

HOUSE BILL No. 1486

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.

Effective: July 1, 2021.

Heaton, Thompson, Cherry

January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.



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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1486

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, 2021]: 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



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

(f) An individual:

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

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

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

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

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

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

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

(g) An individual:

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

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

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

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

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

(4) who is not excluded from membership under section 2 of this 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, 2021]: 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, 2021]: Sec. 2. The system consists of the following public
42 pension or retirement funds:



(1) The public employees' retirement fund established under IC 5-10.2 and IC 5-10.3.

(2) The public employees' defined contribution plan established under IC 5-10.3-12.

(3) The Indiana state teachers' retirement fund established under IC 5-10.2 and IC 5-10.4.

(4) The teachers' defined contribution plan established under IC 5-10.4-8.

(5) The Indiana judges' retirement fund established under IC 33-38-6.

(6) The prosecuting attorneys retirement fund established under IC 33-39-7.

(7) The state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement fund established under IC 5-10-5.5.

(8) The 1977 police officers' and firefighters' pension and disability fund established under IC 36-8-8.

(9) The legislators' retirement system established under IC 2-3.5.

(10) The pension relief fund established under IC 5-10.3-11.

(11) The special death benefit fund established under IC 5-10-9.8.

(12) The public defender retirement fund established by IC 33-40-9.

SECTION 4. IC 5-10.5-5-2, AS ADDED BY P.L.23-2011, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. The board's transactions under this chapter are subject to IC 2-3.5-3-3, IC 5-10-5.5-2.5, IC 5-10.2-2-1.5, IC 33-38-6-13, IC 33-39-7-22, **IC 33-40-9-18**, and IC 36-8-8-2.5.

SECTION 5. IC 33-40-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 9. Public Defender Retirement Fund

Sec. 1. This chapter applies only to:

(1) an individual who serves as a chief public defender or chief deputy public defender on or after January 1, 1990; or

(2) a participant employed in a position described in section 2(9)(B) of this chapter who serves in the position after June 30, 2018.

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

(1) "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

(2) "Board" refers to the board of trustees of the Indiana



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

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

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

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

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

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

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

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

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

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

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

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

If a person is elected or appointed to a position described in clause (A) or (B) and serves one (1) or more terms or part of a term, then retires from office or otherwise separates from service, but at a later period or periods is appointed or elected and serves in a position described in clause (A) or (B), the person shall pay into the fund during all the periods that the person serves in that position, except as otherwise provided in this chapter, whether the periods are connected or disconnected. In addition, the term includes any period of service in the prosecuting attorneys retirement fund (IC 33-39-7) credited to a person described in clause (A) or (B) if



the person participated in the prosecuting attorneys retirement fund, but the person did not attain vested status in the prosecuting attorneys retirement fund.

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

- (1) Each participant's contributions to the fund.
- (2) All gifts, grants, devises, and bequests in money, property, or other form made to the fund.
- (3) All interest on investments or on deposits of the fund.
- (4) A contribution or payment to the fund made in a manner provided by the general assembly.

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

- (1) secure payment of benefits to the participants and their beneficiaries; and
- (2) pay the costs of administering this chapter.

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

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

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

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

- (1) retirement benefit of a retired participant; or
- (2) disability benefit of a participant who is permanently disabled.

Sec. 6. (a) The board shall administer the fund, which may be commingled with any public pension and retirement fund administered by the Indiana public retirement system for investment purposes.



(b) The board shall do the following:

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

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

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

(4) Authorize deposits.

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

(d) The powers and duties of:

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

(2) the attorney general;

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

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

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

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

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

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

(b) A participant who made public employee retirement fund (PERF) contributions while employed in a position described in section 2(9) of this chapter may elect to contribute the difference between:

(1) the PERF contribution; and

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

for each year in which the participant was employed in the position described in section 2(9) of this chapter. The participant may make payments over five (5) annual installments. This subsection expires June 30, 2026.

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

(1) county auditor (for a participant described in section 2(9)(A) of this chapter), and transferred to the auditor of state



1 to be credited to the fund; and

2 (2) auditor of state (for a participant described in section
3 2(9)(B) of this chapter), and credited to the fund.

