

SENATE BILL No. 128

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-13.

Synopsis: Judges' retirement benefits. Provides that a person who serves as a full-time magistrate in an Indiana court on or after July 1, 1998, is a participant in the judges' 1985 benefit system. Provides for prior service credit in the judges' 1985 benefit system for participants who are full-time magistrates. Provides that a participant of the judges' 1977 benefit system and a participant of the judges' 1985 benefit system is eligible for normal retirement benefits if the participant is at least 55 years of age and the participant's age in years plus years of service is at least 85. (The introduced version of this bill was prepared by the pension management oversight commission.)

Effective: July 1, 1998.

Harrison

January 6, 1998, read first time and referred to Committee on Pensions and Labor.



Introduced

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.

SENATE BILL No. 128

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

1 SECTION 1. IC 33-13-8-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The following words
3 and phrases as used in this chapter, unless different meanings are plainly
4 indicated by their context, shall have the following respective meanings:
5 "Americans with Disabilities Act" refers to the Americans with
6 Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and
7 regulations related to the Act.
8 "His" and "widow" means "her" and "widower" in the event the
9 participant is a woman.
10 "Fund" means the Indiana judges' retirement fund, the fund created by
11 this chapter.
12 "Board" means the board of trustees of the public employees'
13 retirement fund.
14 "Employer" means the state of Indiana.
15 "Judge" means any person who has served, is serving, or shall serve
16 as a regular judge of any of the following courts:
17 Supreme court of the state of Indiana.

1998

IN 128—LS 6264/DI 79+



- 1 Court of appeals of the state of Indiana.
 2 Circuit court of any judicial circuit.
 3 Superior court of any county or counties.
 4 Criminal court of any county having a separate criminal court.
 5 Probate court of any county having a separate probate court.
 6 Juvenile court of any county having a separate juvenile court.
 7 Municipal court of any county.
 8 County court of any county or counties.
 9 "Participant" means any judge participating in the fund **or for**
 10 **purposes of IC 33-13-10.1, any judge or full-time magistrate**
 11 **participating in the fund.**
 12 "Services" means the period beginning on the first day upon which any
 13 person first became a judge, whether such date is prior or subsequent to
 14 March 11, 1953, and ending on the date under consideration, including all
 15 intervening employment as a judge, following resignation or expiration of
 16 any term of election or appointment. Services in any fraction of a month
 17 shall be considered as a month of service. However, no more than one (1)
 18 month shall be credited for services in any one (1) calendar month. If a
 19 judge is elected or appointed and serves one (1) or more terms or part of
 20 a term, then retires from office, but at a later period, or periods, is
 21 appointed or elected and serves as judge, the judge shall pay into said fund
 22 during all the periods served as judge, except as otherwise provided in this
 23 chapter, whether said periods be a connected period or disconnected
 24 period, but shall not be required to pay into said fund at any time when the
 25 judge is not serving as judge, or during any period of service as a senior
 26 judge under IC 33-4-8, except as otherwise provided in this chapter.
 27 "Fiscal year" means the period beginning on July 1, in any year, and
 28 ending on June 30 of the succeeding year.
 29 "Salary" means the total salary paid to any participant by the state of
 30 Indiana and by a county or counties, determined without regard to any
 31 salary reduction agreement established under Section 125 of the Internal
 32 Revenue Code.
 33 SECTION 2. IC 33-13-9.1-4, AS AMENDED BY P.L.282-1995,
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 1998]: Sec. 4. (a) Benefits provided under this section are
 36 subject to IC 33-13-8-3.5 and section 9 of this chapter.
 37 (b) Any participant whose employment as judge by the employer is
 38 terminated, regardless of cause, shall be entitled to a retirement annuity
 39 beginning on the date specified by such participant in a written application
 40 therefor, if all the following conditions are met:
 41 (1) The date upon which the annuity begins is not prior to the date
 42 of final termination of employment of such participant, or the date



1 thirty (30) days prior to the receipt of such application by the board.

