HOUSE BILL No. 1463

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.2-2-11; IC 5-10.4.

Synopsis: Teachers' defined contribution plan. Establishes the teachers' defined contribution plan (plan) as an account within the Indiana state teachers' retirement fund (fund). Provides that an individual who begins employment with a school corporation in a covered position that would otherwise be eligible for membership in the fund may elect to become a member of the plan. Provides that an individual who does not elect to become a member of the plan becomes a member of the fund. Provides that an individual has 36 months after the individual's initial election to make a second election concerning membership in the fund or the plan. Requires the board of trustees of the Indiana public retirement system (board) to establish, subject to any approval from the Internal Revenue Service that the board considers necessary or desirable, alternative investment programs within the annuity savings account as the initial alternative investment programs for the plan. Provides that, if the board considers it necessary or appropriate, the board may establish different or additional alternative investment programs for the plan, except that the board shall maintain the stable value fund. Provides that each member's contribution to the plan is 3% of the member's compensation and requires the employer to pay the member's contribution on behalf of the member. Allows a member to make additional contributions to the plan up to 10% of the member's compensation. Provides that the employer's contribution rate for the plan is equal to the employer's contribution rate for the fund as determined by the board, although the amount credited from the employer's contribution rate to the member's account may not be greater than the normal cost of the fund, and any amount not credited

(Continued next page)

Effective: July 1, 2017.

Carbaugh

January 18, 2017, read first time and referred to Committee on Employment, Labor and Pensions.

to the member's account is applied to the unfunded accrued liability of the fund. Provides that an employer's minimum contribution to the plan is 3% of the compensation of all members of the plan. Provides that member contributions and net earnings on the member contributions belong to the member at all times and do not belong to the employer. Provides that a member vests in the employer contribution subaccount at 50% after four years of participation in the plan with full vesting after five years of participation. Provides that, if a member separates from service with an employer before the member is fully vested in the employer contribution subaccount, the amount in the subaccount that is not vested is: (1) transferred to the member's new employer, if the new employer participates in the plan; or (2) forfeited, if the new employer does not participate in the plan. Provides that a member who: (1) terminates service in a covered position; and (2) does not perform any service in a covered position for at least 30 days after the date on which the member terminates service; is entitled to withdraw vested amounts in the member's account. Provides that a member may elect to have withdrawals paid as: (1) a lump sum; (2) a direct rollover to another eligible retirement plan; or (3) if the member is at least 62 years of age with at least five years of participation in the plan, a monthly annuity in accordance with the rules of the board. Provides that, on the plan's effective date, school corporations become participants in the plan.

Introduced

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1463

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

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

SECTION 1. IC 5-10.2-2-11, AS AMENDED BY P.L.241-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) Based on the actuarial investigation and valuation in section 9 of this chapter, the board shall determine:

(1) the normal contribution for each contribution rate group, which is the amount necessary to fund the pension portion of the retirement benefit;

(2) the rate of normal contribution;

(3) the unfunded accrued liability of the public employees' retirement fund, the pre-1996 account, and the 1996 account, which is the excess of total accrued liability over the fund's or account's total assets, respectively; and

(4) the period, which must be thirty (30) years or a shorter period, necessary to amortize the unfunded accrued liability determined in subdivision (3).

(b) Based on the information in subsection (a), the board may determine, in its sole discretion, contributions and contribution rates for individual employers or for a group of employers.

(c) The board shall require an employer to make a supplemental contribution to the fund in addition to the amounts described in subsection (a)(3) and (a)(4) in an amount necessary to pay the employer's share of the fund's actuarial unfunded liability that other employers would otherwise be required to pay because the employer's employees are becoming members of the plan under IC 5-10.3-12 **or IC 5-10.4-8** instead of the fund. The amount necessary to pay an employer's contribution under this subsection in full must be made in a lump sum or in a series of payments determined by the board.

(d) The board's determinations under subsection (a):

(1) are subject to sections 1.5 and 11.5 of this chapter; and

(2) may not include an amount for a retired member for whom the employer may not make contributions during the member's period of reemployment as provided under IC 5-10.2-4-8(e).

(e) If the board determines contributions and contribution rates for one (1) or more employers under this section differ from the contributions and contribution rates determined by the actuarial investigation under section 9 of this chapter, the board shall notify the interim study committee for pension management oversight of this fact by reporting the board's action to the legislative services agency in an electronic format under IC 5-14-6.