4 (d) The state or county may pay the contributions for a
5 participant. The state or county may elect to pay the contribution
6 for the participant as a pickup under Section 414(h) of the Internal
7 Revenue Code.

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

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

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

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

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

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

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

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

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

30 (2) is not eligible for a retirement benefit under this chapter;
31 is entitled to withdraw from the fund, beginning on the date
32 specified by the participant in a written application. The date upon
33 which the withdrawal begins may not be before the date of final
34 termination of employment or the date thirty (30) days before the
35 receipt of the application by the board. Upon withdrawal the
36 participant is entitled to receive the total sum contributed plus
37 interest at a rate specified by rule by the board, payable not later
38 than sixty (60) days from the date of the withdrawal application.

39 (b) Notwithstanding section 2(9) of this chapter, a participant
40 who withdraws from the fund under subsection (a) and becomes a
41 participant again at a later date is not entitled to service credit for
42 years of service before the withdrawal, unless the participant pays



1 into the fund the full amount received by the participant when the
 2 participant withdrew from the fund, plus interest at a rate
 3 specified by rule by the board. The board shall grant a participant
 4 service credit for years of service by the participant before the
 5 participant's withdrawal from the fund if the participant makes
 6 the repayment required by this subsection in a lump sum or a
 7 series of payments determined by the board, not exceeding five (5)
 8 annual installments.

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

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

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

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

22 **(1)** The application for retirement benefits and the choice of
 23 the retirement date is filed on a form provided by the board,
 24 and the retirement date is:

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

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

27 **(C)** not more than six (6) months before the date the
 28 application is received by the board.

29 However, if the board determines that a participant is
 30 incompetent to file for benefits and choose a retirement date,
 31 the retirement date may be any date that is the first of the
 32 month after the time the participant became incompetent.

33 **(2)** The participant:

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

36 **(B)** is at least fifty-five (55) years of age and the
 37 participant's age in years plus the participant's years of
 38 service is at least eighty-five (85); or

39 **(C)** has become permanently disabled.

40 **(3)** The participant is not receiving and is not entitled to
 41 receive any salary for services currently performed.

42 **Sec. 12. (a)** This section does not apply to a participant who



1 becomes permanently disabled, as described in section 13 of this
2 chapter.

3 (b) A participant who:

4 (1) applies for a retirement benefit; and

5 (2) is at least:

6 (A) sixty-five (65) years of age; or

7 (B) fifty-five (55) years of age and the participant's age in
8 years plus the participant's years of service is at least
9 eighty-five (85);

10 is entitled to an annual retirement benefit as calculated in
11 subsection (c).

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

15 (1) the highest annual salary that was paid to the participant
16 before separation from service; multiplied by

17 (2) the percentage prescribed in the following table:

18 Participant's Years of Service	Percentage
19 Less than 8	0
20 8	24%
21 9	27%
22 10	30%
23 11	33%
24 12	50%
25 13	51%
26 14	52%
27 15	53%
28 16	54%
29 17	55%
30 18	56%
31 19	57%
32 20	58%
33 21	59%
34 22 or more	60%

35 If a participant has a partial year of service in addition to at least
36 eight (8) full years of service, an additional percentage is calculated
37 under this subsection by prorating between the applicable
38 percentages, based on the number of months in the partial year of
39 service.

40 (d) Except as provided in subsections (e) and (f), and section
41 15(c)(2)(B) of this chapter, a participant who:

42 (1) applies for a retirement benefit; and



(2) is not described in subsection (b);
 is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-fourth percent (0.25%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday.

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

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

(2) would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the public defender retirement fund, if the participant is not receiving a pension from the public employees' retirement fund on the date of the participant's retirement from the public defender retirement fund.

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

(f) This subsection applies to a participant who is a member of the public employees' defined contribution plan established by IC 5-10.3-12-18. Benefits payable to a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the participant from the public employees' retirement fund if the participant:

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

(2) had retired from the public employees' retirement fund on



the date of the participant's retirement from the public defender retirement fund.

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

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

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

(2) the condition is likely to be permanent.

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

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

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

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

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

(2) treated as confidential medical records.

