

HOUSE BILL No. 1038

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.3; IC 5-10.4.

Synopsis: Default retirement plans. Provides that after June 30, 2018, an individual who becomes a full-time employee of the state for the first time becomes a member of the public employees' defined contribution plan (plan) unless the individual elects to become a member of the public employees' retirement fund (fund). (Under current law, an eligible employee becomes a member of the fund unless the employee elects to become a member of the plan.) Provides that after June 30, 2018, an individual who begins employment for the first time in a covered position with a school corporation and is not already a member of the teachers' defined retirement fund (TRF) becomes a member of the teachers' defined contribution plan unless the individual makes an election to become a member of TRF. (Under current law, an individual that begins employment in a covered position becomes a member of TRF unless the individual elects to become a member of the teachers' defined contribution plan.)

Effective: July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1038

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 5-10.3-7-1, AS AMENDED BY P.L.241-2015,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 1. (a) This section does not apply to:
4 (1) members of the general assembly; or
5 (2) employees covered by section 3 of this chapter.
6 (b) As used in this section, "employees of the state" includes:
7 (1) employees of the judicial circuits whose compensation is paid
8 from state funds;
9 (2) elected and appointed state officers;
10 (3) prosecuting attorneys and deputy prosecuting attorneys of the
11 judicial circuits, whose compensation is paid in whole or in part
12 from state funds, including participants in the prosecuting
13 attorneys retirement fund established under IC 33-39-7;
14 (4) employees in the classified service;
15 (5) employees of any state department, institution, board,
16 commission, office, agency, court, or division of state government
17 receiving state appropriations and having the authority to certify



1 payrolls from appropriations or from a trust fund held by the
2 treasurer of state or by any department;

3 (6) employees of any state agency that is a body politic and
4 corporate;

5 (7) except as provided under IC 5-10.5-7-4, employees of the
6 board of trustees of the Indiana public retirement system;

7 (8) persons who:

8 (A) are employed by the state;

9 (B) have been classified as federal employees by the United
10 States Secretary of Agriculture; and

11 (C) are excluded from coverage as federal employees by the
12 federal Social Security program under 42 U.S.C. 410;

13 (9) the directors and employees of county offices of family and
14 children;

15 (10) employees of the center for agricultural science and heritage
16 (the barn); and

17 (11) members and employees of the state lottery commission.

18 (c) An employee of the state or of a participating political
19 subdivision who:

20 (1) became a full-time employee of the state or of a participating
21 political subdivision in a covered position; and

22 (2) had not become a member of the fund;

23 before April 1, 1988, shall on April 1, 1988, become a member of the
24 fund unless the employee is excluded from membership under section
25 2 of this chapter.

26 (d) Except as otherwise provided, any individual who becomes a
27 full-time employee of the state ~~or of a participating political~~
28 ~~subdivision in a covered position~~ after March 31, 1988, **and before**
29 **July 1, 2018**, becomes a member of the fund on the date the
30 individual's employment begins unless the individual is excluded from
31 membership under section 2 of this chapter.

32 (e) **Except as otherwise provided, any individual who becomes**
33 **a full-time employee of the state after June 30, 2018, becomes a**
34 **member of the fund on the date the individual's employment begins**
35 **if:**

36 (1) **the individual makes an election under section 1.2 of this**
37 **chapter to become a member of the fund; and**

38 (2) **the individual is not excluded from membership under**
39 **section 2 of this chapter.**

40 (f) **Except as otherwise provided, any individual who becomes**
41 **a full-time employee of a participating political subdivision in a**
42 **covered position after March 31, 1988, becomes a member of the**



1 **fund on the date the individual's employment begins unless the**
 2 **individual is excluded from membership under section 2 of this**
 3 **chapter.**

4 ~~(e)~~ **(g)** An individual:

5 (1) who becomes a full-time employee of a political subdivision
 6 in a covered position after June 30, 2015;

7 (2) who is employed by a political subdivision that has elected in
 8 an ordinance or resolution adopted under IC 5-10.3-6-1 and
 9 approved by the board to require an employee in the covered
 10 position to become a member of the fund; and

11 (3) who is not excluded from membership under section 2 of this
 12 chapter;

13 becomes a member of the fund on the date the individual's employment
 14 begins.

