



February 19, 2021

SENATE BILL No. 396

DIGEST OF SB 396 (Updated February 18, 2021 4:11 pm - DI 144)

Citations Affected: IC 36-8.

Synopsis: 1977 pension and disability fund. Amends the definition of "salary of a first class patrolman or first class firefighter" for the purpose of benefits paid from and contributions made to the 1977 police officers' and firefighters' pension and disability fund (fund). Changes the maximum age for an applicant to a police department from 35 to 39 years of age. Requires an employer that participates in the fund and provides longevity increases to pay an amount greater than or equal to the longevity increase paid in the previous year. Requires employers to provide reports or records requested by the system board, and permits the system board to fine the employer for each day that reports or records are late. Provides that an alleged failure of an employer to make required payments to the 1977 fund may be examined by the state board of accounts or by the Indiana public retirement system. Requires employers to submit, both annually and at the request of the system board, the salary of a first class patrolman or firefighter.

Effective: Upon passage.

Boots

January 14, 2021, read first time and referred to Committee on Pensions and Labor.
February 11, 2021, reassigned to Committee on Appropriations pursuant to Rule 68(b).
February 18, 2021, amended, reported favorably — Do Pass.

SB 396—LS 6839/DI 137



February 19, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 396

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

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

1 SECTION 1. IC 36-8-1-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) "Salary of
3 a first class patrolman or first class firefighter" means the ~~base salary~~
4 ~~of a patrolman or firefighter plus all longevity increases; highest~~
5 **nonpromoted salary of a patrolman or firefighter plus up to**
6 **twenty-five (25) years of longevity increases**, if provided by the
7 employer, ~~for service of twenty (20) years or less~~; but does not include
8 remuneration or allowances for fringe benefits, incentive pay, holiday
9 pay, insurance, clothing, automobiles, firearms, education, overtime,
10 or compensatory time off.

11 (b) With respect to the 1925, 1937, and 1953 funds, "salary of a first
12 class patrolman or firefighter" may include longevity increases for
13 more than twenty (20) years of service at the option of the employer but
14 only if these longevity increases had taken effect before January 1,
15 1983.

16 SECTION 2. IC 36-8-3.5-12, AS AMENDED BY P.L.127-2017,
17 SECTION 230, IS AMENDED TO READ AS FOLLOWS

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1 [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Subject to IC 36-8-4.7,
2 to be appointed to the department, an applicant must be:

- 3 (1) a citizen of the United States;
4 (2) a high school graduate or equivalent; and
5 (3) at least:
6 (A) twenty-one (21) years of age, but under thirty-six (36)
7 years of age, **if the person is an applicant to the fire**
8 **department; or**
9 (B) **twenty-one (21) years of age, but under forty (40) years**
10 **of age, if the person is an applicant to the police**
11 **department.**

12 However, the age requirements do not apply to a person who has been
13 previously employed as a member of the department.

14 (b) A person may not be appointed, reappointed, or reinstated if the
15 person has a felony conviction on the person's record.

16 (c) Applications for appointment or reappointment to the
17 department must be filed with the commission. The applicant must
18 produce satisfactory proof of the date and place of the applicant's birth.

19 (d) Applicants for appointment or reappointment to the department
20 must pass the general aptitude test required under IC 36-8-3.2-3 or
21 IC 36-8-3.2-3.5. The general aptitude test shall:

- 22 (1) reflect the essential functions of the job;
23 (2) be conducted according to procedures adopted by the
24 commission; and
25 (3) be administered in a manner that reasonably accommodates
26 the needs of applicants with a disability.

27 The results of the general aptitude test shall be filed with the
28 commission. If the commission finds that the applicant lacks the proper
29 qualifications, it shall reject the applicant.

30 (e) The applicants shall then be rated on the selection criteria and
31 testing methods adopted by the commission, which may include mental
32 alertness, character, habits, and reputation. The commission shall adopt
33 rules for grading the applicants, including the establishment of a
34 passing score. The commission shall place the names of applicants with
35 passing scores on an eligibility list by the order of their scores and shall
36 certify the list to the safety board.

37 (f) This subsection is subject to IC 36-8-4.7. If an applicant for
38 original appointment **to the fire department** reaches the applicant's
39 thirty-sixth birthday, the applicant's name shall be removed from the
40 eligibility list. **If an applicant for original appointment to the police**
41 **department reaches the applicant's fortieth birthday, the**
42 **applicant's name shall be removed from the eligibility list.**



1 Applicants remain on the list for two (2) years from the date of
2 certification. After two (2) years a person may reapply as an applicant.

3 (g) When a vacancy occurs in the department, the commission, upon
4 a written request of the chief of the department, shall administer the
5 physical agility test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 to the
6 applicant having the highest score on the eligibility list. If the
7 appointed applicant successfully completes the physical agility test, the
8 applicant shall then be enrolled as a member of the department to fill
9 the vacancy if:

10 (1) the applicant is still of good character; and

11 (2) the applicant passes the required examinations identified in
12 IC 36-8-3.2-6 and IC 36-8-8-19.

