



February 25, 2020

**ENGROSSED
SENATE BILL No. 25**

DIGEST OF SB 25 (Updated February 25, 2020 9:55 am - DI 128)

Citations Affected: IC 36-8.

Synopsis: Mental health disability review panels. Establishes mental health disability review panels (review panel) for evaluation of members of the 1977 police officers' and firefighters' pension and disability fund (1977 fund) who have been determined to have an impairment for mental illness. Includes mental illness in the description of "occupational diseases" for purposes of determining whether a 1977 fund member has an impairment. Makes the final determination of an impairment for a mental illness provisional for two years: (1) beginning July 1, 2020, for a final determination made after December 31, 2012, and before July 1, 2020; or (2) from the date of the final determination, for a final determination made after June 30, 2020. Requires that, during that time, the 1977 fund member participate in a mental health treatment plan, at the employer's cost, and at the end of the two year period, requires the review panel to evaluate the 1977 fund member to determine if the 1977 fund member: (1) is medically able to return to
(Continued next page)

Effective: July 1, 2020.

**Boots, Garten, Tallian, Doriot,
Niezgodski, Ford J.D.,
Randolph Lonnie M**

(HOUSE SPONSORS — FRYE R, SMALTZ, STEUERWALD)

January 6, 2020, read first time and referred to Committee on Pensions and Labor.
January 9, 2020, amended, reported favorably — Do Pass.
January 13, 2020, read second time, ordered engrossed. Engrossed.
January 14, 2020, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 4, 2020, read first time and referred to Committee on Employment, Labor and Pensions.
February 25, 2020, amended, reported — Do Pass.

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Digest Continued

duty; or (2) may continue for another two year provisional disability period. Requires that, at the end of the second provisional period, the review panel evaluate the 1977 fund member to determine if the 1977 fund member: (1) is medically able to return to duty; or (2) has a permanent impairment. Provides that the evaluations conducted by the mental health disability review panels are confidential. Provides that the board of trustees of the Indiana public retirement system may suspend a 1977 fund member's disability benefits if the member fails to comply with reasonable requests for information by the mental health disability review panel. (The introduced version of this bill was prepared by the interim study committee on pension management oversight.)



February 25, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 25

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

- 1 SECTION 1. IC 36-8-8-12.5, AS AMENDED BY P.L.59-2009,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 12.5. (a) This section applies only to a fund
4 member who:
5 (1) is hired for the first time after December 31, 1989;
6 (2) chooses coverage by this section and section 13.5 of this
7 chapter under section 12.4 of this chapter; or
8 (3) is described in section 12.3(c)(2) of this chapter.
9 (b) At the same hearing where the determination of whether the
10 fund member has a covered impairment is made, the local board shall
11 determine the following:
12 (1) Whether the fund member has a Class 1 impairment. A Class
13 1 impairment is a covered impairment that is the direct result of
14 one (1) or more of the following:
15 (A) A personal injury that occurs while the fund member is on
16 duty.
17 (B) A personal injury that occurs while the fund member is off

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- 1 duty and is responding to:
- 2 (i) an offense or a reported offense, in the case of a police
- 3 officer; or
- 4 (ii) an emergency or reported emergency for which the fund
- 5 member is trained, in the case of a firefighter.
- 6 (C) An occupational disease (as defined in IC 22-3-7-10). A
- 7 covered impairment that is included within this clause and
- 8 subdivision (2), **including mental illnesses**, shall be
- 9 considered a Class 1 impairment.
- 10 (D) A health condition caused by an exposure risk disease that
- 11 results in a presumption of disability or death incurred in the
- 12 line of duty under IC 5-10-13.
- 13 (2) Whether the fund member has a Class 2 impairment. A Class
- 14 2 impairment is a covered impairment that is:
- 15 (A) a duty related disease. A duty related disease means a
- 16 disease arising out of the fund member's employment. A
- 17 disease shall be considered to arise out of the fund member's
- 18 employment if it is apparent to the rational mind, upon
- 19 consideration of all of the circumstances, that:
- 20 (i) there is a connection between the conditions under which
- 21 the fund member's duties are performed and the disease;
- 22 (ii) the disease can be seen to have followed as a natural
- 23 incident of the fund member's duties as a result of the
- 24 exposure occasioned by the nature of the fund member's
- 25 duties; and
- 26 (iii) the disease can be traced to the fund member's
- 27 employment as the proximate cause; or
- 28 (B) a health condition caused by:
- 29 (i) an exposure related heart or lung disease;
- 30 (ii) an exposure related cancer; or
- 31 (iii) exposure related Parkinson's disease;
- 32 that results in a presumption of disability incurred in the line
- 33 of duty under IC 5-10-15.
- 34 (3) Whether the fund member has a Class 3 impairment. A Class
- 35 3 impairment is a covered impairment that is not a Class 1
- 36 impairment or a Class 2 impairment.
- 37 SECTION 2. IC 36-8-8-13.1, AS AMENDED BY P.L.179-2018,
- 38 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 39 JULY 1, 2020]: Sec. 13.1. (a) If:
- 40 (1) the local board has determined under this chapter that a
- 41 covered impairment exists and the safety board has determined
- 42 that there is no suitable and available work within the department,