2 (2) The participant:

3 (A) has attained at least the age of sixty-two (62) and has at least
4 eight (8) years of service credit; ~~or~~

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

8 ~~(B)~~ (C) has become permanently disabled.

9 (3) The participant is not receiving any salary from the state for
10 services currently performed, except for services rendered in the
11 capacity of judge pro tempore or senior judge.

12 (c) The amount of the annual retirement benefit to which a participant
13 who elects to accept retirement after June 30, 1977, and who ~~has attained~~
14 **is at least age sixty-five (65) years of age and a participant who elects**
15 **to accept retirement after June 30, 1998, and who is at least fifty-five**
16 **(55) years of age and meets the requirements under subsection**
17 **(b)(2)(B)** is entitled equals the product of:

18 (1) the salary being paid for the office which the participant held at
19 the time of the participant's separation from service; multiplied by

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

21 TABLE A

22 Participant's Years 23 of Service	24 Percentage
25 8	24%
26 9	27%
27 10	30%
28 11	33%
29 12	50%
30 13	51%
31 14	52%
32 15	53%
33 16	54%
34 17	55%
35 18	56%
36 19	57%
37 20	58%
38 21	59%
39 22 or more	60%

40 If a participant has a partial year of service in addition to at least eight (8)
41 full years of service, an additional percentage shall be calculated by
42 prorating between the applicable percentages, based on the number of
months in the partial year of service. The amount of the annual retirement



1 benefit to which a participant who elects to accept retirement before July
 2 1, 1977, is entitled equals the average of the benefit computed under this
 3 subsection and the benefit the participant would have received under
 4 IC 33-13-8 as in effect on June 30, 1977.

5 (d) If the annual retirement benefit of a participant who began service
 6 as a judge before July 1, 1977, as computed under subsection (c), is less
 7 than the amount the participant would have received under IC 33-13-8 as
 8 in effect on June 30, 1977, the participant is entitled to receive that
 9 greater amount as the participant's annual retirement benefit instead of the
 10 benefit computed under subsection (c).

11 (e) **Except as provided in subsection (b)(2)(B) and subsection**
 12 **(c)**, if a participant who elects to accept retirement after June 30, 1977,
 13 has not attained age sixty-five (65) years, the participant is entitled to
 14 receive a reduced annual retirement benefit which equals the benefit
 15 which would be payable if the participant were age sixty-five (65)
 16 reduced by one-tenth percent (0.1%) for each month that the participant's
 17 age at retirement precedes the participant's sixty-fifth birthday. This
 18 reduction does not apply to:

- 19 (1) participants who are separated from service because of
 20 permanent disability;
 21 (2) survivors of participants who die while in service after August
 22 1, 1992; or
 23 (3) survivors of participants who die while not in service but while
 24 entitled to a future benefit.

25 (f) The amount of the annual benefit to which a participant who has
 26 become permanently disabled is entitled equals the product of:

- 27 (1) the salary being paid for the office which the participant held
 28 at the time of separation from service; multiplied by
 29 (2) the percentage prescribed in the following table:

TABLE B

31 Participant's Years 32 of Service	Percentage
33 0-12	50%
34 13	51%
35 14	52%
36 15	53%
37 16	54%
38 17	55%
39 18	56%
40 19	57%
41 20	58%
42 21	59%