13 (h) All appointments are probationary for a period not to exceed one
14 (1) year. If the commission finds, upon the recommendation of the
15 department during the probationary period, that the conduct or capacity
16 of the probationary member is not satisfactory, the commission shall
17 notify the member in writing that the member:

18 (1) is being reprimanded;

19 (2) is being suspended; or

20 (3) will not receive a permanent appointment.

21 If a member is notified that the member will not receive a permanent
22 appointment, the member's employment immediately ceases.
23 Otherwise, at the expiration of the probationary period the member is
24 considered regularly employed.

25 SECTION 3. IC 36-8-4-7, AS AMENDED BY P.L.115-2016,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 UPON PASSAGE]: Sec. 7. (a) Subject to IC 36-8-4.7, a person may not
28 be appointed as a member of the:

29 (1) ~~police department or fire department~~ after the person has
30 reached thirty-six (36) years of age; or

31 (2) **police department after the person has reached forty (40)**
32 **years of age.**

33 A person may be reappointed as a member of the department only if the
34 person is a former member or a retired member not yet receiving
35 retirement benefits of the 1925, 1937, 1953, or 1977 fund and can
36 complete twenty (20) years of service before reaching sixty (60) years
37 of age.

38 (b) This section does not apply to a fire chief appointed under a
39 waiver under section 6(c) of this chapter or a police chief appointed
40 under a waiver under section 6.5(c) of this chapter.

41 (c) A person must pass the aptitude, physical agility, and physical
42 examination required by the local board of the fund and by



1 IC 36-8-8-19 to be appointed or reappointed as a member of the
2 department.

3 (d) A fire chief appointed under a waiver under section 6(c) of this
4 chapter or police chief appointed under a waiver under section 6.5(c)
5 of this chapter who is receiving, or is entitled to receive, benefits from
6 the 1925, 1937, 1953, or 1977 fund may receive those benefits while
7 serving as chief, subject to all normal requirements for receipt of a
8 benefit, including a separation from service.

9 SECTION 4. IC 36-8-8-3, AS AMENDED BY P.L.130-2015,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]: Sec. 3. (a) If a town establishes a board of
12 metropolitan police commissioners, or if a town becomes a city, the
13 municipality shall participate in the 1977 fund. However, if a police
14 officer or former marshal is a member of the public employees'
15 retirement fund, the police officer or former marshal may continue as
16 a member of that fund instead of the 1977 fund. Notwithstanding the
17 age requirements under section 7(a) of this chapter, a police officer or
18 former marshal employed by a municipality at the time the
19 municipality enters the 1977 fund under this section shall be a member
20 of the 1977 fund unless the police officer or former marshal elects to
21 continue as a member of the public employees' retirement fund. A
22 person may become a member of the 1977 fund under this subsection
23 without meeting the age limitation under section 7(a) of this chapter
24 only if the person satisfies:

- 25 (1) any aptitude, physical agility, or physical and mental standards
26 established by a local board under IC 36-8-3.2; and
27 (2) the minimum standards that are:
28 (A) adopted by the system board under section 19 of this
29 chapter; and
30 (B) in effect on the date the person becomes a member of the
31 1977 fund.

32 Credit for prior service of a person who becomes a member of the 1977
33 fund under this subsection shall be determined under section 18 or 18.1
34 of this chapter. No service credit beyond that allowed under section 18
35 or 18.1 of this chapter may be recognized under the 1977 fund.

36 (b) If a unit did not establish a 1937 fund for its firefighters, the unit
37 may participate in the public employees' retirement fund or it may
38 participate in the 1977 fund. If a unit established a 1937 fund for its
39 firefighters, the unit is and shall remain a participant in the 1977 fund.

- 40 (c) A unit that:
41 (1) has not established a pension fund for its firefighters; or
42 (2) is participating in the public employees' retirement fund under



1 subsection (b);
 2 may participate in the 1977 fund upon approval by the fiscal body,
 3 notwithstanding IC 5-10.3-6-8. A unit that participates in the 1977 fund
 4 under this subsection must comply with section 21 of this chapter.
 5 However, if a police officer or firefighter is a member of the public
 6 employees' retirement fund, the police officer or firefighter may
 7 continue as a member of that fund instead of the 1977 fund.

