



January 19, 2022

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## SENATE BILL No. 79

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DIGEST OF SB 79 (Updated January 13, 2022 11:50 am - DI 129)

**Citations Affected:** IC 36-8.

**Synopsis:** 1977 pension and disability fund. Establishes the 1977 fund defined contribution plan (plan). Provides that current employees may make contributions to the plan. Specifies rules and requirements for the plan concerning items that include member elections, member contributions, vesting, rollover distributions, and withdrawal of funds. (The introduced version of this bill was prepared by the interim study committee on pension management oversight.)

**Effective:** July 1, 2022.

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**Boots, Ford Jon, Rogers, Qaddoura,  
Bassler, Niezgodski**

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January 4, 2022, read first time and referred to Committee on Pensions and Labor.  
January 6, 2022, reported favorably — Do Pass; reassigned to Committee on Appropriations.  
January 18, 2022, amended, reported favorably — Do Pass.

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SB 79—LS 6073/DI 144





January 19, 2022

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.

## SENATE BILL No. 79

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

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

- 1 SECTION 1. IC 36-8-8.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]:  
4 **Chapter 8.1. 1977 Fund Defined Contribution Plan**  
5 **Sec. 1. This chapter applies after the effective date of the plan to**  
6 **an individual who:**  
7 (1) **is currently employed by an employer;**  
8 (2) **is a member of the 1977 fund; and**  
9 (3) **makes an election described in section 6 of this chapter to**  
10 **become a member of the plan.**  
11 **Sec. 2. The following definitions apply throughout this chapter:**  
12 (1) **"1977 fund" has the meaning set forth in IC 36-8-1-5.**  
13 (2) **"Account" means the plan account established for a**  
14 **member under section 7(b) of this chapter.**  
15 (3) **"Effective date" means the first day of the month that is**  
16 **six (6) months after the month in which the system board**  
17 **adopts provisions to implement the plan under section 4(b) of**

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- 1           **this chapter.**  
2           **(4) "Employer" has the meaning set forth in IC 36-8-8-2.**  
3           **(5) "Internal Revenue Code" has the meaning set forth in**  
4           **IC 36-8-8-2.5(a).**  
5           **(6) "Member" means an individual described in section 1 of**  
6           **this chapter who is not otherwise excluded from membership**  
7           **in the plan.**  
8           **(7) "Normal retirement age" for a member means the**  
9           **member is at least fifty-two (52) years of age.**  
10          **(8) "Plan" refers to the 1977 fund defined contribution plan**  
11          **established by section 4 of this chapter.**  
12          **(9) "System board" refers to the board of trustees of the**  
13          **Indiana public retirement system established by IC 5-10.5-3-1.**  
14          **(10) "Years of participation" means all periods of**  
15          **participation in the plan in a covered position, plus any**  
16          **additional service for which this chapter provides years of**  
17          **participation credit.**  
18          **Sec. 3. Except as otherwise provided in this chapter or by**  
19          **federal law, and subject to the system board obtaining any**  
20          **approval from the Internal Revenue Service that the system board**  
21          **considers necessary or desirable, the provisions of this article that**  
22          **apply to the 1977 fund apply to an account established under this**  
23          **chapter.**  
24          **Sec. 4. (a) The 1977 fund defined contribution plan is established**  
25          **for the purpose of providing amounts funded by a member for the**  
26          **use of the member or the member's beneficiaries or survivors after**  
27          **the member's retirement.**  
28          **(b) The system board shall adopt provisions to implement the**  
29          **plan established under subsection (a). Subject to the system board**  
30          **obtaining any approval from the Internal Revenue Service that the**  
31          **system board considers necessary or desirable, the system board**  
32          **shall offer the plan as a separate fund under Section 401(a) or**  
33          **another applicable section of the Internal Revenue Code.**  
34          **(c) The system board shall administer the plan.**  
35          **(d) The system board may adopt a plan document that it**  
36          **considers appropriate or necessary to administer the plan.**  
37          **Sec. 5. The system board may request from the Internal**  
38          **Revenue Service any rulings or determination letters that the**  
39          **system board considers necessary or appropriate in order to**  
40          **implement or administer the plan.**  
41          **Sec. 6. (a) An individual who, on or after the effective date of the**  
42          **plan, meets the qualifications under section 1(1) through 1(2) of**