15 ~~(f)~~ **(h)** An individual:

16 (1) who becomes a full-time employee of a political subdivision
 17 in a covered position after an ordinance or resolution described in
 18 subdivision (2) that is adopted by the political subdivision has
 19 been approved by the board;

20 (2) who is employed by a political subdivision that has elected in
 21 an ordinance or resolution adopted under IC 5-10.3-6-1 and
 22 approved by the board:

23 (A) to allow an employee in the covered position to become a
 24 member of the fund or a member of the public employees'
 25 defined contribution plan at the discretion of the employee;
 26 and

27 (B) to require an employee in a covered position to make an
 28 election under IC 5-10.3-12-20.5 in order to become a member
 29 of the plan;

30 (3) who does not make an election under IC 5-10.3-12-20.5 to
 31 become a member of the public employees' defined contribution
 32 plan; and

33 (4) who is not excluded from membership under section 2 of this
 34 chapter;

35 becomes a member of the fund on the date the individual's employment
 36 begins.

37 ~~(g)~~ **(i)** An individual:

38 (1) who becomes a full-time employee of a political subdivision
 39 in a covered position after an ordinance or resolution described in
 40 subdivision (2) that is adopted by the political subdivision has
 41 been approved by the board;

42 (2) who is employed by a political subdivision that has elected in



- 1 an ordinance or resolution adopted under IC 5-10.3-6-1 and
 2 approved by the board:
 3 (A) to allow an employee in the covered position to become a
 4 member of the fund or the public employees' defined
 5 contribution plan at the discretion of the employee; and
 6 (B) to require an employee to make an election under section
 7 1.1 of this chapter in order to become a member of the fund;
 8 (3) who does make an election under section 1.1 of this chapter to
 9 become a member of the fund; and
 10 (4) who is not excluded from membership under section 2 of this
 11 chapter;

12 becomes a member of the fund on the date the individual's employment
 13 begins.

14 SECTION 2. IC 5-10.3-7-1.2 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2018]: **Sec. 1.2. (a) An individual:**

- 17 **(1) who becomes a full-time employee of the state after June**
 18 **30, 2018; and**
 19 **(2) who is not excluded from membership under section 2 of**
 20 **this chapter;**

21 **may elect to become a member of the fund.**

22 **(b) An election under this section:**

- 23 **(1) must be made in writing on a form prescribed by the**
 24 **board;**
 25 **(2) must be filed with the board; and**
 26 **(3) is irrevocable.**

27 **(c) An individual who:**

- 28 **(1) is eligible to make the election under this section; and**
 29 **(2) does not make the election;**

30 **becomes a member of the public employees' defined contribution**
 31 **plan.**

32 **(d) An individual described in subsection (a) who separates from**
 33 **employment with the state and later returns to employment with**
 34 **the state having had an opportunity to make an election under this**
 35 **section during an earlier period of employment with the state is not**
 36 **entitled to a second opportunity to make an election under this**
 37 **section with respect to the individual's employment with the state.**

38 SECTION 3. IC 5-10.3-12-1, AS AMENDED BY P.L.209-2016,
 39 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2018]: Sec. 1. (a) Except as otherwise provided in this section,
 41 this chapter applies to the following:

- 42 (1) An individual who:



- 1 (A) on or after the effective date of the plan **and before July**
 2 **1, 2018**, becomes for the first time a full-time employee of the
 3 state:
 4 (i) in a position that would otherwise be eligible for
 5 membership in the fund under IC 5-10.3-7; and
 6 (ii) who is paid by the auditor of state by salary warrants;
 7 and
 8 (B) makes the election described in section 20 of this chapter
 9 to become a member of the plan.
- 10 **(2) An individual who:**
 11 **(A) after June 30, 2018, becomes for the first time a**
 12 **full-time employee of the state:**
 13 **(i) in a position that would otherwise be eligible for**
 14 **membership in the fund under IC 5-10.3-7; and**
 15 **(ii) who is paid by the auditor of state by salary**
 16 **warrants; and**
 17 **(B) does not make the election described in IC 5-10.3-7-1.2**
 18 **to become a member of the fund.**
- 19 ~~(2)~~ **(3) An individual:**
 20 (A) who becomes a full-time employee of a participating
 21 political subdivision in a covered position after an ordinance
 22 or resolution described in clause (C) that is adopted by the
 23 political subdivision has been approved by the board;
 24 (B) who would otherwise be eligible for membership in the
 25 fund under IC 5-10.3-7; and
 26 (C) who is employed by a political subdivision that has elected
 27 in an ordinance or resolution adopted under IC 5-10.3-6-1 and
 28 approved by the board to require an employee in the covered
 29 position to become a member of the plan.
- 30 ~~(3)~~ **(4) An individual:**
 31 (A) who becomes a full-time employee of a political
 32 subdivision in a covered position after an ordinance or
 33 resolution described in clause (C) that is adopted by the
 34 political subdivision has been approved by the board;
 35 (B) who would otherwise be eligible for membership in the
 36 fund under IC 5-10.3-7;
 37 (C) who is employed by a political subdivision that has elected
 38 in an ordinance or resolution adopted under IC 5-10.3-6-1 and
 39 approved by the board:
 40 (i) to allow an employee in the covered position to become
 41 a member of the fund or a member of the plan at the
 42 discretion of the employee; and