8 **(d) If a unit that participates in the 1977 fund provides longevity**
 9 **increases, the amount of the longevity increase provided in a year**
 10 **must be greater than or equal to the amount of the longevity**
 11 **increase provided in the previous year.**

12 SECTION 5. IC 36-8-8-6, AS AMENDED BY P.L.35-2012,
 13 SECTION 118, IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Each employer shall
 15 annually on March 31, June 30, September 30, and December 31, for
 16 the calendar quarters ending on those dates, or an alternate date
 17 established by the rules of the system board, pay into the 1977 fund an
 18 amount determined by the system board:

- 19 (1) for administration expenses; and
 20 (2) sufficient to maintain level cost funding during the period of
 21 employment on an actuarial basis for members hired after April
 22 30, 1977.

23 (b) After December 31, 2011, each employer shall submit the
 24 payments required by subsection (a) by electronic funds transfer.

25 **(c) After June 30, 2021, an employer must provide to the system**
 26 **board any reports or records requested by the system board. The**
 27 **requested reports or records must be provided to the system**
 28 **board:**

- 29 (1) not more than thirty (30) days after the end of the
 30 calendar quarter, if applicable; or
 31 (2) by an alternate due date established by the rules of the
 32 system board.

33 **The reports or records requested by the system board must be**
 34 **provided through a secure connection over the Internet or through**
 35 **other electronic means specified by the system board.**

36 **(d) If the employer does not provide the reports or records**
 37 **specified in subsection (c), the system board may fine the employer**
 38 **or department one hundred dollars (\$100) for each day that the**
 39 **reports or records are late, to be withheld under subsection (e).**

40 **(e) If an employer fails to make the payments or provide the**
 41 **reports and membership records as required by subsection**
 42 **subsections (a) or (c) or fails to send the fund members' contributions**



1 required by section 8(a) of this chapter, the amount payable, on request
2 of the system board, may be withheld by the auditor of state from
3 money payable to the employer and transferred to the fund. In the
4 alternative, the amount payable may be recovered in the circuit or
5 superior court of the county in which the employer is located, in an
6 action by the state on the relation of the system board, prosecuted by
7 the attorney general.

8 **(f) In addition to the right of recovery in subsection (e), an**
9 **alleged failure of an employer to make the payments required by**
10 **subsection (a) may be examined by the state board of accounts**
11 **under IC 5-11-1 or by the Indiana public retirement system as**
12 **necessary to confirm compliance with subsection (a).**

13 SECTION 6. IC 36-8-8-6.5 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
15 UPON PASSAGE]: **Sec. 6.5. (a) An employer shall annually submit**
16 **to the system board before January 1 the salary of a first class**
17 **patrolman or first class firefighter.**

18 **(b) If the system board requests that an employer submit the**
19 **salary of a first class patrolman or first class firefighter, the**
20 **employer must submit the requested salary to the system board not**
21 **more than thirty (30) days after the system board makes the**
22 **request.**

23 **(c) The submissions in subsections (a) and (b) must be made**
24 **through a secure connection over the Internet or through other**
25 **electronic means specified by the system board.**

26 **(d) If an employer substantially increases the salary of a first**
27 **class patrolman or first class firefighter, the system board may**
28 **require the employer to at least maintain that salary to avoid a**
29 **negative fiscal impact.**

30 SECTION 7. **An emergency is declared for this act."**



REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 396, currently assigned to the Committee on Pensions and Labor, be reassigned to the Committee on Appropriations.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 396, 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:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 2. IC 36-8-3.5-12, AS AMENDED BY P.L.127-2017, SECTION 230, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Subject to IC 36-8-4.7, to be appointed to the department, an applicant must be:

- (1) a citizen of the United States;
- (2) a high school graduate or equivalent; and
- (3) at least:
 - (A) twenty-one (21) years of age, but under thirty-six (36) years of age, **if the person is an applicant to the fire department; or**
 - (B) **twenty-one (21) years of age, but under forty (40) years of age, if the person is an applicant to the police department.**

However, the age requirements do not apply to a person who has been previously employed as a member of the department.

(b) A person may not be appointed, reappointed, or reinstated if the person has a felony conviction on the person's record.

(c) Applications for appointment or reappointment to the department must be filed with the commission. The applicant must produce satisfactory proof of the date and place of the applicant's birth.

(d) Applicants for appointment or reappointment to the department must pass the general aptitude test required under IC 36-8-3.2-3 or

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IC 36-8-3.2-3.5. The general aptitude test shall:

- (1) reflect the essential functions of the job;
- (2) be conducted according to procedures adopted by the commission; and
- (3) be administered in a manner that reasonably accommodates the needs of applicants with a disability.

The results of the general aptitude test shall be filed with the commission. If the commission finds that the applicant lacks the proper qualifications, it shall reject the applicant.

(e) The applicants shall then be rated on the selection criteria and testing methods adopted by the commission, which may include mental alertness, character, habits, and reputation. The commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the names of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the safety board.

