

February 13, 1998

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# ENGROSSED HOUSE BILL No. 1245

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DIGEST OF HB1245 (Updated February 12, 1998 11:30 am - DI 73)

**Citations Affected:** IC 5-10-1.1.

**Synopsis:** Deferred compensation plan. Provides that the state and a political subdivision may agree to defer a part of an employee's compensation and may procure investments appropriate for a nonqualified deferred compensation plan. Establishes the deferred compensation committee. Provides that the deferred compensation committee may approve proposed funding offerings for the state employees' deferred compensation plan. Requires all amounts deferred under deferred compensation plans for state or local employees to be put into a trust for the exclusive benefit of plan participants. Provides that the deferred compensation committee is the trustee of the trust. Provides that the deferred compensation plan may include provisions  
(Continued next page)

**Effective:** Upon passage; August 5, 1996 (retroactive).

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**Kromkowski, Keeler, Tabaczynski,  
Murphy, Ruppel**

(SENATE SPONSORS — HARRISON, CRAYCRAFT, WASHINGTON)

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January 13, 1998, read first time and referred to Committee on Financial Institutions.  
January 22, 1998, reported — Do Pass.  
January 26, 1998, read second time, ordered engrossed. Engrossed.  
January 27, 1998, read third time, passed. Yeas 99, nays 0.

**SENATE ACTION**

January 30, 1998, read first time and referred to Committee on Pensions and Labor.  
February 12, 1998, reported favorably — Do Pass.

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EH 1245—LS 7228/DI 44+



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to allow participants to make elections, give directions, and receive services through technological methods. Requires the deferred compensation committee to report at least annually to the state board of finance.

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**EH 1245—LS 7228/DI 44+**



February 13, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

## ENGROSSED HOUSE BILL No. 1245

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 5-10-1.1-1, AS AMENDED BY P.L.65-1995,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 1. The state ~~including its departments and~~  
4 ~~agencies, or and~~ any political subdivision (as defined by IC 36-1-2-13)  
5 ~~and agencies or departments of the political subdivision~~ may:  
6 (1) ~~by contract~~ agree with any employee to reduce and defer any  
7 portion of such employee's compensation which under federal law  
8 may be deferred under a nonqualified deferred compensation plan  
9 and subsequently contract for, purchase, or otherwise procure a  
10 ~~fixed or variable life insurance or annuity contract, or investments~~  
11 **insurance and investment products appropriate for a**  
12 **nonqualified deferred compensation plan** (all referred to in this  
13 chapter as "funding"), for the purpose of funding a deferred  
14 compensation plan for such employee;  
15 (2) if the political subdivision is a school corporation, establish an

EH 1245—LS 7228/DI 44+



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1 employee savings plan that is a defined contribution plan  
 2 qualified under Section 401(a) of the Internal Revenue Code, and  
 3 contribute amounts to the plan on behalf of eligible employees to  
 4 be credited and allocated to an account for each employee; and  
 5 (3) contribute amounts before January 1, 1995, and continue or  
 6 begin to contribute amounts after January 1, 1995, to a  
 7 nonqualified deferred compensation plan on behalf of eligible  
 8 employees, subject to any limits and provisions under Section 457  
 9 of the Internal Revenue Code.

10 SECTION 2. IC 5-10-1.1-4 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) ~~The state~~  
 12 ~~employees' deferred compensation plan shall provide for the state board~~  
 13 ~~of finance to review proposed funding offerings and shall require that~~  
 14 ~~only funding determined to be acceptable by the treasurer of state may~~  
 15 ~~be offered to employees under the plan. The deferred compensation~~  
 16 ~~committee is established. The committee consists of five (5) persons~~  
 17 ~~appointed by the state board of finance as follows:~~

18 (1) ~~Each member of the state board of finance shall appoint~~  
 19 ~~one (1) member to the committee.~~

20 (2) ~~The remaining two (2) members:~~

21 (A) ~~must be participants in the state employees' deferred~~  
 22 ~~compensation plan;~~

23 (B) ~~may not be employees of the members of the state~~  
 24 ~~board of finance; and~~

25 (C) ~~must be from different political parties.~~

26 (b) ~~The deferred compensation committee may approve~~  
 27 ~~proposed funding offerings for the state employees' deferred~~  
 28 ~~compensation plan.~~

29 (c) ~~All amounts deferred under the state employees' deferred~~  
 30 ~~compensation plan must be put into a trust for the exclusive benefit~~  
 31 ~~of plan participants, as required by Section 457(g) of the Internal~~  
 32 ~~Revenue Code. The deferred compensation committee is the trustee~~  
 33 ~~of the trust.~~

34 ~~(b) (d)~~ (d) The plan shall include appropriate provisions pertaining to  
 35 its day to day operation providing for methods of electing to defer  
 36 income, methods of changing the amount of income to be deferred, and  
 37 such other provisions as may be appropriate. **Notwithstanding**  
 38 **IC 22-2-6-2, the plan may also include provisions for the use of**  
 39 **automated voice response units and telephonic communications,**  
 40 **on-line activities, and other technology for participant elections,**  
 41 **directions, and services if the technology has sufficient capacity to**  
 42 **record and store the elections and directions.**



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1           ~~(e)~~ (e) The plan shall provide for the preparation and distribution,  
 2 from time to time to all eligible employees, of pamphlets describing the  
 3 plan and outlining the opportunities available to employees under the  
 4 plan.

