

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 1, “Organization,” Chapter 2, “Investment Board,” Chapter 3, “Benefits Advisory Committee,” Chapter 4, “Employers,” Chapter 5, “Employees,” Chapter 11, “Application for, Modification of, and Termination of Benefits,” and Chapter 31, “Agency Procedure for Rule Making,” Iowa Administrative Code.

IPERS proposes the following amendments: to conform rules with other rules and statutes or to rescind rules that are outdated, redundant or inconsistent, or no longer in effect to meet the requirements of the statutory five-year rules review for Chapters 1 to 5; to implement contribution rates for regular and special service members beginning July 1, 2018; to amend language to comply with open meeting laws; to require employers to obtain an IRS determination if they disagree with IPERS' employee coverage determination; to provide consistency with social security determinations of employee versus independent contractor coverage; to add a definition of emergency medical care provider consistent with the coverage afforded in Iowa Code chapter 97B; to match language in the bona fide refund rules with that in the bona fide retirement rules; to clarify that, effective July 1, 2018, a member will not have a bona fide retirement if the member enters into an agreement to return to work with the member's former employer, prior to or during the member's first month of entitlement and before receiving four months of payments from IPERS; to update the interest rate for fraud to match IPERS' lowered investment return assumption to 7 percent; to stress that there are only 60 days to make an alternative election; and to clarify that dual coverage is not allowed for the same position.

These amendments were prepared after consultation with IPERS' staff, IPERS' tax counsel and the Benefits Advisory Committee.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 23, 2018. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-0054. Comments may also be submitted by fax to (515)281-0045 or by email to [adminrule@ipers.org](mailto:adminrule@ipers.org).

A public hearing will be held on January 23, 2018, from 10 to 11 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. Persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

There are no waiver provisions included in the proposed amendments.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Amend rule 495—1.1(97B) as follows:

**495—1.1(97B) Organization.** The agency shall administer the retirement system created by Iowa Code chapter 97B. Specific powers and duties of the agency, CEO, board, committee, and agency staff are set forth in Iowa Code chapter 97B and these administrative rules.

Operational units within the agency shall develop and administer policies and procedures governing retirement system programs, including accounting functions for the collection of funds from employers and employee members; disbursement of retirement benefits, death benefits, lump sum payments, and disability retirement benefits; training to employers and subsequent review of employer records for compliance with Iowa Code chapter 97B, rules and policies; preparation and release of informational newsletters and the annual report; and investment of funds contributed to the retirement system by employers and employee members. The retirement system is also the state administrator to the federal Social Security Administration pursuant to Iowa Code chapter 97C.

ITEM 2. Amend rule 495—2.1(97B) as follows:

**495—2.1(97B) Investment board.** The principal place of business of the board is IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

1. Effective July 1, 2002, the board shall be the trustee of the retirement fund. The board shall meet annually, and may meet more often, to review its investment policies.

2. At the first meeting in each fiscal year, the voting members shall elect a chair and vice chair. Future meeting dates for the year shall also be decided at the first meeting. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21. All meetings of the board are open to the public and shall be held in accordance with Robert's Rules of Order, Newly Revised.

3. Parties wishing to present items for the agenda of the next meeting shall file a written request with the board chair at least five business days prior to the meeting. ~~The board may take up matters not included on its agenda.~~

4. Four members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

5. Members of the board shall file financial statements pursuant to Iowa Code section 68B.35(2) "e."

6. In the event that it should become necessary to fill the chief investment officer position, the board may consult with, and make hiring recommendations to, the chief executive officer that are consistent with the requirements of Iowa Code chapter 8A, subchapter IV.

7. The board shall set the salary of the CEO pursuant to Iowa Code section 97B.3.

8. The board shall participate in the annual performance evaluation of the chief investment officer.

ITEM 3. Amend subrule 3.3(3) as follows:

**3.3(3) *Citizen representative.*** The citizen representative shall be elected by the eight voting representatives who serve under subrules 3.3(1) and 3.3(2).

