

January 23, 1998

SENATE BILL No. 128

DIGEST OF SB128 (Updated January 22, 1998 11:16 am - DI 73)

Citations Affected: IC 33-4; 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.
January 22, 1998, amended, reported favorably — Do Pass.

SB 128—LS 6264/DI 79+



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January 23, 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.

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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 33-4-7-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) **Except as**
3 **provided in subsection (b)**, a magistrate may:

4 (1) participate in the public employees' retirement fund as
5 provided in IC 5-10.3; or

6 (2) elect to remain in the judges' retirement system under
7 IC 33-13 if the magistrate had previously participated in the
8 system.

9 (b) **A person who serves as a full-time magistrate in an Indiana**
10 **court after June 30, 1998, shall participate in the judges'**
11 **retirement fund under IC 33-13-10.1.**

12 SECTION 2. IC 33-13-8-2 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The following words
14 and phrases as used in this chapter, unless different meanings are
15 plainly indicated by their context, shall have the following respective
16 meanings:

17 "Americans with Disabilities Act" refers to the Americans with

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- 1 Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and
 2 regulations related to the Act.
- 3 "His" and "widow" means "her" and "widower" in the event the
 4 participant is a woman.
- 5 "Fund" means the Indiana judges' retirement fund, the fund created
 6 by this chapter.
- 7 "Board" means the board of trustees of the public employees'
 8 retirement fund.
- 9 "Employer" means the state of Indiana.
- 10 "Judge" means any person who has served, is serving, or shall serve
 11 as a regular judge of any of the following courts:
 12 Supreme court of the state of Indiana.
 13 Court of appeals of the state of Indiana.
 14 Circuit court of any judicial circuit.
 15 Superior court of any county or counties.
 16 Criminal court of any county having a separate criminal court.
 17 Probate court of any county having a separate probate court.
 18 Juvenile court of any county having a separate juvenile court.
 19 Municipal court of any county.
 20 County court of any county or counties.
- 21 "Participant" means any judge participating in the fund **or for**
 22 **purposes of IC 33-13-10.1, any judge or full-time magistrate**
 23 **participating in the fund.**
- 24 "Services" means the period beginning on the first day upon which
 25 any person first became a judge, whether such date is prior or
 26 subsequent to March 11, 1953, and ending on the date under
 27 consideration, including all intervening employment as a judge,
 28 following resignation or expiration of any term of election or
 29 appointment. Services in any fraction of a month shall be considered
 30 as a month of service. However, no more than one (1) month shall be
 31 credited for services in any one (1) calendar month. If a judge is elected
 32 or appointed and serves one (1) or more terms or part of a term, then
 33 retires from office, but at a later period, or periods, is appointed or
 34 elected and serves as judge, the judge shall pay into said fund during
 35 all the periods served as judge, except as otherwise provided in this
 36 chapter, whether said periods be a connected period or disconnected
 37 period, but shall not be required to pay into said fund at any time when
 38 the judge is not serving as judge, or during any period of service as a
 39 senior judge under IC 33-4-8, except as otherwise provided in this
 40 chapter.
- 41 "Fiscal year" means the period beginning on July 1, in any year, and
 42 ending on June 30 of the succeeding year.

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1 "Salary" means the total salary paid to any participant by the state
 2 of Indiana and by a county or counties, determined without regard to
 3 any salary reduction agreement established under Section 125 of the
 4 Internal Revenue Code.

5 SECTION 3. IC 33-13-9.1-4, AS AMENDED BY P.L.282-1995,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 1998]: Sec. 4. (a) Benefits provided under this section are
 8 subject to IC 33-13-8-3.5 and section 9 of this chapter.

9 (b) Any participant whose employment as judge by the employer is
 10 terminated, regardless of cause, shall be entitled to a retirement annuity
 11 beginning on the date specified by such participant in a written
 12 application therefor, if all the following conditions are met:

13 (1) The date upon which the annuity begins is not prior to the date
 14 of final termination of employment of such participant, or the date
 15 thirty (30) days prior to the receipt of such application by the
 16 board.

17 (2) The participant:

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

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

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

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

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

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

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

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TABLE A

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. The amount of the annual retirement benefit to which a participant who elects to accept retirement before July 1, 1977, is entitled equals the average of the benefit computed under this subsection and the benefit the participant would have received under IC 33-13-8 as in effect on June 30, 1977.