(f) This subsection is subject to IC 36-8-4.7. If an applicant for original appointment **to the fire department** reaches the applicant's thirty-sixth birthday, the applicant's name shall be removed from the eligibility list. **If an applicant for original appointment to the police department reaches the applicant's fortieth birthday, the applicant's name shall be removed from the eligibility list.** Applicants remain on the list for two (2) years from the date of certification. After two (2) years a person may reapply as an applicant.

(g) When a vacancy occurs in the department, the commission, upon a written request of the chief of the department, shall administer the physical agility test under IC 36-8-3.2-3 or IC 36-8-3.2-3.5 to the applicant having the highest score on the eligibility list. If the appointed applicant successfully completes the physical agility test, the applicant shall then be enrolled as a member of the department to fill the vacancy if:

- (1) the applicant is still of good character; and
- (2) the applicant passes the required examinations identified in IC 36-8-3.2-6 and IC 36-8-8-19.

(h) All appointments are probationary for a period not to exceed one (1) year. If the commission finds, upon the recommendation of the department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify the member in writing that the member:

- (1) is being reprimanded;
- (2) is being suspended; or
- (3) will not receive a permanent appointment.

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If a member is notified that the member will not receive a permanent appointment, the member's employment immediately ceases. Otherwise, at the expiration of the probationary period the member is considered regularly employed.

SECTION 3. IC 36-8-4-7, AS AMENDED BY P.L.115-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to IC 36-8-4.7, a person may not be appointed as a member of the:

- (1) ~~police department or~~ fire department after the person has reached thirty-six (36) years of age; or
- (2) police department after the person has reached forty (40) years of age.**

A person may be reappointed as a member of the department only if the person is a former member or a retired member not yet receiving retirement benefits of the 1925, 1937, 1953, or 1977 fund and can complete twenty (20) years of service before reaching sixty (60) years of age.

(b) This section does not apply to a fire chief appointed under a waiver under section 6(c) of this chapter or a police chief appointed under a waiver under section 6.5(c) of this chapter.

(c) A person must pass the aptitude, physical agility, and physical examination required by the local board of the fund and by IC 36-8-8-19 to be appointed or reappointed as a member of the department.

(d) A fire chief appointed under a waiver under section 6(c) of this chapter or police chief appointed under a waiver under section 6.5(c) of this chapter who is receiving, or is entitled to receive, benefits from the 1925, 1937, 1953, or 1977 fund may receive those benefits while serving as chief, subject to all normal requirements for receipt of a benefit, including a separation from service."

Page 3, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 5. IC 36-8-8-6, AS AMENDED BY P.L.35-2012, SECTION 118, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Each employer shall annually on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, or an alternate date established by the rules of the system board, pay into the 1977 fund an amount determined by the system board:

- (1) for administration expenses; and
- (2) sufficient to maintain level cost funding during the period of employment on an actuarial basis for members hired after April 30, 1977.



(b) After December 31, 2011, each employer shall submit the payments required by subsection (a) by electronic funds transfer.

(c) After June 30, 2021, an employer must provide to the system board any reports or records requested by the system board. The requested reports or records must be provided to the system board:

- (1) not more than thirty (30) days after the end of the calendar quarter, if applicable; or**
- (2) by an alternate due date established by the rules of the system board.**

The reports or records requested by the system board must be provided through a secure connection over the Internet or through other electronic means specified by the system board.

(d) If the employer does not provide the reports or records specified in subsection (c), the system board may fine the employer or department one hundred dollars (\$100) for each day that the reports or records are late, to be withheld under subsection (e).

(e) If an employer fails to make the payments or provide the reports and membership records as required by subsections (a) or (c) or fails to send the fund members' contributions required by section 8(a) of this chapter, the amount payable, on request of the system board, may be withheld by the auditor of state from money payable to the employer and transferred to the fund. In the alternative, the amount payable may be recovered in the circuit or superior court of the county in which the employer is located, in an action by the state on the relation of the system board, prosecuted by the attorney general.

(f) In addition to the right of recovery in subsection (e), an alleged failure of an employer to make the payments required by subsection (a) may be examined by the state board of accounts under IC 5-11-1 or by the Indiana public retirement system as necessary to confirm compliance with subsection (a).

SECTION 6. IC 36-8-8-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. (a) An employer shall annually submit to the system board before January 1 the salary of a first class patrolman or first class firefighter.**

(b) If the system board requests that an employer submit the salary of a first class patrolman or first class firefighter, the employer must submit the requested salary to the system board not more than thirty (30) days after the system board makes the request.



(c) The submissions in subsections (a) and (b) must be made through a secure connection over the Internet or through other electronic means specified by the system board.

(d) If an employer substantially increases the salary of a first class patrolman or first class firefighter, the system board may require the employer to at least maintain that salary to avoid a negative fiscal impact."

Page 3, delete lines 2 through 26, begin a new paragraph and insert:

"SECTION 7. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 396 as introduced.)

MISHLER, Chairperson

Committee Vote: Yeas 12, Nays 0.