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

(1) the annual salary that was paid to the participant at the time of separation from service; multiplied by

(2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%



1	15	53%
2	16	54%
3	17	55%
4	18	56%
5	19	57%
6	20	58%
7	21	59%
8	22 or more	60%
9	If a participant has a partial year of service in addition to at least	
10	ten (10) years of service, an additional percentage is calculated	
11	under this subsection by prorating between the applicable	
12	percentages, based on the number of months in the partial year of	
13	service.	
14	(b) Except as provided in subsection (c), benefits payable to a	
15	participant under this section are reduced by the amounts, if any,	
16	that are payable to the participant from the public employees'	
17	retirement fund.	
18	(c) This subsection applies to a participant who is a member of	
19	the public employees' defined contribution plan established by	
20	IC 5-10.3-12-18. Benefits payable to a participant under this	
21	section are reduced by the pension portion of the retirement	
22	benefit, if any, that would be payable to the participant from the	
23	public employees' retirement fund if the participant had not made	
24	an election under IC 5-10.3-12-20 to become a member of the	
25	public employees' defined contribution plan.	
26	Sec. 15. (a) A participant may designate the participant's	
27	surviving spouse or one (1) or more of the participant's surviving	
28	dependent children to receive the benefit provided by this section	
29	upon the death of the participant. A participant may designate a	
30	trust or a custodian account under IC 30-2-8.5 that is established	
31	for one (1) or more of the participant's surviving dependent	
32	children to receive the benefit provided by this section instead of	
33	designating one (1) or more of the participant's surviving	
34	dependent children to receive the benefit directly.	
35	(b) If a participant:	
36	(1) dies; and	
37	(2) on the date of death:	
38	(A) was receiving benefits under this chapter;	
39	(B) was in service in a position described in section 2(9) of	
40	this chapter and had completed at least eight (8) years of	
41	service in a position described in section 2(9) of this	
42	chapter;	



1 (C) had a permanent disability as described in section 13
 2 of this chapter; or
 3 (D) was not in service in a position described in section 2(9)
 4 of this chapter, had completed at least eight (8) years of
 5 service in a position described in section 2(9) of this
 6 chapter, and was entitled to a future benefit;

7 the participant's beneficiary designated under subsection (a) is
 8 entitled, regardless of the participant's age, to the benefit
 9 prescribed by subsection (c), (e), or (f).

10 (c) The amount of the annual benefit payable to a beneficiary to
 11 whom subsection (b) applies is equal to the greater of:

12 (1) twelve thousand dollars (\$12,000); or

13 (2) fifty percent (50%) of the amount of retirement benefit:

14 (A) the participant was drawing at the time of death; or

15 (B) to which the participant would have been entitled had
 16 the participant retired and begun receiving retirement
 17 benefits on the date of death. However, the reduction
 18 described in section 12(d) of this chapter does not apply to
 19 the calculation of a survivor benefit under this clause.

20 (d) A benefit payable under this section is subject to the
 21 following:

22 (1) A surviving spouse designated as the beneficiary under
 23 subsection (a) is entitled to receive the benefit for life.

24 (2) The total monthly benefit payable to a surviving child or
 25 children is equal to the same monthly benefit that was to have
 26 been payable to the surviving spouse.

27 (3) If there is more than one (1) child designated by the
 28 participant, the children are entitled to share the benefit in
 29 equal monthly amounts.

30 (4) A child entitled to a benefit shall receive that child's share
 31 until the child becomes eighteen (18) years of age or during
 32 the entire period of the child's physical or mental disability,
 33 whichever period is longer.

34 (5) Upon the cessation of benefits to one (1) designated child,
 35 if there are one (1) or more other children then surviving and
 36 still entitled to benefits, the remaining children shall share the
 37 benefit equally. If the surviving spouse of the participant is
 38 surviving upon the cessation of benefits to all designated
 39 children, the surviving spouse shall then receive the benefit
 40 for the remainder of the spouse's life.

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



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

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

6 (C) A designation is not made.