- 1 (ii) to require an employee in a covered position to make an
 2 election under section 20.5 of this chapter in order to
 3 become a member of the plan; and
 4 (D) who makes an election under section 20.5 of this chapter
 5 to become a member of the plan.
- 6 ~~(4)~~ **(5)** An individual:
- 7 (A) who becomes a full-time employee of a political
 8 subdivision in a covered position after an ordinance or
 9 resolution described in clause (C) that is adopted by the
 10 political subdivision has been approved by the board;
 11 (B) who would otherwise be eligible for membership in the
 12 fund under IC 5-10.3-7;
 13 (C) who is employed by a political subdivision that has elected
 14 in an ordinance or resolution adopted under IC 5-10.3-6-1 and
 15 approved by the board:
- 16 (i) to allow an employee in the covered position to become
 17 a member of the fund or a member of the plan at the
 18 discretion of the employee; and
 19 (ii) to require an employee to make an election under
 20 IC 5-10.3-7-1.1 in order to become a member of the fund;
 21 and
 22 (D) who does not make an election under IC 5-10.3-7-1.1 to
 23 become a member of the fund.
- 24 ~~(5)~~ **(6)** An individual who makes an election described in section
 25 20.3 of this chapter.
- 26 ~~(6)~~ **(7)** An individual:
- 27 (A) who is a retired member (as defined in IC 5-10.3-1-5) of
 28 the fund;
 29 (B) who is prohibited from making contributions to the fund
 30 under IC 5-10.2-4-8(e) during a period of reemployment that
 31 begins more than thirty (30) days after the member retired; and
 32 (C) who, on or after the date:
- 33 (i) the state files a notice; or
 34 (ii) a participating political subdivision files an adopted
 35 ordinance or resolution;
 36 with the board in accordance with section 32 of this chapter,
 37 begins, or is engaged in, a period of reemployment with the
 38 state or a participating political subdivision as a full-time
 39 employee more than thirty (30) days after the individual's
 40 retirement in a position that would otherwise be covered by the
 41 fund.
- 42 (b) Except as provided in subsection (c), this chapter does not apply



1 to an individual who, on or after the effective date of the plan:

2 (1) becomes for the first time a full-time employee of the state in
3 a position that would otherwise be eligible for membership in the
4 fund under IC 5-10.3-7; and

5 (2) is employed by:

6 (A) a body corporate and politic of the state created by state
7 statute; or

8 (B) a state educational institution (as defined in
9 IC 21-7-13-32).

10 (c) The chief executive officer of a body or institution described in
11 subsection (b) may elect, by submitting a written notice of the election
12 to the director, to have this chapter apply to individuals who, as
13 employees of the body or institution, become for the first time full-time
14 employees of the state in positions that would otherwise be eligible for
15 membership in the fund under IC 5-10.3-7. An election under this
16 subsection is effective on the later of:

17 (1) the date the notice of the election is received by the director;

18 or

19 (2) March 1, 2013.

20 SECTION 4. IC 5-10.3-12-20, AS AMENDED BY P.L.209-2016,
21 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2018]: Sec. 20. (a) This section applies only to an individual
23 who, on or after the effective date of the plan **and before July 1, 2018**,
24 becomes for the first time a full-time employee of the state in a position
25 that would otherwise be eligible for membership in the fund under
26 IC 5-10.3-7.

27 (b) An individual to whom this section applies may elect to become
28 a member of the plan for all service credit that the member accrues in
29 a covered position as an employee of the state. An election under this
30 section:

31 (1) must be made in writing;

32 (2) must be filed with the board, on a form prescribed by the
33 board; and

34 (3) is irrevocable.

35 (c) Except as provided in section 32(a) of this chapter, an individual
36 who does not elect to become a member of the plan becomes a member
37 (as defined in IC 5-10.3-1-5) of the fund for all service credit that the
38 member accrues in a covered position as an employee of the state.

39 SECTION 5. IC 5-10.3-12-20.5, AS AMENDED BY P.L.209-2016,
40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2018]: Sec. 20.5. (a) This section applies to an individual
42 described in section ~~1(a)(3)~~ **1(a)(4)** of this chapter who is otherwise



1 eligible to become a member of the plan.