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

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

- (1) participants who are separated from service because of permanent disability;

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- 1 (2) survivors of participants who die while in service after
 2 August 1, 1992; or
 3 (3) survivors of participants who die while not in service but
 4 while entitled to a future benefit.
 5 (f) The amount of the annual benefit to which a participant who
 6 has become permanently disabled is entitled equals the product of:
 7 (1) the salary being paid for the office which the participant held
 8 at the time of separation from service; multiplied by
 9 (2) the percentage prescribed in the following table:

TABLE B

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

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

28 (g) The surviving spouse or surviving child or children, as
 29 designated by the participant, of any participant who has qualified
 30 before July 1, 1977, to receive the retirement annuity under the
 31 provisions of this chapter, either by length of service or by being
 32 permanently disabled, shall, upon the death of such participant, be
 33 entitled to an annuity in an amount equal to the greater of:

- 34 (1) the sum of:
 35 (A) two thousand dollars (\$2,000); plus
 36 (B) fifty percent (50%) of the amount of retirement annuity
 37 the participant was drawing at the time of the participant's
 38 death, or to which the participant would have been entitled
 39 had the participant retired and begun receiving retirement
 40 annuity benefits prior to the participant's death; or
 41 (2) the amount determined under the following table:

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TABLE C

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(h) If a participant who qualifies after June 30, 1977, and before July 1, 1983, to receive a retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, dies, the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled to an annuity in an amount equal to the greater of:

- (1) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before death; or
- (2) the amount determined under TABLE C in subsection (g)(2).

(i) If a participant:

- (1) dies after June 30, 1983; and
- (2) on the date of the participant's death:
 - (A) was receiving benefits under this chapter;
 - (B) had completed at least eight (8) years of service and was in service as a judge;
 - (C) was permanently disabled; or
 - (D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;

the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled, regardless of the participant's age, to an annuity in an amount equal to the greater of the amount determined under TABLE C in subsection (g)(2) or fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits on the participant's date of death, with reductions as necessary under subsection (e).

(j) Notwithstanding subsection (i), if a participant:

- (1) died after June 30, 1983, and before July 1, 1985; and
- (2) was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the

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1 surviving spouse of a permanently disabled participant entitled to
2 benefits under subsection (h).

3 (k) The annuity payable to a surviving child or children under
4 subsection (g), (h), or (i) is subject to the following:

5 (1) The total monthly benefit payable to a surviving child or
6 children is equal to the same monthly annuity that was to have
7 been payable to the surviving spouse.

8 (2) If there is more than one (1) child designated by the
9 participant, then the children are entitled to share the annuity in
10 equal monthly amounts.

11 (3) Each child entitled to an annuity shall receive that child's
12 share until the child becomes eighteen (18) years of age or
13 during the entire period of the child's physical or mental
14 disability, whichever period is longer.

15 (4) Upon the cessation of payments to one (1) designated child,
16 if there is at least one (1) other child then surviving and still
17 entitled to payments, the remaining child or children shall share
18 equally the annuity. If the surviving spouse of the participant is
19 surviving upon the cessation of payments to all designated
20 children, the surviving spouse will then receive the annuity for
21 the remainder of the spouse's life.

22 (5) The annuity shall be payable to the participant's surviving
23 spouse if any of the following occur:

24 (A) No child named as a beneficiary by a participant
25 survives the participant.

26 (B) No children designated by the participant are entitled to
27 an annuity due to their age at the time of death of the
28 participant.

29 (C) A designation is not made.

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

34 SECTION 4. IC 33-13-9.1-5 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) Benefits provided
36 under this section are subject to IC 33-13-8-3.5.

37 (b) A participant shall be considered permanently disabled if the
38 board has received a written certificate by at least two (2) licensed and
39 practicing physicians, appointed by the board, indicating that the
40 participant is totally incapacitated, by reason of physical or mental
41 infirmities, from earning a livelihood and that such condition is likely
42 to be permanent. Such participant shall be reexamined by at least two

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1 (2) physicians appointed by the board, periodically at such times as the
 2 board shall designate but at intervals of not to exceed one (1) year. If
 3 in the opinion of these physicians, the participant has recovered from
 4 the participant's disability, then benefits shall cease to be payable as of
 5 the date of such examination unless, on that date, the participant ~~shall~~
 6 ~~have reached the age of~~ **is at least** sixty-five (65) years of age **or is at**
 7 **least fifty-five (55) years of age and meets the requirements under**
 8 **section 4(b)(2)(B) of this chapter.**

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

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

14 (2) treated as confidential medical records.

15 SECTION 5. IC 33-13-10.1-3 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Each person who:

17 (1) begins service as a judge after August 31, 1985; and

18 (2) is then not a participant;

19 shall become a participant in the fund.