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

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

26 Sec. 16. (a) If:

27 (1) a participant's spouse does not survive the participant;
28 and

29 (2) the participant did not designate one (1) or more of the
30 participant's surviving dependent children to receive the
31 benefit provided by section 15 of this chapter;
32 the participant's surviving dependent children are, upon the death
33 of the participant, entitled to a benefit equal to the benefit the
34 participant's spouse would have received under section 15 of this
35 chapter.

36 (b) If a surviving spouse of a decedent participant dies and a
37 dependent child of the surviving spouse and the decedent
38 participant survives them, that dependent child is entitled to
39 receive a benefit equal to the benefit the spouse was receiving or
40 would have received under section 15 of this chapter.

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



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

5 (e) Except as provided in subsection (f), benefits payable to a
 6 dependent child are reduced by the amount, if any, that is payable
 7 to the dependent child from the public employees' retirement fund
 8 after subtracting the participant's contributions and earnings
 9 attributable to the participant's contributions in the participant's
 10 annuity savings account.

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

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

29 (1) the surviving spouse of the participant or the children of
 30 the participant, as designated by the participant;

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

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

35 (b) The amount owed a spouse, designated children, other
 36 dependents, or estate under subsection (a) is payable not later than
 37 sixty (60) days after the date of receipt of the withdrawal
 38 application, or in monthly installments, as the recipient elects.

39 Sec. 18. The fund shall satisfy the qualification requirements in
 40 Section 401 of the Internal Revenue Code as applicable to the fund.
 41 In order to meet those requirements, the fund is subject to the
 42 following provisions, notwithstanding any other provision of this



chapter:

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

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

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

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

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

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

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

(6) The board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of participant's beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits specified by Section 415 of the Internal Revenue Code. If a participant's benefits under this chapter would exceed that maximum benefit, the benefit payable



under this chapter shall be reduced as necessary.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

Sec. 19. (a) For purposes of this chapter, the following amounts are appropriated for each biennium:

(1) From the state general fund, the amount required to actuarially fund participants' retirement benefits, as determined by the board on recommendation of an actuary.

(2) From the fund, the amount required for administration purposes.

(b) The biennial appropriations provided in this section shall be credited to the board annually in equal installments in the month of July of each year of the biennium.

Sec. 20. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

Sec. 21. (a) Notwithstanding any other provision of this chapter, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes.

(b) Notwithstanding any other provision of this chapter, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

Sec. 22. A participant, 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 participants in the fund.



SECTION 6. IC 35-43-4-2, AS AMENDED BY P.L.276-2019,
SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2021]: Sec. 2. (a) A person who knowingly or intentionally
exerts unauthorized control over property of another person, with intent
to deprive the other person of any part of its value or use, commits
theft, a Class A misdemeanor. However, the offense is:

(1) a Level 6 felony if:

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

(B) the property is a:

(i) firearm;

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

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

(C) the person has a prior unrelated conviction for

(i) theft under this section; or

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

(2) a Level 5 felony if:

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

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

(i) relates to transportation safety;

(ii) relates to public safety; or

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

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

(C) the property is a:

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

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

the person has a prior unrelated conviction for theft of a motor
vehicle (as defined in IC 9-13-2-105(a)) or theft of a
component part (as defined in IC 9-13-2-34).

(b) For purposes of this section, "the value of property" means:

(1) the fair market value of the property at the time and place the
offense was committed; or

(2) if the fair market value of the property cannot be satisfactorily
determined, the cost to replace the property within a reasonable
time after the offense was committed.



1 A price tag or price marking on property displayed or offered for sale
2 constitutes prima facie evidence of the value of the property.

3 (c) If the offense described in subsection (a) is committed by a
4 public servant who exerted unauthorized control over public funds (as
5 defined by IC 5-22-2-23) from the public servant's employer, the
6 employer may be reimbursed in accordance with IC 2-3.5-4-11,
7 IC 2-3.5-5-9, IC 5-10-5.5-19, IC 5-10.3-8-9, IC 5-10.4-5-14,
8 IC 10-12-2-10, IC 33-38-6-19.5, IC 33-39-7-10.5, **IC 33-40-9-5**,
9 IC 36-8-6-14, IC 36-8-7-22, IC 36-8-7.5-19, or IC 36-8-8-17.