2 (b) An individual described in subsection (a) may elect to become
3 a member of the plan on the date the individual begins the individual's
4 employment in a covered position with a political subdivision that
5 participates in the plan. The election applies to all service credit that
6 the member accrues in a covered position as an employee of the
7 political subdivision while the political subdivision participates in the
8 plan.

9 (c) An election under this section:

10 (1) must be made in writing;

11 (2) must be filed with the board on a form prescribed by the
12 board; and

13 (3) is irrevocable.

14 (d) Except as provided in section 32(b) of this chapter, an individual
15 described in subsection (a) who does not elect to become a member of
16 the plan becomes a member (as defined in IC 5-10.3-1-5) of the fund
17 for all service credit that the member accrues in a covered position as
18 an employee of the political subdivision while the political subdivision
19 participates in the fund.

20 SECTION 6. IC 5-10.3-12-31, AS AMENDED BY P.L.85-2017,
21 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2018]: Sec. 31. (a) If a member of the plan separates from
23 employment with the member's employer and later begins employment
24 with the same or a different employer in a position covered by the plan:

25 (1) the member resumes the member's participation in the plan;
26 and

27 (2) the member is entitled to receive credit for the member's years
28 of participation in the plan before the member's separation.

29 Any amounts forfeited by the member under section 25(e) of this
30 chapter may not be restored to the member's account.

31 (b) An individual who returns to state employment **before July 1,**
32 **2018, after** having had an opportunity to make an election under
33 section 20 of this chapter during an earlier period of state employment
34 is not entitled to a second opportunity to make an election under
35 section 20 of this chapter. **An individual who returns to state**
36 **employment after June 30, 2018, after having become a member of**
37 **the fund during an earlier period of state employment continues to**
38 **be a member of the fund with respect to the individual's state**
39 **employment.**

40 (c) An individual described in section ~~1(a)(3)~~ **1(a)(4)** of this chapter
41 who returns to employment with a participating political subdivision
42 having had an opportunity to make an election under section 20.5 of



1 this chapter during an earlier period of employment with the
 2 participating political subdivision is not entitled to a second
 3 opportunity to make an election under section 20.5 of this chapter with
 4 respect to that employer.

5 SECTION 7. IC 5-10.4-4-1, AS AMENDED BY P.L.217-2017,
 6 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2018]: Sec. 1. (a) **Except as otherwise provided in this**
 8 **section**, the members of the fund include:

9 (1) legally qualified and regularly employed teachers in the public
 10 schools;

11 (2) persons employed by a governing body, who were qualified
 12 before their election or appointment;

13 (3) legally qualified and regularly employed teachers at Ball State
 14 University, Indiana State University, University of Southern
 15 Indiana, and Vincennes University;

16 (4) legally qualified and regularly employed teachers in a state
 17 educational institution whose teachers devote their entire time to
 18 teaching;

19 (5) legally qualified and regularly employed teachers in state
 20 benevolent, charitable, or correctional institutions;

21 (6) legally qualified and regularly employed teachers in an
 22 experimental school in a state university who teach elementary or
 23 high school students;

24 (7) as determined by the board, certain instructors serving in a
 25 state educational institution extension division not covered by a
 26 state retirement law;

27 (8) employees and officers of the department of education and of
 28 the fund who were qualified before their election or appointment;

29 (9) a person who:

30 (A) is employed as a nurse appointed under IC 20-34-3-6 by
 31 a school corporation located in a city having a population of
 32 more than eighty thousand (80,000) but less than eighty
 33 thousand four hundred (80,400); and

34 (B) participated in the fund before December 31, 1991, in the
 35 position described in clause (A); and

36 (10) persons who are employed by the fund.

37 (b) Teachers in any state institution who accept the benefits of a
 38 state supported retirement benefit system comparable to the fund's
 39 benefits may not come under the fund unless permitted by law or the
 40 rules of the board.

41 (c) The members of the fund do not include substitute teachers who
 42 have not obtained an associate degree or a baccalaureate degree.



1 (d) The members of the fund do not include individuals who
2 participate in the teachers' defined contribution plan under IC 5-10.4-8.

