

HOUSE BILL No. 1078

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.3-7; IC 5-10.5; IC 33-40-9; IC 35-43-4-2.

Synopsis: Public defender retirement fund. Establishes the public defender retirement fund. Makes conforming amendments. Makes an appropriation.

Effective: July 1, 2022.

Heaton, Cherry, Thompson

January 4, 2022, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1078

A BILL FOR AN ACT to amend the Indiana Code concerning pensions and to make an appropriation.

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.92-2019,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: 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; ~~and~~
 15 (10) members and employees of the state lottery commission; **and**
 16 **(11) persons described in IC 33-40-9-2(9) (chief public**
 17 **defenders, chief deputy public defenders, and the executive**
 18 **director and the assistant executive director of the public**
 19 **defender council of Indiana), including participants in the**
 20 **public defender retirement fund established under IC 33-40-9.**
 21 (c) An employee of the state or of a participating political
 22 subdivision who:
 23 (1) became a full-time employee of the state or of a participating
 24 political subdivision in a covered position; and
 25 (2) had not become a member of the fund;
 26 before April 1, 1988, shall on April 1, 1988, become a member of the
 27 fund unless the employee is excluded from membership under section
 28 2 of this chapter.
 29 (d) Except as otherwise provided, any individual who becomes a
 30 full-time employee of the state or of a participating political
 31 subdivision in a covered position after March 31, 1988, becomes a
 32 member of the fund on the date the individual's employment begins
 33 unless the individual is excluded from membership under section 2 of
 34 this chapter.
 35 (e) An individual:
 36 (1) who becomes a full-time employee of a political subdivision
 37 in a covered position after June 30, 2015;
 38 (2) who is employed by a political subdivision that has elected in
 39 an ordinance or resolution adopted under IC 5-10.3-6-1 and
 40 approved by the board to require an employee in the covered
 41 position to become a member of the fund; and
 42 (3) who is not excluded from membership under section 2 of this



1 chapter;
 2 becomes a member of the fund on the date the individual's employment
 3 begins.

4 (f) An individual:

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

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

12 (A) to allow an employee in the covered position to become a
 13 member of the fund or a member of the public employees'
 14 defined contribution plan at the discretion of the employee;
 15 and

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

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

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

24 becomes a member of the fund on the date the individual's employment
 25 begins.

26 (g) An individual:

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

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

34 (A) to allow an employee in the covered position to become a
 35 member of the fund or the public employees' defined
 36 contribution plan at the discretion of the employee; and

37 (B) to require an employee to make an election under section
 38 1.1 of this chapter in order to become a member of the fund;

39 (3) who does make an election under section 1.1 of this chapter to
 40 become a member of the fund; and

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



1 becomes a member of the fund on the date the individual's employment
2 begins.

3 SECTION 2. IC 5-10.3-7-2, AS AMENDED BY P.L.198-2016,
4 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2022]: Sec. 2. The following employees may not be members
6 of the fund:

7 (1) Officials of a political subdivision elected by vote of the
8 people, unless the governing body specifically provides for the
9 participation of locally elected officials.

10 (2) Employees occupying positions normally requiring
11 performance of service of less than six hundred (600) hours
12 during a year who:

13 (A) were hired before July 1, 1982; or

14 (B) are employed by a participating school corporation.

15 (3) Independent contractors or officers or employees paid wholly
16 on a fee basis.

17 (4) Employees who occupy positions that are covered by other
18 pension or retirement funds or plans, maintained in whole or in
19 part by appropriations by the state or a political subdivision,
20 except:

21 (A) the federal Social Security program; **and**

22 (B) the prosecuting attorneys retirement fund established by
23 IC 33-39-7-9; **and**

24 **(C) the public defender retirement fund established by**
25 **IC 33-40-9.**

26 (5) Managers or employees of a license branch of the bureau of
27 motor vehicles commission, except those persons who may be
28 included as members under IC 9-14-10.

29 (6) Employees, except employees of a participating school
30 corporation, hired after June 30, 1982, occupying positions
31 normally requiring performance of service of less than one
32 thousand (1,000) hours during a year.

33 (7) Persons who:

34 (A) are employed by the state;

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

37 (C) are covered by the federal Social Security program as
38 federal employees under 42 U.S.C. 410.