SECTION 2. IC 5-10.4-4-1, AS AMENDED BY P.L.119-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) The members of the fund include:

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

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

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

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

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

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

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

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

(9) a person who:

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

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

(10) persons who are employed by the fund.

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

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

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

SECTION 3. IC 5-10.4-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 8. Teachers' Defined Contribution Plan

Sec. 1. (a) Except as provided in subsection (b), this chapter applies after the effective date of the plan to an individual who:

(1) 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) makes an election described in section 6 or 7 of this chapter to become a member of the plan.

(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 eligible for membership in the fund under IC 5-10.4-4; and

(B) either:

(i) does not make the election described in section 6 of this chapter to become a member of the plan; or

(ii) makes the election described in section 7 of this chapter to become a member of the fund.

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

(1) "Account" means the plan account established for a member under section 8(b) of this chapter.

(2) "Annuity savings account" means the annuity savings account of the 1996 account maintained under IC 5-10.2-2-2(b)(2) and IC 5-10.2-2-2(c)(1).

(3) "Compensation" has the meaning set forth in IC 5-10.2-3-2(a).

(4) "Effective date" means the first day of the month that is six (6) months after the month in which the board adopts provisions to implement the plan under section 4(b) of this chapter.

(5) "Employer" means a school corporation.

(6) "Employer contribution subaccount" means the subaccount in a member's plan account established under section 8(b)(2) of this chapter.

(7) "Internal Revenue Code" has the meaning set forth in IC 5-10.2-1-3.5.

(8) "Member" means an individual described in section 1(a) of this chapter who is not otherwise excluded from membership in the plan.

(9) "Member contribution subaccount" means the subaccount in a member's plan account established under section 8(b)(1) of this chapter.

(10) "Normal retirement age" for a member means the member is at least sixty-two (62) years of age with at least five (5) years of participation in the plan.

(11) "Plan" refers to the teachers' defined contribution plan established by section 4 of this chapter.

(12) "Years of participation" means all periods of participation in the plan in a covered position, plus any additional service for which this chapter provides years of participation credit.

Sec. 3. Except as otherwise provided in this chapter or by federal law, and subject to the board obtaining any approval from the Internal Revenue Service that the board considers necessary or desirable, the provisions of this article that apply to the annuity

savings account apply to an account established under this chapter.

Sec. 4. (a) The teachers' defined contribution plan is established for the purpose of providing amounts funded by an employer and a member for the use of the member or the member's beneficiaries or survivors after the member's retirement.

(b) The board shall adopt provisions to implement the plan established under subsection (a) as follows:

(1) The board shall initially offer the plan using the annuity savings account, subject to obtaining any approval from the Internal Revenue Service that the board considers necessary or desirable to preserve the qualified status of the plan and the fund. The plan as provided under this subdivision is a component within the fund.

(2) If the approval of the Internal Revenue Service to offer the plan using the annuity savings account cannot be obtained in a manner satisfactory to the board, the board shall offer the plan as a separate fund under Section 401(a) or another applicable section of the Internal Revenue Code.

(c) The board shall administer the plan.

(d) The board may adopt a plan document that it considers appropriate or necessary to administer the plan.

Sec. 5. The board may request from the Internal Revenue Service any rulings or determination letters that the board considers necessary or appropriate in order to implement or administer the plan.

Sec. 6. (a) An individual who, on or after the effective date of the plan, 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 may elect to become a member of the plan.

(b) 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) except as provided in section 7 of this chapter, is irrevocable.

(c) 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.

Sec. 7. (a) An individual who makes an election under section 6 of this chapter to become a member of the plan may, not later than thirty-six (36) months after the date of that election, elect to become a member of the fund.

(b) An individual who becomes a member of the fund because the individual did not elect under section 6 of this chapter to become a member of the plan may, not later than thirty-six (36) months after the date of that decision, elect to become a member of the plan.

(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.

(d) If an individual makes the election described in subsection (a), the following apply:

(1) The individual's participation in the plan from the date the individual first became employed with a school corporation until the date immediately preceding the date of the individual's election under subsection (a) is considered creditable service in the fund under IC 5-10.2-3-1 and IC 5-10.4-4-2. To the extent that an individual wants to use this creditable service for the purpose of computing a retirement benefit, an individual is required, to the extent necessary to fully fund the retirement benefit provided by the creditable service, to purchase the creditable service as provided under subdivisions (2) and (3).