- 1 this chapter may elect to become a member of the plan.  
 2 (b) An election under this section:  
 3 (1) must be made in writing; and  
 4 (2) must be filed with the system board, on a form prescribed  
 5 by the system board.
- 6 Sec. 7. (a) The plan consists of the following:  
 7 (1) Each member's contributions to the plan under section 9  
 8 of this chapter.  
 9 (2) Rollovers to the plan by a member under section 14 of this  
 10 chapter.  
 11 (3) All earnings on investments or deposits of the plan.  
 12 (4) All contributions or payments to the plan made in the  
 13 manner provided by the general assembly.
- 14 (b) The plan shall establish an account for each member. A  
 15 member's account consists of:  
 16 (1) the member's contributions to the plan under section 9 of  
 17 this chapter; and  
 18 (2) the net earnings on the contributions described in  
 19 subdivision (1) as determined under section 8 of this chapter.
- 20 (c) If a member makes rollover contributions under section 14  
 21 of this chapter, the plan shall establish a rollover account as a  
 22 separate subaccount within the member's account.
- 23 Sec. 8. (a) Subject to the system board obtaining any approval  
 24 from the Internal Revenue Service that the system board considers  
 25 necessary or desirable, the system board shall establish:  
 26 (1) a stable value fund for the plan; and  
 27 (2) alternative investment programs for the plan.
- 28 (b) The system board may adopt requirements and rules that  
 29 apply to the alternative investment programs within the plan,  
 30 including the following:  
 31 (1) The system board's investment guidelines and limits for  
 32 the alternative investment programs.  
 33 (2) A member's selection of and changes to the member's  
 34 investment options.  
 35 (3) The valuation of a member's account.  
 36 (4) The allocation and payment of administrative expenses for  
 37 the alternative investment programs.
- 38 (c) The system board shall determine the appropriate  
 39 administrative fees to be charged to the member accounts. The fees  
 40 charged to the member accounts under this subsection shall be  
 41 greater in the first year of plan implementation to cover any  
 42 administrative costs and may be lowered in subsequent years to



1 cover ongoing administrative costs of the plan.

2 **Sec. 9. (a)** Each member may make contributions to the plan.

3 **(b)** Member contributions must be credited to the member's  
4 account.

5 **Sec. 10.** Member contributions and net earnings on the member  
6 contributions in the member account belong to the member at all  
7 times and do not belong to the employer. The member is fully  
8 vested in the member account.

9 **Sec. 11. (a)** Subject to the provisions of the Internal Revenue  
10 Code applicable to qualified plan distributions, a member who  
11 terminates service in a covered position is entitled to withdraw all  
12 or part of the amounts in the member's account to the extent the  
13 member is vested in the account. A member must make a required  
14 withdrawal from the member's account not later than the required  
15 beginning date under the Internal Revenue Code.

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

17 **(1)** a lump sum;

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

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

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

29 **(d)** Unless otherwise required by federal law, state law, or this  
30 chapter, the requirements and rules that apply to the distribution  
31 of the 1977 fund apply to distributions from a member's account.

32 **(e)** Subject to the Pension Protection Act of 2006 and  
33 notwithstanding any state law, an active member who:

34 **(1)** is at least fifty-nine and one-half (59 1/2) years of age; and

35 **(2)** has attained vested status in the fund;

36 may withdraw all or part of the amount in the member's account  
37 without separating from a covered position.

38 **Sec. 12. (a)** If a member dies:

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

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

42 to the extent that the member is vested, the member's account shall



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

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

- 10 (1) the surviving spouse of the member;  
 11 (2) if there is not a surviving spouse, the surviving dependent  
 12 or dependents of the member in equal shares; or  
 13 (3) if there is not a surviving spouse or dependent, the  
 14 member's estate.