ITEM 4. Amend subrule 4.1(6) as follows:

**4.1(6) *Patient advocates.*** For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

ITEM 5. Amend subrule 4.3(6) as follows:

**4.3(6) *Fees for noncompliance.*** IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of \$20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code ~~section~~ sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

ITEM 6. Amend paragraph **4.6(1)“b”** as follows:

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	14.88%	14.88%	14.88%	14.88%	14.88%	<u>15.73%</u>
Employer	<del>8.93%</del>	8.93%	8.93%	8.93%	8.93%	<u>9.44%</u>
Employee	<del>5.95%</del>	5.95%	5.95%	5.95%	5.95%	<u>6.29%</u>

ITEM 7. Amend subrule 4.6(2) as follows:

**4.6(2)** Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	<del>19.76%</del>	19.76%	19.76%	19.26%	18.76%	<u>19.52%</u>
Employer	<del>9.88%</del>	9.88%	9.88%	9.63%	9.38%	<u>9.76%</u>
Employee	<del>9.88%</del>	9.88%	9.88%	9.63%	9.38%	<u>9.76%</u>

ITEM 8. Amend subrule 4.6(3) as follows:

**4.6(3)** Contribution rates for protection occupations are as follows.

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	<del>16.90%</del>	16.90%	16.40%	16.40%	16.40%	<u>17.02%</u>
Employer	<del>10.14%</del>	10.14%	9.84%	9.84%	9.84%	<u>10.21%</u>
Employee	<del>6.76%</del>	6.76%	6.56%	6.56%	6.56%	<u>6.81%</u>

ITEM 9. Amend subrule 5.1(1) as follows:

**5.1(1) Definition of employee—generally.** A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

IPERS makes employment determinations based on a common law test, which factors in behavior control, financial control and relationship of the parties. Once this decision is made, if any party disagrees with the decision, the party in disagreement will be required to submit an SS-8 Determination of Workers Status form directly to the Internal Revenue Service (IRS). Upon receipt of the determination by the IRS, IPERS will review this hiring arrangement a second time. A Final Agency Determination will be made at that time.

Further, if a person is performing essential governmental functions that can only be performed by a governmental employee, that person shall be IPERS-covered.

ITEM 10. Amend subrule 5.2(6) as follows:

**5.2(6)** Police, firefighters, emergency personnel, and certain peace officers.

a. Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.

b. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.

c. Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.

d. Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.

e. A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.

f. Peace officer candidates of the department of public safety shall not be covered.

g. An emergency medical care provider who provides emergency medical services, as defined in Iowa Code section 147A.1, and who is not a member of the retirement systems established in Iowa Code chapter 401 or 411 shall be covered.

ITEM 11. Amend subrule 5.2(32) as follows:

**5.2(32)** Employees appointed by the state board of regents shall be covered unless, ~~at the discretion of the state board of regents,~~ they elect coverage in an ~~alternate~~ alternative retirement system qualified by the state board of regents. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

ITEM 12. Amend subrule 5.2(40) as follows:

**5.2(40)** Employees of area community colleges shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

ITEM 13. Amend subrule 5.2(41) as follows:

**5.2(41)** Volunteer emergency personnel, such as ambulance drivers and emergency medical technicians, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section ~~97B.44~~ 97B.1A.

ITEM 14. Amend rule 495—5.3(97B) as follows:

**495—5.3(97B) Participation in IPERS and another retirement system.** Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for ~~any~~ the same position held.

ITEM 15. Amend **495—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.1A, 97B.4, ~~97B.44~~, 97B.42, 97B.42A, 97B.49B, 97B.49C, and 97B.49G.

ITEM 16. Amend subrule 11.5(1) as follows:

**11.5(1) Bona fide retirement—general.** To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments.

The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into ~~contractual~~ verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

~~The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.~~

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

~~A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.~~

~~Effective July 1, 1998, through June 30, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by 495—Chapter 4, is terminated and the member receives at least four monthly benefit payments. In order to receive retirement benefits, the member must file a completed application for benefits with IPERS before returning to any employment with the same employer.~~

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent

contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

ITEM 17. Amend paragraph **11.7(5)“b”** as follows:

*b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of ~~7.5~~ 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

ITEM 18. Amend subrule 31.2(1) as follows:

**31.2(1)** IPERS shall designate the benefits advisory committee (BAC), and investment board as applicable, as the stakeholder rule-making group, pursuant to the rules for creation, public notice, procedures, public input, and results as outlined in Executive Order Number 80. The stakeholder group shall review and comment on any proposed ~~rules~~ rule changes before the rules are considered to be pending, as defined in subrule 31.3(2).