39 SECTION 3. IC 5-10.5-2-2, AS AMENDED BY P.L.27-2019,
40 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2022]: Sec. 2. The system consists of the following public
42 pension or retirement funds:



- 1 (1) The public employees' retirement fund established under
 2 IC 5-10.2 and IC 5-10.3.
 3 (2) The public employees' defined contribution plan established
 4 under IC 5-10.3-12.
 5 (3) The Indiana state teachers' retirement fund established under
 6 IC 5-10.2 and IC 5-10.4.
 7 (4) The teachers' defined contribution plan established under
 8 IC 5-10.4-8.
 9 (5) The Indiana judges' retirement fund established under
 10 IC 33-38-6.
 11 (6) The prosecuting attorneys retirement fund established under
 12 IC 33-39-7.
 13 (7) The state excise police, gaming agent, gaming control officer,
 14 and conservation enforcement officers' retirement fund
 15 established under IC 5-10-5.5.
 16 (8) The 1977 police officers' and firefighters' pension and
 17 disability fund established under IC 36-8-8.
 18 (9) The legislators' retirement system established under IC 2-3.5.
 19 (10) The pension relief fund established under IC 5-10.3-11.
 20 (11) The special death benefit fund established under IC 5-10-9.8.
 21 **(12) The public defender retirement fund established by**
 22 **IC 33-40-9.**

23 SECTION 4. IC 5-10.5-5-2, AS ADDED BY P.L.23-2011,
 24 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2022]: Sec. 2. The board's transactions under this chapter are
 26 subject to IC 2-3.5-3-3, IC 5-10-5.5-2.5, IC 5-10.2-2-1.5,
 27 IC 33-38-6-13, IC 33-39-7-22, **IC 33-40-9-18**, and IC 36-8-8-2.5.

28 SECTION 5. IC 33-40-9 IS ADDED TO THE INDIANA CODE AS
 29 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 30 1, 2022]:

31 **Chapter 9. Public Defender Retirement Fund**

32 **Sec. 1. This chapter applies only to:**

- 33 (1) **an individual who serves as a chief public defender or chief**
 34 **deputy public defender on or after January 1, 1990; or**
 35 **(2) a participant employed in a position described in section**
 36 **2(9)(B) of this chapter who serves in the position after June**
 37 **30, 2018.**

38 **Sec. 2. The following definitions apply throughout this chapter:**

- 39 (1) **"Americans with Disabilities Act" refers to the Americans**
 40 **with Disabilities Act (42 U.S.C. 12101 et seq.) and any**
 41 **amendments and regulations related to the Act.**
 42 (2) **"Board" refers to the board of trustees of the Indiana**



1 public retirement system established by IC 5-10.5-3-1.

2 (3) "Chief deputy public defender" means the one (1)
3 individual appointed to assist the chief public defender in
4 carrying out the chief public defender's management
5 activities. The term does not include a person who has a
6 private legal practice.

7 (4) "Chief public defender" means the chief executive officer
8 of a county public defender agency who is responsible for the
9 overall management of the agency, including daily
10 administration, personnel, training, caseload management,
11 ethics, and quality control. The term does not include a person
12 who has a private legal practice.

13 (5) "Fiscal year" means the period beginning on July 1 in any
14 year and ending on June 30 of the following year.

15 (6) "Fund" refers to the public defender retirement fund
16 established by this chapter.

17 (7) "Participant" means a person serving in a position
18 described in subdivision (9)(A) or (9)(B) who is participating
19 in the fund.

20 (8) "Salary" means the salary paid to a participant by the:

21 (A) county, for a person described in subdivision (9)(A);
22 and

23 (B) state, for a person described in subdivision (9)(B);
24 determined without regard to any salary reduction agreement
25 established under Section 125 of the Internal Revenue Code.

26 (9) "Services" means the sum of all periods in which a person
27 is employed as:

28 (A) a chief public defender or chief deputy public
29 defender; or

30 (B) the executive director or the assistant executive
31 director of the public defender council of Indiana.

32 If a person is elected or appointed to a position described in
33 clause (A) or (B) and serves one (1) or more terms or part of
34 a term, then retires from office or otherwise separates from
35 service, but at a later period or periods is appointed or elected
36 and serves in a position described in clause (A) or (B), the
37 person shall pay into the fund during all the periods that the
38 person serves in that position, except as otherwise provided in
39 this chapter, whether the periods are connected or
40 disconnected. In addition, the term includes any period of
41 service in the public employees' retirement fund (IC 5-10.2
42 and IC 5-10.3) or the prosecuting attorneys retirement fund



1 (IC 33-39-7) credited to a person described in clause (A) or
 2 (B) if the person participated in the public employees'
 3 retirement fund or the prosecuting attorneys retirement fund,
 4 but the person did not attain vested status in the public
 5 employees' retirement fund or the prosecuting attorneys
 6 retirement fund.

7 **Sec. 3. The public defender retirement fund is established. The**
 8 **fund consists of the following:**

9 (1) Each participant's contributions to the fund.

10 (2) All gifts, grants, devises, and bequests in money, property,
 11 or other form made to the fund.

12 (3) All interest on investments or on deposits of the fund.

13 (4) A contribution or payment to the fund made in a manner
 14 provided by the general assembly.

15 **Sec. 4. The fund is a trust, separate and distinct from all other**
 16 **entities, maintained to:**

17 (1) secure payment of benefits to the participants and their
 18 beneficiaries; and

19 (2) pay the costs of administering this chapter.