(2) The amount credited to the individual's member contribution subaccount on the date of the individual's election under subsection (a) is transferred to the individual's annuity savings account in the fund. An individual may use all or part of the amount transferred under this subdivision to purchase the creditable service described in subdivision (1), if the amount transferred under subdivision (3) is not enough to fully fund the purchase of the creditable service.

(3) The amount credited to the individual's employer contribution subaccount on the date of the individual's election under subsection (a) is transferred to the retirement allowance account of the 1996 account established under IC 5-10.4-2-2. To the extent the amount transferred from the individual's employer contribution subaccount does not fully fund the cost of the benefit provided by each year of creditable service described in subdivision (1), the individual may use all or part of the amount transferred under subdivision (2) to purchase all or part of the creditable service not funded by the amount transferred under this subdivision.

(e) If an individual makes the election described in subsection (b), the following apply:

(1) The individual's service from the date the individual first became employed by a school corporation that participates in the plan until the date immediately preceding the date of the individual's election under subsection (b) is considered participation in the plan for purposes of vesting in the employer contribution subaccount under section 12 of this chapter, and the individual waives service credit in the fund for the service.

(2) The amount credited to the individual's annuity savings account on the date of the individual's election under subsection (b) is transferred to the individual's member contribution subaccount.

(3) The amount credited to the individual's employer contribution subaccount is equivalent to the amount that:

(A) would have been contributed to the plan for the individual from the date the individual first became employed by a school corporation that participates in the plan until the date immediately preceding the date of the individual's election under subsection (b); and

(B) would not have been forfeited had the individual originally elected to become a member of the plan.

Sec. 8. (a) The plan consists of the following:

(1) Each member's contributions to the plan under section 10 of this chapter.

(2) Contributions made by an employer to the plan on behalf of each member under section 11 of this chapter.

(3) Rollovers to the plan by a member under section 16 of this chapter.

(4) All earnings on investments or deposits of the plan.

(5) All contributions or payments to the plan made in the manner provided by the general assembly.

(b) The plan shall establish an account for each member. A member's account consists of two (2) subaccounts credited individually as follows:

(1) The member contribution subaccount consists of:

(A) the member's contributions to the plan under section 10 of this chapter; and

(B) the net earnings on the contributions described in clause (A) as determined under section 9 of this chapter.

(2) The employer contribution subaccount consists of:

(A) the employer's contributions made on behalf of the member to the plan under section 11 of this chapter; and
(B) the earnings on the contributions described in clause (A) as determined under section 9 of this chapter.

The board may combine the two (2) subaccounts established under this subsection into a single account, if the board determines that a single account is administratively appropriate and permissible under applicable law.

(c) If a member makes rollover contributions under section 16 of this chapter, the plan shall establish a rollover account as a separate subaccount within the member's account.

Sec. 9. (a) Subject to the board obtaining any approval from the Internal Revenue Service that the board considers necessary or desirable, the board shall establish alternative investment programs (as described by IC 5-10.2-2-3) within the annuity savings account as the initial alternative investment programs for the plan. If the board considers it necessary or appropriate, the board may establish different or additional alternative investment programs for the plan, except that the board shall maintain the stable value fund as described by IC 5-10.2-2-3(b).

(b) The requirements and rules that apply to the alternative investment programs within the annuity savings account are the initial requirements and rules that apply to the alternative investment programs within the plan, including the following:
(1) The board's investment guidelines and limits for the alternative investment programs.
(2) A member's selection of and changes to the member's investment options.
(3) The valuation of a member's account.
(4) The allocation and payment of administrative expenses for the alternative investment programs.

(c) If the board considers it necessary or appropriate, the board may establish different or additional requirements and rules that apply to the alternative investment programs within the plan.

(d) The board shall determine the appropriate administrative fees to be charged to the member accounts.

Sec. 10. (a) Each member's contribution to the plan is equal to three percent (3%) of the member's compensation.

(b) An employer shall pay a member's contribution on behalf of the member.