- 1 considering reasonable accommodation to the extent required by
 2 the Americans with Disabilities Act; or
 3 (2) the fund member has filed an appeal under section 12.7(o) of
 4 this chapter;
 5 the local board shall submit the local board's determinations and the
 6 safety board's determinations to the system board's director.
- 7 (b) Whenever a fund member is determined to have an impairment
 8 under section 12.7(i) of this chapter, the system board's director shall
 9 initiate a review of the default award not later than sixty (60) days after
 10 the director learns of the default award.
- 11 (c) After the system board's director receives the determinations
 12 under subsection (a) or initiates a review under subsection (b), the fund
 13 member must submit to an examination by a medical authority selected
 14 by the system board. The authority shall determine if there is a covered
 15 impairment. With respect to a fund member who is covered by sections
 16 12.5 and 13.5 of this chapter, the authority shall determine the degree
 17 of impairment. The system board shall adopt rules to establish
 18 impairment standards, such as the impairment standards contained in
 19 the United States Department of Veterans Affairs Schedule for Rating
 20 Disabilities. The report of the examination shall be submitted to the
 21 system board's director. If a fund member refuses to submit to an
 22 examination, the authority may find that no impairment exists.
- 23 (d) The system board's director shall review the medical authority's
 24 report and the local board's determinations and issue an initial
 25 determination within sixty (60) days after receipt of the local board's
 26 determinations. The system board's director shall notify the local board,
 27 the safety board, and the fund member of the initial determination. The
 28 following provisions apply if the system board's director does not issue
 29 an initial determination within sixty (60) days and if the delay is not
 30 attributable to the fund member or the safety board:
- 31 (1) In the case of a review initiated under subsection (a)(1):
 32 (A) the determinations of the local board and the chief of the
 33 police or fire department are considered to be the initial
 34 determination; and
 35 (B) for purposes of section 13.5(d) of this chapter, the fund
 36 member is considered to be totally impaired.
- 37 (2) In the case of an appeal submitted under subsection (a)(2), the
 38 statements made by the fund member under section 12.7(o) of this
 39 chapter are considered to be the initial determination.
- 40 (3) In the case of a review initiated under subsection (b), the
 41 initial determination is the impairment determined under section
 42 12.7(i) of this chapter.



1 (e) The fund member, the safety board, or the local board may
 2 object in writing to the director's initial determination within fifteen
 3 (15) days after the determination is issued. If no written objection is
 4 filed, the initial determination becomes the final order of the system
 5 board. If a timely written objection is filed, the system board shall issue
 6 the final order after a hearing. Unless an administrative law judge
 7 orders a waiver or an extension of the period for cause shown, the final
 8 order shall be issued not later than one hundred eighty (180) days after
 9 the date of receipt of the local board's determination or the date the
 10 system board's director initiates a review under subsection (b). The
 11 following provisions apply if a final order is not issued within the time
 12 limit described in this subsection and if the delay is not attributable to
 13 the fund member or the chief of the police or fire department:

14 (1) In the case of a review initiated under subsection (a)(1):

15 (A) the determinations of the local board and the chief of the
 16 police or fire department are considered to be the final order;
 17 and

18 (B) for purposes of section 13.5(f) of this chapter, the fund
 19 member is considered to be totally impaired.

20 (2) In the case of an appeal submitted under subsection (a)(2), the
 21 statements made by the fund member under section 12.7(o) of this
 22 chapter are considered to be the final order.

23 (3) In the case of a review initiated under subsection (b), the
 24 impairment determined under section 12.7(i) of this chapter is
 25 considered to be the final order.

26 (f) If the system board approves the director's initial determination,
 27 then the system board shall issue a final order adopting the initial
 28 determination. The local board and the chief of the police or fire
 29 department shall comply with the initial determination. If the system
 30 board does not approve the initial determination, the system board may
 31 receive additional evidence on the matter before issuing a final order.

32 (g) Appeals of the system board's final order may be made under
 33 IC 4-21.5.

34 (h) The transcripts, records, reports, and other materials compiled
 35 under this section must be retained in accordance with the procedures
 36 specified in section 12.7(p) of this chapter.

37 **(i) The system board may seek the assistance of the mental**
 38 **health disability review panel established under IC 36-8-8.3-4 in**
 39 **issuing an initial determination or a final order.**

40 SECTION 3. IC 36-8-8.3 IS ADDED TO THE INDIANA CODE
 41 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2020]:

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Chapter 8.3. Impairment Determination for Mental Illness

Sec. 1. This chapter applies to a 1977 fund member who receives a final determination of an impairment for a mental health illness under IC 36-8-8-13.1 after December 31, 2012.