- 1 (B) had completed at least eight (8) years of service and was
 2 in service as a judge;
 3 (C) was permanently disabled; or
 4 (D) had completed at least eight (8) years of service, was not
 5 still in service as a judge, and was entitled to a future benefit;
 6 the participant's surviving spouse or surviving child or children, as
 7 designated by the participant, is entitled, regardless of the participant's
 8 age, to an annuity in an amount equal to the greater of the amount
 9 determined under TABLE C in subsection (g)(2) or fifty percent (50%)
 10 of the amount of retirement annuity the participant was drawing at the
 11 time of death, or to which the participant would have been entitled had the
 12 participant retired and begun receiving retirement annuity benefits on the
 13 participant's date of death, with reductions as necessary under subsection
 14 (e).
- 15 (j) Notwithstanding subsection (i), if a participant:
 16 (1) died after June 30, 1983, and before July 1, 1985; and
 17 (2) was serving as a judge at the time of death;
 18 the surviving spouse is entitled to the same retirement annuity as the
 19 surviving spouse of a permanently disabled participant entitled to benefits
 20 under subsection (h).
- 21 (k) The annuity payable to a surviving child or children under
 22 subsection (g), (h), or (i) is subject to the following:
 23 (1) The total monthly benefit payable to a surviving child or
 24 children is equal to the same monthly annuity that was to have been
 25 payable to the surviving spouse.
 26 (2) If there is more than one (1) child designated by the participant,
 27 then the children are entitled to share the annuity in equal monthly
 28 amounts.
 29 (3) Each child entitled to an annuity shall receive that child's share
 30 until the child becomes eighteen (18) years of age or during the
 31 entire period of the child's physical or mental disability, whichever
 32 period is longer.
 33 (4) Upon the cessation of payments to one (1) designated child, if
 34 there is at least one (1) other child then surviving and still entitled
 35 to payments, the remaining child or children shall share equally the
 36 annuity. If the surviving spouse of the participant is surviving upon
 37 the cessation of payments to all designated children, the surviving
 38 spouse will then receive the annuity for the remainder of the
 39 spouse's life.
 40 (5) The annuity shall be payable to the participant's surviving
 41 spouse if any of the following occur:
 42 (A) No child named as a beneficiary by a participant survives



- 1 the participant.
 2 (B) No children designated by the participant are entitled to
 3 an annuity due to their age at the time of death of the
 4 participant.
 5 (C) A designation is not made.

6 (6) An annuity payable to a surviving child or children may be paid
 7 to a trust or a custodian account under IC 30-2-8.5, established for
 8 the surviving child or children as designated by the participant.

9 SECTION 3. IC 33-13-9.1-5 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) Benefits provided
 11 under this section are subject to IC 33-13-8-3.5.

12 (b) A participant shall be considered permanently disabled if the
 13 board has received a written certificate by at least two (2) licensed and
 14 practicing physicians, appointed by the board, indicating that the
 15 participant is totally incapacitated, by reason of physical or mental
 16 infirmities, from earning a livelihood and that such condition is likely to
 17 be permanent. Such participant shall be reexamined by at least two (2)
 18 physicians appointed by the board, periodically at such times as the board
 19 shall designate but at intervals of not to exceed one (1) year. If in the
 20 opinion of these physicians, the participant has recovered from the
 21 participant's disability, then benefits shall cease to be payable as of the
 22 date of such examination unless, on that date, the participant ~~shall have~~
 23 ~~reached the age of~~ **is at least** sixty-five (65) years **of age or is at least**
 24 **fifty-five (55) years of age and meets the requirements under section**
 25 **4(b)(2)(B) of this chapter.**

26 (c) To the extent required by the Americans with Disabilities Act, the
 27 transcripts, reports, records, and other material generated by the initial
 28 and periodic examinations and reviews to determine eligibility for
 29 disability benefits under this section shall be:

- 30 (1) kept in separate medical files for each member; and
 31 (2) treated as confidential medical records.

32 SECTION 4. IC 33-13-10.1-3 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Each person who:

- 34 (1) begins service as a judge after August 31, 1985; and
 35 (2) is then not a participant;

36 shall become a participant in the fund.