20 **Sec. 5. (a) All assets in the fund are exempt from levy, sale,**
 21 **garnishment, attachment, or other legal process. However, a**
 22 **participant's contributions or benefits, or both, may be transferred**
 23 **to reimburse the participant's employer for loss resulting from the**
 24 **participant's criminal taking of the employer's property by the**
 25 **board if the board receives adequate proof of the loss. The loss**
 26 **resulting from the participant's criminal taking of the participant's**
 27 **employer's property must be proven by an order for restitution in**
 28 **favor of the employer issued by the sentencing court following a**
 29 **felony or misdemeanor conviction.**

30 (b) The board may withhold payment of a participant's
 31 contributions and interest if the employer of the participant
 32 notifies the board that felony or misdemeanor charges accusing the
 33 participant of the criminal taking of the employer's property have
 34 been filed.

35 (c) The board may withhold payment of a participant's
 36 contributions and interest under subsection (b) until the final
 37 resolution of the criminal charges.

38 (d) Subsections (b) and (c) do not apply to the:

39 (1) retirement benefit of a retired participant; or

40 (2) disability benefit of a participant who is permanently
 41 disabled.

42 **Sec. 6. (a) The board shall administer the fund, which may be**



1 commingled with any public pension and retirement fund
 2 administered by the Indiana public retirement system for
 3 investment purposes.

4 (b) The board shall do the following:

5 (1) Determine eligibility for and make payments of benefits
 6 under this chapter.

7 (2) In accordance with the powers and duties granted to the
 8 board in IC 5-10.3-3-7.1, IC 5-10.3-5-3 through IC 5-10.3-5-6,
 9 IC 5-10.5-4, and IC 5-10.5-6, administer the fund.

10 (3) Provide by rule for the implementation of this chapter.

11 (4) Authorize deposits.

12 (c) A determination by the board may be appealed under
 13 IC 4-21.5.

14 (d) The powers and duties of:

15 (1) the director and the actuary of the board; and

16 (2) the attorney general;

17 with respect to the fund are those specified in IC 5-10.3-3,
 18 IC 5-10.3-4, IC 5-10.5-4, and IC 5-10.5-6.

19 (e) The board may hire additional personnel, including hearing
 20 officers, to assist in the implementation of this chapter.

21 (f) Fund records of individual participants and participants'
 22 information are confidential, except for the name and years of
 23 service of a fund participant.

24 Sec. 7. (a) Except as otherwise provided in this section, a
 25 participant shall make contributions to the fund as follows:

26 (1) A participant described in section 2(9)(A) of this chapter
 27 shall make contributions of six percent (6%) of each payment
 28 of salary received for services after December 31, 1989.

29 (2) A participant described in section 2(9)(B) of this chapter
 30 shall make contributions of six percent (6%) of each payment
 31 of salary received for services after June 30, 2018.

32 (b) A participant who made contributions to the public
 33 employees' retirement fund while employed in a position described
 34 in section 2(9) of this chapter may elect to contribute the difference
 35 between:

36 (1) the contribution to the public employees' retirement fund;
 37 and

38 (2) six percent (6%) of the participant's salary;

39 for each year in which the participant was employed in the position
 40 described in section 2(9) of this chapter and shall receive credit for
 41 the years of service in which the participant made contributions to
 42 the public employees' retirement fund. The participant may make



1 payments over five (5) annual installments. This subsection expires
2 June 30, 2027.

3 (c) A participant's contributions shall be deducted from the
4 participant's monthly salary by the:

5 (1) county auditor (for a participant described in section
6 2(9)(A) of this chapter), and transferred to the auditor of state
7 to be credited to the fund; and

8 (2) auditor of state (for a participant described in section
9 2(9)(B) of this chapter), and credited to the fund.

10 (d) The state or county may pay the contributions for a
11 participant. The state or county may elect to pay the contribution
12 for the participant as a pickup under Section 414(h) of the Internal
13 Revenue Code.

14 (e) After a participant has contributed to the fund as provided
15 in subsection (a) for twenty-two (22) years, the participant is not
16 required to make additional contributions to the fund.

17 (f) The auditor of state shall submit the contributions paid by or
18 on behalf of a participant under this section by electronic funds
19 transfer in accordance with section 8 of this chapter.

20 Sec. 8. (a) This section applies to reports, records, and
21 contributions submitted under this chapter.

22 (b) As used in this section, "electronic funds transfer" has the
23 meaning set forth in IC 4-8.1-2-7(f).

24 (c) The state shall submit through the use of electronic funds
25 transfer contributions paid by or on behalf of a participant under
26 section 7 of this chapter.

27 (d) The state shall submit in a uniform format through a secure
28 connection over the Internet, or through other electronic means
29 specified by the board, the reports and records required by the
30 board under this chapter.