3 (e) **The members of the fund do not include individuals who:**

4 (1) **begin employment after June 30, 2018, in a covered**
5 **position with a school corporation;**

6 (2) **were not, before beginning the employment described in**
7 **subdivision (1), already members of the fund or the teachers'**
8 **defined contribution plan under IC 5-10.4-8; and**

9 (3) **do not elect to become members of the fund under section**
10 **1.5 of this chapter.**

11 SECTION 8. IC 5-10.4-4-1.5 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2018]: **Sec. 1.5. (a) As used in this section,**
14 **"plan" refers to the teachers' defined contribution plan under**
15 **IC 5-10.4-8.**

16 (b) **An individual who:**

17 (1) **begins employment after June 30, 2018, in a covered**
18 **position with a school corporation; and**

19 (2) **was not, before beginning the employment described in**
20 **subdivision (1), already a member of the fund or the plan;**
21 **may elect to become a member of the fund.**

22 (c) **An election under this section:**

23 (1) **must be made in writing on a form prescribed by the**
24 **board;**

25 (2) **must be filed with the board; and**

26 (3) **is irrevocable.**

27 (d) **An individual who:**

28 (1) **is eligible to make the election under this section; and**

29 (2) **does not make the election;**

30 **becomes a member of the plan.**

31 (e) **An individual described in subsection (b) who separates from**
32 **employment with a school corporation and later returns to**
33 **employment with a school corporation having had an opportunity**
34 **to make an election under this section during an earlier period of**
35 **employment with the school corporation is not entitled to a second**
36 **opportunity to make an election under this section with respect to**
37 **the individual's subsequent employment with a school corporation.**

38 SECTION 9. IC 5-10.4-8-1, AS ADDED BY P.L.217-2017,
39 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2018]: **Sec. 1. (a) Except as otherwise provided in subsection**
41 **(b), this section, this chapter applies after the effective date of the plan**
42 **to an individual who: the following:**



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(1) An individual who, on or after the effective date of the plan and before July 1, 2018:

- ~~(1)~~ **(A)** begins employment with a school corporation in a covered position that would otherwise be eligible for membership in the fund under IC 5-10.4-4; and
- ~~(2)~~ **(B)** makes an election described in section 6 of this chapter to become a member of the plan.

(2) An individual who, after June 30, 2018:

- (A)** begins employment with a school corporation in a covered position that would otherwise be eligible for membership in the fund under IC 5-10.4-4; and
- (B)** does not make an election described in IC 5-10.4-4-1.5 to become a member of the fund.

(b) This chapter does not apply to the following:

- (1) An individual who, before the effective date of the plan, is or was a member (as defined in IC 5-10.4-1-9) of the fund.
- (2) An individual who, on or after the effective date of the plan:
 - (A) begins employment with a school corporation that participates in the plan in a covered position that ~~would otherwise be~~ **makes the individual** eligible for membership in the fund under IC 5-10.4-4; and
 - (B) ~~does not make the election described in section 6 of this chapter to become a member of the plan.~~ **becomes a member of the fund.**

SECTION 10. IC 5-10.4-8-6, AS ADDED BY P.L.217-2017, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) **This section applies to** an individual who, on or after the effective date of the plan **and before July 1, 2018**, begins employment with a school corporation that participates in the plan in a covered position that would otherwise be eligible for membership in the fund under IC 5-10.4-4.

(b) An individual to whom this section applies may elect to become a member of the plan.

~~(b)~~ **(c)** An election under this section:

- (1) must be made in writing;
- (2) must be filed with the board, on a form prescribed by the board; and
- (3) is irrevocable.

~~(c)~~ **(d)** An individual who does not elect to become a member of the plan becomes a member (as defined in IC 5-10.4-1-9) of the fund.

SECTION 11. IC 5-10.4-8-17, AS ADDED BY P.L.217-2017, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2018]; Sec. 17. (a) If a member of the plan separates from
 2 employment with the member's employer and later returns to
 3 employment in a position covered by the plan:
 4 (1) the individual resumes membership in the plan; and
 5 (2) the member is entitled to receive credit for the member's years
 6 of participation in the plan before the member's separation.
 7 (b) An individual who:
 8 **(1) before July 1, 2018, elected under section 6 of this chapter to**
 9 **become a member of the plan; or**
 10 **(2) after June 30, 2018, was eligible to make an election under**
 11 **IC 5-10.4-4-1.5 to become a member of the fund and did not**
 12 **make the election;**
 13 resumes membership in the plan upon the individual's return to
 14 employment covered by the plan.
 15 (c) An individual who:
 16 **(1) before July 1, 2018, did not elect to become a member of the**
 17 **plan; or**
 18 **(2) after June 30, 2018, elected to become a member of the**
 19 **fund;**
 20 resumes membership in the fund.
 21 (d) An individual who returns to employment in a position covered
 22 by the plan having had an opportunity to make an election under
 23 section 6 of this chapter during an earlier period of employment is not
 24 entitled to a second opportunity to make an election under section 6 of
 25 this chapter.