37 (b) **A person who serves as a full-time magistrate in an Indiana**
 38 **court on or after July 1, 1998, is a participant in the fund.**

39 SECTION 5. IC 33-13-10.1-6, AS AMENDED BY P.L.43-1997,
 40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 1998]: Sec. 6. Any participant whose employment as judge is
 42 terminated is entitled to a retirement benefit computed under section 7 of



1 this chapter, beginning on the date specified by the participant in a written
2 application, if all of the following conditions are met:

3 (1) The date upon which the benefit begins is not before the date of
4 final termination of employment of the participant or the date thirty
5 (30) days before the receipt of the application by the board.

6 (2) The participant:

7 (A) has attained at least the age of sixty-two (62) and has at
8 least eight (8) years of service credit; ~~or~~

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

12 ~~(B)~~ (C) has become permanently disabled.

13 (3) The participant is not receiving any salary from the state for
14 services currently performed, except for services rendered in the
15 capacity of judge pro tempore or senior judge.

16 SECTION 6. IC 33-13-10.1-7, AS AMENDED BY P.L.282-1995,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 1998]: Sec. 7. (a) Benefits provided under this section are
19 subject to IC 33-13-8-3.5 and section 13 of this chapter.

20 (b) The amount of the annual retirement benefit to which a
21 participant who applies for a retirement benefit and who ~~has attained~~ **is** at
22 least ~~age~~ **sixty-five (65) years of age or is at least fifty-five (55) years**
23 **of age and meets the requirements under section 6(2)(B) of this**
24 **chapter** is entitled equals the product of:

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

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

28 TABLE

29 Participant's Years 30 of Service	Percentage
31 8	24%
32 9	27%
33 10	30%
34 11	33%
35 12	50%
36 13	51%
37 14	52%
38 15	53%
39 16	54%
40 17	55%
41 18	56%
42 19	57%



1	20	58%
2	21	59%
3	22 or more	60%

4 If a participant has a partial year of service in addition to at least eight (8)
5 full years of service, an additional percentage shall be calculated by
6 prorating between the applicable percentages, based on the number of
7 months in the partial year of service.

8 (c) **Except as provided in section 6(2)(B) of this chapter and**
9 **subsection (b)**, if a participant who applies for a retirement benefit has
10 not attained age sixty-five (65) years, the participant is entitled to receive
11 a reduced annual retirement benefit that equals the benefit that would be
12 payable if the participant were age sixty-five (65) reduced by one-tenth
13 percent (0.1%) for each month that the participant's age at retirement
14 precedes the participant's sixty-fifth birthday. This reduction does not
15 apply to:

- 16 (1) participants who are separated from service because of
- 17 permanent disability;
- 18 (2) survivors of participants who die while in service after August
- 19 1, 1992; or
- 20 (3) survivors of participants who die while not in service but while
- 21 entitled to a future benefit.

22 SECTION 7. IC 33-13-10.1-8 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) A participant shall
24 be considered permanently disabled if the board has received a written
25 certification by at least two (2) licensed and practicing physicians,
26 appointed by the board, that:

- 27 (1) the participant is totally incapacitated, by reason of physical or
- 28 mental infirmities, from earning a livelihood; and
- 29 (2) the condition is likely to be permanent.

30 The participant shall be reexamined by at least two (2) physicians
31 appointed by the board, at such times as the board may designate but at
32 intervals of not to exceed one (1) year. If in the opinion of these
33 physicians, the participant has recovered from the participant's disability,
34 then benefits shall cease to be payable as of the date of such examination
35 unless, on that date, the participant ~~has reached the age of~~ **is at least**
36 **sixty-five (65) years of age or is at least fifty-five (55) years of age and**
37 **meets the requirements under section 6(2)(B) of this chapter.**

38 (b) To the extent required by the Americans with Disabilities Act,
39 the transcripts, reports, records, and other material generated by the initial
40 and periodic examinations and reviews to determine eligibility for
41 disability benefits under this section shall be:

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



- 1 (2) treated as confidential medical records.
- 2 SECTION 8. IC 33-13-10.1-14 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) This section
- 4 applies to a person who:
- 5 (1) is a judge **or a full-time magistrate** participating under this
- 6 chapter;
- 7 (2) before becoming a judge **or full-time magistrate** was
- 8 appointed by a court to serve as a full-time referee, full-time
- 9 commissioner, or full-time magistrate;
- 10 (3) was a member of the public employees' retirement fund during
- 11 the employment described in subdivision (2); and
- 12 (4) received credited service under the public employees' retirement
- 13 fund for the employment described in subdivision (2).
- 14 (b) If a person becomes a participant in the judges' 1985 benefit
- 15 system under ~~IC 33-13-10.1-1~~ **section 1 or section 3(b) of this chapter**,
- 16 credit for prior service by the **full-time magistrate or the** judge as a
- 17 full-time referee, full-time commissioner, or full-time magistrate shall be
- 18 granted under this chapter by the board if:
- 19 (1) the prior service was credited under the public employees'
- 20 retirement fund;
- 21 (2) the state contributes to the judges' 1985 benefit system the
- 22 amount the board determines necessary to amortize the prior
- 23 service liability over a period determined by the board, but not
- 24 more than ten (10) years; and
- 25 (3) the judge **or full-time magistrate** pays in a lump sum or in a
- 26 series of payments determined by the board, not exceeding five (5)
- 27 annual payments, the amount the judge **or full-time magistrate**
- 28 would have contributed if the judge **or full-time magistrate** had
- 29 been a member of the judges' 1985 benefit system during the prior
- 30 service.
- 31 (c) If the requirements of subsection (b)(2) and (b)(3) are not
- 32 satisfied, a participant is entitled to credit only for years of service after
- 33 the date of participation in the 1985 benefit system.
- 34 (d) An amortization schedule for contributions paid under subsection
- 35 (b)(2) or (b)(3) must include interest at a rate determined by the board.
- 36 (e) The following provisions apply to a person described in
- 37 subsection (a):
- 38 (1) A minimum benefit applies to participants receiving credit in
- 39 the judges' 1985 benefit system from service covered by the public
- 40 employees' retirement fund. The minimum benefit is payable at
- 41 sixty-five (65) years of age **or when the participant is at least**
- 42 **fifty-five (55) years of age and meets the requirements under**



- 1 **section 6(2)(B) of this chapter** and equals the actuarial equivalent
 2 of the vested retirement benefit that is:
 3 (A) payable to the member at normal retirement under
 4 IC 5-10.2-4-1 as of the day before the transfer; and
 5 (B) based solely on:
 6 (i) creditable service;
 7 (ii) the average of the annual compensation; and
 8 (iii) the amount credited under IC 5-10.2 and IC 5-10.3
 9 to the annuity savings account of the transferring member
 10 as of the day before the transfer.
- 11 (2) If the requirements of subsection (b)(2) and (b)(3) are satisfied,
 12 the board shall transfer from the public employees' retirement fund
 13 to the judges' 1985 benefit system the amount credited to the
 14 annuity savings account and the present value of the retirement
 15 benefit payable at sixty-five (65) years of age **or at least fifty-five**
 16 **(55) years of age under section 6(2)(B) of this chapter** that is
 17 attributable to the transferring participant.
- 18 (3) The amount the state and the participant must contribute to the
 19 judges' 1985 benefit system under subsection (b) shall be reduced
 20 by the amount transferred to the judges' 1985 benefit system by the
 21 board under subdivision (2).
- 22 (4) If the requirements of subsection (b)(2) and (b)(3) are satisfied,
 23 credit for prior service in the public employees' retirement fund as
 24 a full-time referee, full-time commissioner, or full-time magistrate
 25 is waived. Any credit for the prior service under the judges' 1985
 26 benefit system may be granted only under subsection (b).
- 27 (5) Credit for prior service in the public employees' retirement fund
 28 for service other than as a full-time referee, full-time
 29 commissioner, or full-time magistrate remains under the public
 30 employees' retirement fund and may not be credited under the
 31 judges' 1985 benefit system.