31 (e) The board shall establish by rule the due dates for all
32 reports, records, and contributions required under this chapter.

33 Sec. 9. (a) A participant who:

34 (1) ceases service in a position described in section 2(9) of this
35 chapter, other than by death or disability; and

36 (2) is not eligible for a retirement benefit under this chapter;
37 is entitled to withdraw from the fund, beginning on the date
38 specified by the participant in a written application. The date upon
39 which the withdrawal begins may not be before the date of final
40 termination of employment or the date thirty (30) days before the
41 receipt of the application by the board. Upon withdrawal the
42 participant is entitled to receive the total sum contributed plus



1 interest at a rate specified by rule by the board, payable not later
2 than sixty (60) days from the date of the withdrawal application.

3 (b) Notwithstanding section 2(9) of this chapter, a participant
4 who withdraws from the fund under subsection (a) and becomes a
5 participant again at a later date is not entitled to service credit for
6 years of service before the withdrawal, unless the participant pays
7 into the fund the full amount received by the participant when the
8 participant withdrew from the fund, plus interest at a rate
9 specified by rule by the board. The board shall grant a participant
10 service credit for years of service by the participant before the
11 participant's withdrawal from the fund if the participant makes
12 the repayment required by this subsection in a lump sum or a
13 series of payments determined by the board, not exceeding five (5)
14 annual installments.

15 Sec. 10. (a) Interest shall be credited annually on June 30 at a
16 rate specified by rule by the board on all amounts credited to the
17 member as of June 30 of the preceding year.

18 (b) Contributions begin to accumulate interest at the beginning
19 of the fiscal year after the year in which the contributions are due.

20 (c) When a member retires or withdraws, a proportional
21 interest credit determined under this chapter shall be paid for the
22 period elapsed since the last date on which interest was credited.

23 Sec. 11. A participant whose employment in a position described
24 in section 2(9) of this chapter is terminated is entitled to a
25 retirement benefit computed under section 12 or 14 of this chapter,
26 beginning on the date specified by the participant in a written
27 application, if all of the following conditions are met:

28 (1) The application for retirement benefits and the choice of
29 the retirement date is filed on a form provided by the board,
30 and the retirement date is:

31 (A) after the cessation of the participant's service;

32 (B) on the first day of a month; and

33 (C) not more than six (6) months before the date the
34 application is received by the board.

35 However, if the board determines that a participant is
36 incompetent to file for benefits and choose a retirement date,
37 the retirement date may be any date that is the first of the
38 month after the time the participant became incompetent.

39 (2) The participant:

40 (A) is at least sixty-two (62) years of age and has at least
41 eight (8) years of service credit;

42 (B) is at least fifty-five (55) years of age and the



- 1 participant's age in years plus the participant's years of
- 2 service is at least eighty-five (85); or
- 3 (C) has become permanently disabled.
- 4 (3) The participant is not receiving and is not entitled to
- 5 receive any salary for services currently performed.

6 **Sec. 12. (a) This section does not apply to a participant who**
 7 **becomes permanently disabled, as described in section 13 of this**
 8 **chapter.**

- 9 (b) A participant who:
- 10 (1) applies for a retirement benefit; and
- 11 (2) is at least:
 - 12 (A) sixty-five (65) years of age; or
 - 13 (B) fifty-five (55) years of age and the participant's age in
 - 14 years plus the participant's years of service is at least
 - 15 eighty-five (85);

16 is entitled to an annual retirement benefit as calculated in
 17 subsection (c).

18 (c) Except as provided in subsections (d), (e), and (f), the amount
 19 of the annual retirement benefit to which a participant described
 20 in subsection (b) is entitled equals the product of:

- 21 (1) the highest annual salary that was paid to the participant
- 22 before separation from service; multiplied by
- 23 (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
25 Less than 8	0
26 8	24%
27 9	27%
28 10	30%
29 11	33%
30 12	50%
31 13	51%
32 14	52%
33 15	53%
34 16	54%
35 17	55%
36 18	56%
37 19	57%
38 20	58%
39 21	59%
40 22 or more	60%

41 **If a participant has a partial year of service in addition to at least**
 42 **eight (8) full years of service, an additional percentage is calculated**



1 under this subsection by prorating between the applicable
 2 percentages, based on the number of months in the partial year of
 3 service.

4 (d) Except as provided in subsections (e) and (f), and section
 5 15(c)(2)(B) of this chapter, a participant who:

6 (1) applies for a retirement benefit; and

7 (2) is not described in subsection (b);

8 is entitled to receive a reduced annual retirement benefit that
 9 equals the benefit that would be payable if the participant were
 10 sixty-five (65) years of age reduced by one-fourth percent (0.25%)
 11 for each month that the participant's age at retirement precedes
 12 the participant's sixty-fifth birthday.

