner to the Class 3 excludable condition.
- (5) If, during the first four (4) years of service with the employer:
  - (A) a fund member with a Class 3 excludable condition is determined to have a Class 3 impairment; and
  - (B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;

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the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an accidental injury. The local board shall forward the initial determination to the director of the PERF board for a final determination by the PERF board or the PERF board's designee.

(f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the PERF medical authority based on the degree of impairment.

(g) Benefits for a Class 1 impairment **as determined under this section** are payable ~~until for the remainder of the fund member becomes fifty-two (52) years of age:~~ **member's life.**

(h) Benefits for a Class 2 ~~and a Class 3~~ impairment are payable:

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) ~~until the member becomes fifty-two (52) years of age for the remainder of the fund member's life~~ if the fund member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

(i) **Benefits for a Class 3 impairment are payable:**

**(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or**

**(2) until the member becomes fifty-two (52) years of age if the member's benefit is:**

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- (A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment;**
- or**
- (B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.**

~~(h)~~ **(j)** Upon becoming fifty-two (52) years of age, a fund member with a ~~Class 1~~ or Class 2 impairment **determined under subsection (h)(1)** is entitled to receive the retirement benefit payable to a fund member with:

- (1) twenty (20) years of service; or
- (2) the total years of service **(including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits)** and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age;

whichever is greater.

~~(i)~~ **(k)** Upon becoming fifty-two (52) years of age, a fund member who is receiving or has received a Class 3 impairment benefit that is:

- (1) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or
- (2) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service;

is entitled to receive the retirement benefit payable to a fund member with twenty (20) years of service.

~~(j)~~ **(l)** Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

- (1) has had a covered impairment;
- (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 section 12.3(b)(3) of this chapter, would be a covered impairment;

is entitled to the benefit under this subsection 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

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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 section 15 of this chapter that would have been applicable during the member's period of reemployment.

SECTION 3. IC 36-8-8-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23. (a) This section applies to a fund member who:**

- (1) after June 30, 2009, receives a benefit based on a determination that the member has a Class 1 or Class 2 impairment, regardless of whether the determination was made before, on, or after June 30, 2009; and**
- (2) before July 1, 2009, has not had the member's disability benefit recalculated under section 13.5 of this chapter.**

**(b) Upon becoming fifty-two (52) years of age, a fund member receiving a Class 1 impairment benefit or Class 2 impairment benefit under section 13.5(h)(2) of this chapter is entitled to receive a monthly supplemental benefit determined in STEP THREE of the following formula:**

**STEP ONE: Determine the greater of:**

- (A) the monthly retirement benefit payable to a fund member with twenty (20) years of service; or**
- (B) the monthly retirement benefit payable to a fund member with the total years of service (including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits) and salary, as of the year the fund member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age.**

**STEP TWO: Subtract from the amount determined under STEP ONE the amount of any monthly benefit determined under section 13.5 of this chapter that the fund member is entitled to receive for the remainder of the fund member's life.**

**STEP THREE: Determine the greater of the following:**

- (A) The remainder determined under STEP TWO.**
- (B) Zero (0).**

**(c) A monthly supplemental benefit determined under this section is payable for the remainder of the fund member's life.**

SECTION 4. [EFFECTIVE JULY 1, 2009] IC 36-8-8-12 and IC 36-8-8-13.5, both as amended by this act, apply to a member of the 1977 police officers' and firefighters' pension and disability

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**fund who:**

- (1) after June 30, 2009, receives a benefit based on a determination that the member has a Class 1 or Class 2 impairment, regardless of whether the determination was made before, on, or after June 30, 2009; and**
- (2) before July 1, 2009, has not had the member's disability benefit recalculated under IC 36-8-8-13.5 (as the section read before amendment by this act).**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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