5           ~~(d)~~ (f) The state board of finance shall extend the plan to any  
 6 political subdivision which elects to utilize the state employees'  
 7 deferred compensation plan for its employees as authorized in section  
 8 7(b)(2) of this chapter.

9           **(g) At least annually, the deferred compensation committee shall**  
 10 **report to the state board of finance on the status of the state**  
 11 **employees' deferred compensation plan, including any changes to**  
 12 **the plan.**

13           SECTION 3. IC 5-10-1.1-5 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The auditor  
 15 of ~~the~~ state shall provide for the administration of the state employees'  
 16 deferred compensation plan. ~~He~~ **The auditor of state** may, at ~~his~~ **the**  
 17 **auditor of state's** option, enter into a contract or contracts with an  
 18 individual or individuals, incorporated or unincorporated organizations  
 19 or associations, the state of Indiana, units of local government, agencies  
 20 of the state or units of local government, or a group of such persons  
 21 acting in concert, for the provision of all or part of the services  
 22 involved in the administration of the plan. Participation in the plan  
 23 shall be by a specific written agreement between each employee and  
 24 the state which agreement shall provide for the deferral of such amount  
 25 of compensation as requested by the employee. With each ~~distribution~~  
 26 **deferral** of compensation, ~~to a participating employee,~~ the employee  
 27 shall receive a memorandum of the amount by which ~~his~~ **the**  
 28 **employee's** gross compensation ~~for the period involved~~ is reduced by  
 29 reason of the deferment of compensation, which amount shall not be  
 30 included as a part of ~~his~~ **gross the employee's taxable** compensation  
 31 as to that period.

32           (b) The funding utilized under the state employees' deferred  
 33 compensation plan shall have been reviewed and selected by the  
 34 ~~treasurer of state~~ **deferred compensation committee** based on a  
 35 competitive bidding process as established by such specifications  
 36 deemed appropriate by the ~~state board of finance.~~ **deferred**  
 37 **compensation committee.** Nothing in this section shall be construed  
 38 as requiring a limitation on the number and variety of funding contracts  
 39 which may be selected as a result of this bidding process.

40           (c) In no case shall funding of the state employees' deferred  
 41 compensation plan be made except through persons or companies  
 42 authorized and duly licensed by this state and applicable federal



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1 regulatory agencies to offer such funding programs.

2 SECTION 4. IC 5-10-1.1-6 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The state or  
4 political subdivision under a deferred compensation ~~program~~ **plan** shall  
5 be obligated at any point in time solely for the then current **market**  
6 value of the funding theretofore made.

7 SECTION 5. IC 5-10-1.1-7 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Any political  
9 subdivision (as defined by IC 36-1-2-13) may establish for its  
10 employees a deferred compensation plan. ~~or plans. Each~~ **The plan** shall  
11 be selected by the governing body of the political subdivision, which  
12 in the case of a unit subject to IC 36-1-3 shall be done by ordinance.  
13 Participation shall be by written agreement between each employee and  
14 the governing body of the political subdivision, which agreement  
15 provides for the deferral of compensation and subsequent  
16 administration of such funds.

17 (b) For funding such agreements, the governing body of the political  
18 subdivision may:

19 (1) designate one (1) of its agencies or departments to establish  
20 and administer such plans and choose such funding as deemed  
21 appropriate by the agency or department, ~~including life insurance~~  
22 ~~or annuity contracts;~~ **which may include more than one (1)**  
23 **funding product; or**

24 (2) ~~enter into an agreement with the state board of finance to~~  
25 ~~extend the state employees' deferred compensation plan to~~  
26 ~~employees of the political subdivision, and designate one (1) of~~  
27 ~~the political subdivision's agencies or departments to locally~~  
28 ~~administer the plan. subject to the terms and conditions of the~~  
29 ~~state employees' deferred compensation plan as it is~~  
30 **established from time to time.**

31 (c) This section does not limit the power or authority of any political  
32 subdivision to establish and administer other plans deemed appropriate  
33 by the governing bodies of such subdivisions, including plans  
34 established under section 1(2) of this chapter.

35 SECTION 6. IC 5-10-1.1-9 IS ADDED TO THE INDIANA CODE  
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
37 AUGUST 5, 1996 (RETROACTIVE)]: **Sec. 9. All amounts held**  
38 **under any deferred compensation plan established under this**  
39 **chapter must be held for the exclusive benefit of participants of the**  
40 **plan and their beneficiaries, as required by Section 457(g) of the**  
41 **Internal Revenue Code.**

42 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) **All amounts**



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1 deferred under the state employees' deferred compensation plan  
2 before July 1, 1998, that remain in the plan on July 1, 1998, must  
3 be put into the trust required by IC 5-10-1.1-4(c), as amended by  
4 this act, for the exclusive benefit of plan participants, as required  
5 by Section 457(g) of the Internal Revenue Code.

6 (b) All amounts deferred under any other deferred  
7 compensation plan established under IC 5-10-1.1 that remain in the  
8 plan on December 31, 1998, must be held for the exclusive benefit  
9 of plan participants in a manner permitted by Section 457(g) of the  
10 Internal Revenue Code.

11 (c) This SECTION expires July 1, 2002.  
12 SECTION 8. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1245, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

TABACZYNSKI, Chair

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred House Bill 1245, 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.

(Reference is made to House Bill 1245 as printed January 23, 1998.)

HARRISON, Chairperson

Committee Vote: Yeas 8, Nays 0.

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