13 (e) Except as provided in subsection (f), benefits payable to a
 14 participant under this section are reduced by the pension, if any,
 15 that:

16 (1) the participant is receiving from the public employees'
 17 retirement fund, if the participant is receiving a pension from
 18 the public employees' retirement fund on the date of the
 19 participant's retirement from the public defender retirement
 20 fund; or

21 (2) would be payable to the participant from the public
 22 employees' retirement fund if the participant had retired
 23 from the public employees' retirement fund on the date of the
 24 participant's retirement from the public defender retirement
 25 fund, if the participant is not receiving a pension from the
 26 public employees' retirement fund on the date of the
 27 participant's retirement from the public defender retirement
 28 fund.

29 Benefits payable to a participant under this section are not reduced
 30 by annuity payments made to the participant from the public
 31 employees' retirement fund or by postretirement increases to the
 32 pension, if any, that the participant is receiving from the public
 33 employees' retirement fund. A participant to whom subdivision (2)
 34 applies is entitled to a recalculation of the benefits payable to the
 35 participant under this section after the participant has begun
 36 receiving a pension from the public employees' retirement fund
 37 based on the actual amount of the pension that the participant is
 38 receiving from the public employees' retirement fund.

39 (f) This subsection applies to a participant who is a member of
 40 the public employees' defined contribution plan established by
 41 IC 5-10.3-12-18. Benefits payable to a participant under this
 42 section are reduced by the pension portion of the retirement



1 benefit, if any, that would be payable to the participant from the
2 public employees' retirement fund if the participant:

3 (1) had not made an election under IC 5-10.3-12-20 to become
4 a member of the public employees' defined contribution plan;
5 and

6 (2) had retired from the public employees' retirement fund on
7 the date of the participant's retirement from the public
8 defender retirement fund.

9 (g) If benefits payable from the public employees' retirement
10 fund exceed the benefits payable from the public defender
11 retirement fund, the participant is entitled at retirement to
12 withdraw from the public defender retirement fund the total sum
13 contributed plus interest at a rate specified by rule by the board.

14 Sec. 13. (a) A participant is considered to have a permanent
15 disability if the board has received written certifications by at least
16 two (2) licensed and practicing physicians, appointed by the board,
17 that:

18 (1) the participant is totally incapacitated, by reason of
19 physical or mental infirmities, from earning a livelihood; and

20 (2) the condition is likely to be permanent.

21 (b) A participant found to have a permanent disability under
22 subsection (a) must be reexamined by at least two (2) physicians
23 appointed by the board, at the times the board designates but at
24 intervals not to exceed one (1) year. If, in the opinion of these
25 physicians, the participant has recovered from the participant's
26 disability, benefits cease to be payable as of the date of the
27 examination, unless on that date the participant is:

28 (1) at least sixty-five (65) years of age; or

29 (2) at least fifty-five (55) years of age and the participant's age
30 in years plus the participant's years of service is at least
31 eighty-five (85).

32 (c) To the extent required by the Americans with Disabilities
33 Act, the transcripts, reports, records, and other material generated
34 to prove that an individual is qualified for disability benefits under
35 this section must be:

36 (1) kept in separate medical files for each member; and

37 (2) treated as confidential medical records.

38 Sec. 14. (a) Except as provided in subsections (b) and (c), a
39 participant who becomes permanently disabled, as described in
40 section 13 of this chapter, is entitled to an annual benefit equal to
41 the product of:

42 (1) the annual salary that was paid to the participant at the



1 time of separation from service; multiplied by
 2 (2) the percentage prescribed in the following table:
 3

Participant's Years of Service	Percentage
4 0-12	50%
5 13	51%
6 14	52%
7 15	53%
8 16	54%
9 17	55%
10 18	56%
11 19	57%
12 20	58%
13 21	59%
14 22 or more	60%

15 If a participant has a partial year of service in addition to at least
 16 ten (10) years of service, an additional percentage is calculated
 17 under this subsection by prorating between the applicable
 18 percentages, based on the number of months in the partial year of
 19 service.

20 (b) Except as provided in subsection (c), benefits payable to a
 21 participant under this section are reduced by the amounts, if any,
 22 that are payable to the participant from the public employees'
 23 retirement fund.

24 (c) This subsection applies to a participant who is a member of
 25 the public employees' defined contribution plan established by
 26 IC 5-10.3-12-18. Benefits payable to a participant under this
 27 section are reduced by the pension portion of the retirement
 28 benefit, if any, that would be payable to the participant from the
 29 public employees' retirement fund if the participant had not made
 30 an election under IC 5-10.3-12-20 to become a member of the
 31 public employees' defined contribution plan.

32 Sec. 15. (a) A participant may designate the participant's
 33 surviving spouse or one (1) or more of the participant's surviving
 34 dependent children to receive the benefit provided by this section
 35 upon the death of the participant. A participant may designate a
 36 trust or a custodian account under IC 30-2-8.5 that is established
 37 for one (1) or more of the participant's surviving dependent
 38 children to receive the benefit provided by this section instead of
 39 designating one (1) or more of the participant's surviving
 40 dependent children to receive the benefit directly.