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

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

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

29 Sec. 13. (a) All assets in the plan are exempt from levy, sale,  
 30 garnishment, attachment, or other legal process.

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

- 33 (1) Premiums on a life, hospitalization, surgical, or medical  
 34 group insurance plan maintained in part by a state agency.  
 35 (2) Dues to an association that proves to the system board's  
 36 satisfaction that the association has as members at least  
 37 twenty percent (20%) of the retired members in the plan.

38 Sec. 14. (a) To the extent permitted by the Internal Revenue  
 39 Code and the applicable regulations and guidance, the plan may  
 40 accept, on behalf of any member, a rollover distribution from any  
 41 of the following:

- 42 (1) A qualified plan described in Section 401(a) or Section



- 1           **403(a) of the Internal Revenue Code.**
- 2           **(2) An annuity contract or account described in Section 403(b)**  
 3           **of the Internal Revenue Code.**
- 4           **(3) An eligible plan maintained by a state, a political**  
 5           **subdivision of a state, or an agency or instrumentality of a**  
 6           **state or political subdivision of a state under Section 457(b) of**  
 7           **the Internal Revenue Code.**
- 8           **(4) An individual retirement account or annuity described in**  
 9           **Section 408(a) or Section 408(b) of the Internal Revenue**  
 10           **Code.**
- 11           **(b) Any amounts rolled over under subsection (a) must be**  
 12           **accounted for in a rollover account that is separate from the**  
 13           **member's account in the plan. The member is fully vested in the**  
 14           **member's rollover account.**
- 15           **(c) A member may direct the investment of the member's**  
 16           **rollover account into any alternative investment option that the**  
 17           **system board may make available to the member's rollover**  
 18           **account under section 8 of this chapter.**
- 19           **(d) A member may withdraw all or part of the member's**  
 20           **rollover account from the plan in a lump sum or direct a rollover**  
 21           **to an eligible retirement plan at any time. Upon attainment of**  
 22           **normal retirement age, in addition to these payment options, the**  
 23           **member may withdraw the member's rollover account as a**  
 24           **monthly annuity as established by the system board in accordance**  
 25           **with the annuity options that are available for the member's**  
 26           **account in the plan. A member shall make a required withdrawal**  
 27           **from the member's account in the plan not later than the required**  
 28           **beginning date under the Internal Revenue Code.**
- 29           **Sec. 15. (a) If a member becomes disabled while in a covered**  
 30           **position, subject to any federal law limitations concerning qualified**  
 31           **plan distributions and the member furnishing to the system board**  
 32           **the proof of disability required under state and federal law, to the**  
 33           **extent that the member is vested, the member may make a full or**  
 34           **partial withdrawal from the member's account.**
- 35           **(b) The member may elect to have the withdrawal paid as:**
- 36                   **(1) a lump sum;**
- 37                   **(2) a direct rollover to another eligible retirement plan; or**
- 38                   **(3) a monthly annuity in accordance with the rules of the**  
 39                   **system board.**
- 40           **(c) The system board may establish a minimum account balance**  
 41           **or a minimum monthly payment amount in order for a member to**  
 42           **select the monthly annuity option.**





1           **Sec. 16. (a) If a member of the plan separates from employment**  
2 **with the member's employer and later returns to employment in a**  
3 **position covered by the plan:**  
4           **(1) the individual resumes membership in the plan; and**  
5           **(2) the member is entitled to receive credit for the member's**  
6           **years of participation in the plan before the member's**  
7           **separation.**  
8           **(b) An individual who elected under section 6 of this chapter to**  
9 **become a member of the plan resumes membership in the plan**  
10 **upon the individual's return to employment covered by the plan.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 79, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 79 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 10, Nays 0

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 79, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 39, after "accounts." insert "**The fees charged to the member accounts under this subsection shall be greater in the first year of plan implementation to cover any administrative costs and may be lowered in subsequent years to cover ongoing administrative costs of the plan.**".

and when so amended that said bill do pass.

(Reference is to SB 79 as printed January 7, 2022.)

MISHLER, Chairperson

Committee Vote: Yeas 12, Nays 0.