(c) To the extent permitted by the Internal Revenue Code and applicable regulations, a member of the plan may make

contributions to the plan in addition to the contribution required under subsection (a). IC 5-10.2-3-2(c) and IC 5-10.2-3-2(d) govern additional contributions made under this subsection.

(d) Member contributions must be credited to the member's account as specified in IC 5-10.2-3.

(e) Although designated as employee contributions, the contributions made under subsection (b) by an employer must be picked up and paid by the employer instead of the contributions being paid by the employee in accordance with Section 414(h)(2) of the Internal Revenue Code.

(f) A member may not receive any amounts paid by an employer under this section directly instead of having the amounts paid to the plan.

Sec. 11. (a) An employer shall make employer contributions to the plan based on the rate determined under this section.

(b) The employer's contribution rate for the plan must be equal to the employer's contribution rate for the fund as determined by the board under IC 5-10.2-2-11(b). The amount credited from the employer's contribution rate to the member's account shall be the normal cost of the fund. Any amount not credited to the member's account must be applied to the unfunded accrued liability of the fund as determined under IC 5-10.2-2-11(c).

(c) Notwithstanding subsection (b), an employer's minimum contribution under this section is equal to three percent (3%) of the compensation of all members of the plan.

(d) An employer shall submit the employer contributions determined under this section as provided in IC 5-10.2-2-12.5.

Sec. 12. (a) Member contributions and net earnings on the member contributions in the member contribution subaccount belong to the member at all times and do not belong to the employer.

(b) A member is vested in the employer contribution subaccount in accordance with the following schedule:

Years of participation in the plan	**Vested percentage of employer contributions and earnings**
1	**0%**
2	**0%**
3	**0%**
4	**50%**
5	**100%**

For purposes of vesting in the employer contribution subaccount,

only a member's full years of participation in the plan may be counted.

(c) The amount that a member may withdraw from the member's account is limited to the vested portion of the account.

(d) A member who attains normal retirement age is fully vested in all amounts in the member's account.

(e) If a member separates from service with an employer before the member is fully vested in the employer contribution subaccount, the amount in the employer contribution subaccount that is not vested is:

(1) transferred to the member's new employer, if the employer is a school corporation that participates in the plan; or

(2) forfeited as of the date the member separates from service, if the member's new employer is not a school corporation that participates in the plan.

(f) Amounts forfeited under subsection (e) must be used as determined by the board.

(g) A member may not earn creditable service (as defined in IC 5-10.2-3-1(a)) under the plan.

Sec. 13. (a) Subject to the provisions of the Internal Revenue Code applicable to qualified plan distributions, a member who:

(1) terminates service in a covered position; and

(2) does not perform any service in a position covered by the fund for at least thirty (30) days after the date on which the member terminates service;

is entitled to withdraw amounts in the member's account to the extent the member is vested in the account. A member must make a required withdrawal from the member's account not later than the required beginning date under the Internal Revenue Code.

(b) A member may elect to have withdrawals paid as:

(1) a lump sum;

(2) a direct rollover to another eligible retirement plan; or

(3) if the member has attained normal retirement age, a monthly annuity in accordance with the rules of the board.

(c) The board may establish a minimum account balance or a minimum monthly payment amount in order for a member to select the monthly annuity option. The board shall establish the forms of annuity by rule, in consultation with the board's actuary. The board shall give members information about these forms of payment and any information required by federal law to accompany such distributions.

(d) Unless otherwise required by federal or state law, the requirements and rules that apply to the distribution of the annuity savings account apply to distributions from a member's account.

Sec. 14. (a) If a member dies:

(1) while in service in a position covered by the plan; or

(2) after terminating service in a position covered by the plan but before withdrawing the member's account;

to the extent that the member is vested, the member's account shall be paid to the beneficiary or beneficiaries designated by the member on a form prescribed by the board. The amount paid must be valued as provided in IC 5-10.2-2-3. The board shall invest the total amount in the member's account in the stable value fund not later than thirty (30) days after receiving notification of a member's death.

(b) If there is no properly designated beneficiary, or if no beneficiary survives the member, the member's account shall be paid to:

(1) the surviving spouse of the member;

(2) if there is not a surviving spouse, the surviving dependent or dependents of the member in equal shares; or

(3) if there is not a surviving spouse or dependent, the member's estate.