41 (b) If a participant:
 42 (1) dies; and



- 1 **(2) on the date of death:**
 2 **(A) was receiving benefits under this chapter;**
 3 **(B) was in service in a position described in section 2(9) of**
 4 **this chapter and had completed at least eight (8) years of**
 5 **service in a position described in section 2(9) of this**
 6 **chapter;**
 7 **(C) had a permanent disability as described in section 13**
 8 **of this chapter; or**
 9 **(D) was not in service in a position described in section 2(9)**
 10 **of this chapter, had completed at least eight (8) years of**
 11 **service in a position described in section 2(9) of this**
 12 **chapter, and was entitled to a future benefit;**
 13 **the participant's beneficiary designated under subsection (a) is**
 14 **entitled, regardless of the participant's age, to the benefit**
 15 **prescribed by subsection (c), (e), or (f).**
 16 **(c) The amount of the annual benefit payable to a beneficiary to**
 17 **whom subsection (b) applies is equal to the greater of:**
 18 **(1) twelve thousand dollars (\$12,000); or**
 19 **(2) fifty percent (50%) of the amount of retirement benefit:**
 20 **(A) the participant was drawing at the time of death; or**
 21 **(B) to which the participant would have been entitled had**
 22 **the participant retired and begun receiving retirement**
 23 **benefits on the date of death. However, the reduction**
 24 **described in section 12(d) of this chapter does not apply to**
 25 **the calculation of a survivor benefit under this clause.**
 26 **(d) A benefit payable under this section is subject to the**
 27 **following:**
 28 **(1) A surviving spouse designated as the beneficiary under**
 29 **subsection (a) is entitled to receive the benefit for life.**
 30 **(2) The total monthly benefit payable to a surviving child or**
 31 **children is equal to the same monthly benefit that was to have**
 32 **been payable to the surviving spouse.**
 33 **(3) If there is more than one (1) child designated by the**
 34 **participant, the children are entitled to share the benefit in**
 35 **equal monthly amounts.**
 36 **(4) A child entitled to a benefit shall receive that child's share**
 37 **until the child becomes eighteen (18) years of age or during**
 38 **the entire period of the child's physical or mental disability,**
 39 **whichever period is longer.**
 40 **(5) Upon the cessation of benefits to one (1) designated child,**
 41 **if there are one (1) or more other children then surviving and**
 42 **still entitled to benefits, the remaining children shall share the**



1 benefit equally. If the surviving spouse of the participant is
 2 surviving upon the cessation of benefits to all designated
 3 children, the surviving spouse shall then receive the benefit
 4 for the remainder of the spouse's life.

5 (6) The benefit is payable to the participant's surviving spouse
 6 if any of the following occur:

7 (A) No child or children named as a beneficiary by the
 8 participant survives or survive the participant.

9 (B) No child or children designated by the participant is or
 10 are entitled to a benefit due to the age of the child or
 11 children at the time of death of the participant.

12 (C) A designation is not made.

13 (e) Except as provided in subsection (f), benefits payable to a
 14 designated beneficiary under this section are reduced by the
 15 amount, if any, that is payable to the surviving spouse or the
 16 surviving dependent children from the public employees'
 17 retirement fund as a result of the participant's death after
 18 subtracting the participant's contributions and earnings
 19 attributable to the participant's contributions in the participant's
 20 annuity savings account.

21 (f) This subsection applies to a surviving spouse of a participant
 22 who is a member of the public employees' defined contribution
 23 plan established by IC 5-10.3-12-18. Benefits payable to a surviving
 24 spouse of a participant under this section are reduced by the
 25 pension portion of the retirement benefit, if any, that would be
 26 payable to the spouse from the public employees' retirement fund
 27 under the joint and survivor option under IC 5-10.2-4-7, computed
 28 at fifty percent (50%) of the participant's decreased retirement
 29 benefit, if the participant had not made an election under
 30 IC 5-10.3-12-20 to become a member of the public employees'
 31 defined contribution plan.

32 Sec. 16. (a) If:

33 (1) a participant's spouse does not survive the participant;
 34 and

35 (2) the participant did not designate one (1) or more of the
 36 participant's surviving dependent children to receive the
 37 benefit provided by section 15 of this chapter;

38 the participant's surviving dependent children are, upon the death
 39 of the participant, entitled to a benefit equal to the benefit the
 40 participant's spouse would have received under section 15 of this
 41 chapter.

42 (b) If a surviving spouse of a decedent participant dies and a



1 dependent child of the surviving spouse and the decedent
 2 participant survives them, that dependent child is entitled to
 3 receive a benefit equal to the benefit the spouse was receiving or
 4 would have received under section 15 of this chapter.