Sec. 2. As used in this chapter, "review panel" refers to a mental health disability review panel established under section 4 of this chapter.

Sec. 3. As used in this chapter, "system board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

Sec. 4. (a) This chapter provides for the establishment of mental health disability review panels to review impairment determinations in the case of a mental health disability.

(b) A mental health disability review panel consists of:

- (1) one (1) psychologist licensed under IC 25-33-1-5.1;**
- (2) one (1) psychiatrist licensed as a physician under IC 25-22.5; and**
- (3) one (1) active or retired police officer or firefighter who is a member of the 1977 fund, depending on the profession of the fund member being evaluated.**

(c) A mental health disability review panel shall be selected by the system board.

(d) Compensation shall be determined by the system board.

(e) A mental health disability review panel established under this chapter is not a governing body under IC 5-14-1.5-2(b).

Sec. 5. (a) The final determination of an impairment for a mental illness is provisional for two (2) years:

- (1) for a final determination made after June 30, 2020, from the date of the final determination by the system board under IC 36-8-8-13.1; or**
- (2) for a final determination made after December 31, 2012, and before July 1, 2020, beginning July 1, 2020.**

(b) During the initial two (2) year provisional period, the fund member shall be subject to and responsible for active participation in a mental health treatment plan as determined by the fund member's treating physician.

(c) The employer shall pay for the fund member's mental health care and treatment relating to the disability during the initial two (2) year provisional period.

Sec. 6. (a) At the conclusion of the initial two (2) year provisional period described in section 5 of this chapter, a mental health disability review panel, as described in section 4 of this



1 chapter, shall conduct a confidential evaluation of the fund
2 member.

3 (b) The review panel:

4 (1) shall examine reports and records submitted by the fund
5 member's treating physician, and any other mental health
6 care provider seen by the fund member; and

7 (2) may consult with other medical authorities;
8 in conducting its confidential evaluation.

9 Sec. 7. (a) If the review panel determines the fund member is no
10 longer impaired, the review panel shall notify the system board and
11 the local board, and the fund member shall be returned to duty.

12 (b) If the review panel determines the fund member remains
13 impaired consistent with the final disability determination, the
14 fund member shall begin an additional two (2) year provisional
15 period from the date of the review panel's determination. The fund
16 member shall continue to be subject to and responsible for active
17 participation in a mental health treatment plan as determined by
18 the fund member's treating physician.

19 (c) The employer shall continue to pay for the fund member's
20 mental health care and treatment relating to the disability during
21 the second two (2) year provisional period.

22 Sec. 8. At the conclusion of the fund member's second two (2)
23 year provisional period, the review panel shall reevaluate the fund
24 member. The review panel shall conduct its confidential
25 reevaluation in the manner described in section 6(b) of this
26 chapter.

27 Sec. 9. (a) If, after the second evaluation, the review panel
28 determines the fund member is no longer impaired, the review
29 panel shall notify the system board and the local board, and the
30 fund member shall be returned to duty.

31 (b) If the review panel determines the fund member remains
32 impaired consistent with the final disability determination, the
33 fund member shall be determined to have a permanent
34 impairment.

35 Sec. 10. The system board may, during the provisional periods
36 described in sections 5 and 7 of this chapter, suspend a member's
37 disability benefit if the member fails to comply with reasonable
38 requests by the review panel for information pursuant to its
39 authority under this chapter.



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 25, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 4, delete "June 30, 2020." and insert "**December 31, 2012.**".

Page 5, delete lines 24 through 26, begin a new paragraph and insert:

"Sec. 5. (a) The final determination of an impairment for a mental illness is provisional for two (2) years:

(1) for a final determination made after June 30, 2020, from the date of the final determination by the system board under IC 36-8-8-13.1; or

(2) for a final determination made after December 31, 2012, and before July 1, 2020, beginning July 1, 2020."

and when so amended that said bill do pass.

(Reference is to SB 25 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 8, Nays 2.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 25, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, between lines 23 and 24, begin a new paragraph and insert:

"(e) A mental health disability review panel established under this chapter is not a governing body under IC 5-14-1.5-2(b)."

Page 5, line 41, delete "evaluate" and insert "**conduct a confidential evaluation of**".

Page 6, line 5, after "its" insert "**confidential**".

Page 6, line 21, after "its" insert "**confidential**".

Page 6, after line 30, begin a new paragraph and insert:

"Sec. 10. The system board may, during the provisional periods described in sections 5 and 7 of this chapter, suspend a member's

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disability benefit if the member fails to comply with reasonable requests by the review panel for information pursuant to its authority under this chapter."

and when so amended that said bill do pass.

(Reference is to SB 25 as printed January 10, 2020.)

VANNATTER

Committee Vote: yeas 13, nays 0.