(c) The beneficiary or beneficiaries designated under subsection (a) or a survivor determined under subsection (b) may elect to have the member's account paid as:

(1) a lump sum;

(2) a direct rollover to another eligible retirement plan; or

(3) a monthly annuity in accordance with rules of the board.

A monthly annuity is an option only on or after the date the beneficiary or survivor becomes sixty-two (62) years of age. The board shall establish the forms of annuity by rule, in consultation with the board's actuary. Further, the board may establish a minimum account balance or a minimum monthly payment amount that is required in order for a beneficiary or survivor to select the monthly annuity option.

Sec. 15. (a) All assets in the plan are exempt from levy, sale, garnishment, attachment, or other legal process.

(b) A member, beneficiary, or survivor may not assign any payment under this chapter except for the following:

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

(2) Dues to an association that proves to the board's

satisfaction that the association has as members at least twenty percent (20%) of the retired members in the plan.

Sec. 16. (a) To the extent permitted by the Internal Revenue Code and the applicable regulations and guidance, the plan may accept, on behalf of any member who is employed in a covered position, a rollover distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(b) Any amounts rolled over under subsection (a) must be accounted for in a rollover account that is separate from the member's account in the plan. The member is fully vested in the member's rollover account.

(c) A member may direct the investment of the member's rollover account into any alternative investment option that the board may make available to the member's rollover account under section 9 of this chapter.

(d) A member may withdraw the member's rollover account from the plan in a lump sum or direct a rollover to an eligible retirement plan at any time. Upon attainment of normal retirement age, in addition to these payment options, the member may withdraw the member's rollover account as a monthly annuity as established by the board in accordance with the annuity options that are available for the member's account in the plan. A member shall make a required withdrawal from the member's account in the plan not later than the required beginning date under the Internal Revenue Code.

Sec. 17. (a) If a member becomes disabled while in a covered position, subject to any federal law limitations concerning qualified plan distributions and the member furnishing proof of the member's qualification for Social Security disability benefits to the board, to the extent that the member is vested, the member may make a withdrawal from the member's account.

(b) The member may elect to have the withdrawal paid as:

(1) a lump sum;
(2) a direct rollover to another eligible retirement plan; or
(3) a monthly annuity in accordance with the rules of the board.

(c) The board may establish a minimum account balance or a minimum monthly payment amount in order for a member to select the monthly annuity option.

Sec. 18. (a) If a member of the plan separates from employment with the member's employer and later returns to employment in a position covered by the plan:
(1) the individual resumes membership in the plan; and
(2) the member is entitled to receive credit for the member's years of participation in the plan before the member's separation. However, any amounts forfeited by the member under section 12(e) of this chapter may not be restored to the member's account.

(b) An individual who elected under section 6 or 7 of this chapter to become a member of the plan resumes membership in the plan upon the individual's return to employment covered by the plan.

(c) An individual who:
(1) did not elect to become a member of the plan; or
(2) made an election described in section 7 of this chapter to become a member of the fund;
resumes membership in the fund.

(d) An individual who returns to employment in a position covered by the plan having had an opportunity to make an election under section 6 or 7 of this chapter during an earlier period of employment is not entitled to a second opportunity to make an election under section 6 or 7 of this chapter.

SECTION 4. IC 5-10.4-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 9. Participation by School Corporations in the Defined Contribution Plan

Sec. 1. The following definitions apply throughout this chapter:
(1) "Account" has the meaning set forth in IC 5-10.4-8-2(1).
(2) "Plan" has the meaning set forth in IC 5-10.4-8-2(11).

Sec. 2. On the effective date of the plan, a school corporation becomes a participant in the plan.

Sec. 3. After a school corporation becomes a participant in the plan, its governing body may make appropriations, make

payments, and do all things required under IC 5-10.4-8.

Sec. 4. The board shall maintain separate accounts for each contribution rate group. Credits and charges to these accounts shall be made as prescribed under IC 5-10.4-8.

Sec. 5. A school corporation shall make the appropriations and payments required under this article and IC 5-10.2 from its general fund.

Sec. 6. If a school corporation fails to make payments required by this chapter, the amount payable may be:

(1) withheld by the auditor of state from money payable to the school corporation and transferred to the plan; or

(2) recovered in a suit in the circuit or superior court of the county in which the school corporation is located. The suit must be an action by the state on the relation of the board, prosecuted by the attorney general.