5 (c) If there is more than one (1) dependent child, the dependent
 6 children are entitled to share the benefit equally.

7 (d) Each dependent child is entitled to receive that child's share
 8 until the child becomes eighteen (18) years of age or during the
 9 entire period of the child's physical or mental disability, whichever
 10 period is longer.

11 (e) Except as provided in subsection (f), benefits payable to a
 12 dependent child are reduced by the amount, if any, that is payable
 13 to the dependent child from the public employees' retirement fund
 14 after subtracting the participant's contributions and earnings
 15 attributable to the participant's contributions in the participant's
 16 annuity savings account.

17 (f) This subsection applies to a dependent child of a participant
 18 who is a member of the public employees' defined contribution
 19 plan established by IC 5-10.3-12-18. Benefits payable to a
 20 dependent child of a participant under this section are reduced by
 21 the actuarial equivalent of the pension portion of the retirement
 22 benefit, if any, that would be payable to the spouse (assuming the
 23 spouse would have had the same birth date as the participant) from
 24 the public employees' retirement fund under the joint and survivor
 25 option under IC 5-10.2-4-7, computed at fifty percent (50%) of the
 26 participant's decreased retirement benefit, if the participant had
 27 not made an election under IC 5-10.3-12-20 to become a member
 28 of the public employees' defined contribution plan.

29 Sec. 17. (a) If benefits are not payable to the survivors of a
 30 participant who dies, and if a withdrawal application is filed with
 31 the board by the survivors or the participant's estate, the total of
 32 the participant's contributions, plus interest at a rate specified by
 33 rule by the board and minus any payments made to the
 34 participant, shall be paid to:

35 (1) the surviving spouse of the participant or the children of
 36 the participant, as designated by the participant;

37 (2) any dependents of the participant, if a spouse or
 38 designated child does not survive; or

39 (3) the participant's estate, if a spouse, designated child, or
 40 other dependent does not survive.

41 (b) The amount owed a spouse, designated children, other
 42 dependents, or estate under subsection (a) is payable not later than



1 sixty (60) days after the date of receipt of the withdrawal
2 application, or in monthly installments, as the recipient elects.

3 **Sec. 18. The fund shall satisfy the qualification requirements in**
4 **Section 401 of the Internal Revenue Code as applicable to the fund.**
5 **In order to meet those requirements, the fund is subject to the**
6 **following provisions, notwithstanding any other provision of this**
7 **chapter:**

8 (1) The board shall distribute the corpus and income of the
9 fund to participants and their beneficiaries in accordance
10 with this chapter.

11 (2) A part of the corpus or income of the fund may not be used
12 for or diverted to any purpose other than the exclusive benefit
13 of the participants and their beneficiaries.

14 (3) Forfeitures arising from severance of employment or
15 death, or for any other reason, may not be applied to increase
16 the benefits a participant would otherwise receive under the
17 retirement fund law.

18 (4) If the fund is terminated, or if all contributions to the fund
19 are completely discontinued, the rights of each affected
20 participant to the benefits accrued at the date of the
21 termination or discontinuance, to the extent then funded, are
22 nonforfeitable.

23 (5) All benefits paid from the fund shall be distributed in
24 accordance with the requirements of Section 401(a)(9) of the
25 Internal Revenue Code and the regulations under that section.
26 In order to meet those requirements, the fund is subject to the
27 following provisions:

28 (A) The life expectancy of a participant, the participant's
29 spouse, or the participant's beneficiary shall not be
30 recalculated after the initial determination for purposes of
31 determining any benefits.

32 (B) If a participant dies before the distribution of the
33 participant's benefits has begun, distributions to
34 beneficiaries must begin no later than December 31 of the
35 calendar year immediately following the calendar year in
36 which the member died.

37 (6) The board may not:

38 (A) determine eligibility for benefits;

39 (B) compute rates of contribution; or

40 (C) compute benefits of participant's beneficiaries;

41 in a manner that discriminates in favor of participants who
42 are considered officers, supervisors, or highly compensated,



- 1 as prohibited under Section 401(a)(4) of the Internal Revenue
2 Code.
- 3 (7) Benefits paid under this chapter may not exceed the
4 maximum benefits specified by Section 415 of the Internal
5 Revenue Code. If a participant's benefits under this chapter
6 would exceed that maximum benefit, the benefit payable
7 under this chapter shall be reduced as necessary.
- 8 (8) The salary taken into account under this chapter may not
9 exceed the applicable amount under Section 401(a)(17) of the
10 Internal Revenue Code.
- 11 (9) The board may not engage in a transaction prohibited by
12 Section 503(b) of the Internal Revenue Code.
- 13 **Sec. 19. (a) For purposes of this chapter, the following amounts**
14 **are appropriated for each biennium:**
- 15 (1) From the state general fund, the amount required to
16 actuarially fund participants' retirement benefits, as
17 determined by the board on recommendation of an actuary.
- 18 (2) From the fund, the amount required for administration
19 purposes.
- 20 (b) The biennial appropriations provided in this section shall be
21 credited to the board annually in equal installments in the month
22 of July of each year of the biennium.
- 23 **Sec. 20. Notwithstanding any other provision of this chapter, to**
24 **the extent required by Internal Revenue Code Section 401(a)(31),**
25 **as added by the Unemployment Compensation Amendments of**
26 **1992 (P.L.102-318), and any amendments and regulations related**
27 **to Section 401(a)(31), the fund shall allow participants and**
28 **qualified beneficiaries to elect a direct rollover of eligible**
29 **distributions to another eligible retirement plan.**
- 30 **Sec. 21. (a) Notwithstanding any other provision of this chapter,**
31 **the fund must be administered in a manner consistent with the**
32 **Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A**
33 **member on a leave of absence that qualifies for the benefits and**
34 **protections afforded by the Family and Medical Leave Act is**
35 **entitled to receive credit for vesting and eligibility purposes to the**
36 **extent required by the Family and Medical Leave Act, but is not**
37 **entitled to receive credit for service for benefit purposes.**
- 38 (b) Notwithstanding any other provision of this chapter, a
39 participant is entitled to service credit and benefits in the amount
40 and to the extent required by the Uniformed Services Employment
41 and Reemployment Rights Act (38 U.S.C. 4301 et seq.).
- 42 **Sec. 22. A participant, beneficiary, or survivor may not assign**



1 **any payment under this chapter except for the following:**

2 **(1) Premiums on a life, hospitalization, surgical, or medical**
3 **group insurance plan maintained in part by a state agency.**

4 **(2) Dues to an association that proves to the board's**
5 **satisfaction that the association has as members at least**
6 **twenty percent (20%) of the retired participants in the fund.**

7 SECTION 6. IC 35-43-4-2, AS AMENDED BY P.L.70-2021,
8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2022]: Sec. 2. (a) A person who knowingly or intentionally
10 exerts unauthorized control over property of another person, with intent
11 to deprive the other person of any part of its value or use, commits
12 theft, a Class A misdemeanor. However, the offense is:

13 (1) a Level 6 felony if:

14 (A) the value of the property is at least seven hundred fifty
15 dollars (\$750) and less than fifty thousand dollars (\$50,000);

16 (B) the property is a:

17 (i) firearm;

18 (ii) motor vehicle (as defined in IC 9-13-2-105(a)); or

19 (iii) component part (as defined in IC 9-13-2-34) of a motor
20 vehicle; or

21 (C) the person has a prior unrelated conviction for:

22 (i) theft under this section;

23 (ii) criminal conversion under section 3 of this chapter;

24 (iii) robbery under IC 35-42-5-1; or

25 (iv) burglary under IC 35-43-2-1; and

26 (2) a Level 5 felony if:

27 (A) the value of the property is at least fifty thousand dollars
28 (\$50,000);

29 (B) the property that is the subject of the theft is a valuable
30 metal (as defined in IC 25-37.5-1-1) and:

31 (i) relates to transportation safety;

32 (ii) relates to public safety; or

33 (iii) is taken from a hospital or other health care facility,
34 telecommunications provider, public utility (as defined in
35 IC 32-24-1-5.9(a)), or critical infrastructure facility;

36 and the absence of the property creates a substantial risk of
37 bodily injury to a person; or

38 (C) the property is a:

39 (i) motor vehicle (as defined in IC 9-13-2-105(a)); or

40 (ii) component part (as defined in IC 9-13-2-34) of a motor
41 vehicle; and

42 the person has a prior unrelated conviction for theft of a motor



1 vehicle (as defined in IC 9-13-2-105(a)) or theft of a
2 component part (as defined in IC 9-13-2-34).
3 (b) For purposes of this section, "the value of property" means:
4 (1) the fair market value of the property at the time and place the
5 offense was committed; or
6 (2) if the fair market value of the property cannot be satisfactorily
7 determined, the cost to replace the property within a reasonable
8 time after the offense was committed.
9 A price tag or price marking on property displayed or offered for sale
10 constitutes prima facie evidence of the value of the property.
11 (c) If the offense described in subsection (a) is committed by a
12 public servant who exerted unauthorized control over public funds (as
13 defined by IC 5-22-2-23) from the public servant's employer, the
14 employer may be reimbursed in accordance with IC 2-3.5-4-11,
15 IC 2-3.5-5-9, IC 5-10-5.5-19, IC 5-10.3-8-9, IC 5-10.4-5-14,
16 IC 10-12-2-10, IC 33-38-6-19.5, IC 33-39-7-10.5, **IC 33-40-9-5**,
17 IC 36-8-6-14, IC 36-8-7-22, IC 36-8-7.5-19, or IC 36-8-8-17.