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

22 SECTION 6. IC 33-13-10.1-6, AS AMENDED BY P.L.43-1997,
 23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 1998]: Sec. 6. Any participant whose employment as judge is
 25 terminated is entitled to a retirement benefit computed under section
 26 7 of this chapter, beginning on the date specified by the participant in
 27 a written application, if all of the following conditions are met:

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

31 (2) The participant:

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

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

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

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

41 SECTION 7. IC 33-13-10.1-7, AS AMENDED BY P.L.282-1995,
 42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



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1 JULY 1, 1998]: Sec. 7. (a) Benefits provided under this section are
2 subject to IC 33-13-8-3.5 and section 13 of this chapter.

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

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

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

11 TABLE

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

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

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

41 (1) participants who are separated from service because of
42 permanent disability;



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- 1 (2) survivors of participants who die while in service after
- 2 August 1, 1992; or
- 3 (3) survivors of participants who die while not in service but
- 4 while entitled to a future benefit.

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

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

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

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

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

28 SECTION 9. IC 33-13-10.1-14 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) This section
 30 applies to a person who:

- 31 (1) is a judge **or a full-time magistrate** participating under this
- 32 chapter;
- 33 (2) before becoming a judge **or full-time magistrate** was
- 34 appointed by a court to serve as a full-time referee, full-time
- 35 commissioner, or full-time magistrate;
- 36 (3) was a member of the public employees' retirement fund
- 37 during the employment described in subdivision (2); and
- 38 (4) received credited service under the public employees'
- 39 retirement fund for the employment described in subdivision (2).

40 (b) If a person becomes a participant in the judges' 1985 benefit
 41 system under ~~IC 33-13-10.1-1~~ **section 1 or section 3(b) of this**
 42 **chapter**, credit for prior service by the **full-time magistrate or the**

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1 judge as a full-time referee, full-time commissioner, or full-time
2 magistrate shall be granted under this chapter by the board if:

3 (1) the prior service was credited under the public employees'
4 retirement fund;

5 (2) the state contributes to the judges' 1985 benefit system the
6 amount the board determines necessary to amortize the prior
7 service liability over a period determined by the board, but not
8 more than ten (10) years; and

9 (3) the judge **or full-time magistrate** pays in a lump sum or in
10 a series of payments determined by the board, not exceeding five
11 (5) annual payments, the amount the judge **or full-time**
12 **magistrate** would have contributed if the judge **or full-time**
13 **magistrate** had been a member of the judges' 1985 benefit
14 system during the prior service.

15 (c) If the requirements of subsection (b)(2) and (b)(3) are not
16 satisfied, a participant is entitled to credit only for years of service after
17 the date of participation in the 1985 benefit system.

18 (d) An amortization schedule for contributions paid under
19 subsection (b)(2) or (b)(3) must include interest at a rate determined by
20 the board.

21 (e) The following provisions apply to a person described in
22 subsection (a):

23 (1) A minimum benefit applies to participants receiving credit in
24 the judges' 1985 benefit system from service covered by the
25 public employees' retirement fund. The minimum benefit is
26 payable at sixty-five (65) years of age **or when the participant**
27 **is at least fifty-five (55) years of age and meets the**
28 **requirements under section 6(2)(B) of this chapter** and equals
29 the actuarial equivalent of the vested retirement benefit that is:

30 (A) payable to the member at normal retirement under
31 IC 5-10.2-4-1 as of the day before the transfer; and

32 (B) based solely on:

33 (i) creditable service;

34 (ii) the average of the annual compensation; and

35 (iii) the amount credited under IC 5-10.2 and IC 5-10.3
36 to the annuity savings account of the transferring
37 member as of the day before the transfer.

38 (2) If the requirements of subsection (b)(2) and (b)(3) are
39 satisfied, the board shall transfer from the public employees'
40 retirement fund to the judges' 1985 benefit system the amount
41 credited to the annuity savings account and the present value of
42 the retirement benefit payable at sixty-five (65) years of age **or**



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1 **at least fifty-five (55) years of age under section 6(2)(B) of**
2 **this chapter** that is attributable to the transferring participant.
3 (3) The amount the state and the participant must contribute to
4 the judges' 1985 benefit system under subsection (b) shall be
5 reduced by the amount transferred to the judges' 1985 benefit
6 system by the board under subdivision (2).
7 (4) If the requirements of subsection (b)(2) and (b)(3) are
8 satisfied, credit for prior service in the public employees'
9 retirement fund as a full-time referee, full-time commissioner, or
10 full-time magistrate is waived. Any credit for the prior service
11 under the judges' 1985 benefit system may be granted only under
12 subsection (b).
13 (5) Credit for prior service in the public employees' retirement
14 fund for service other than as a full-time referee, full-time
15 commissioner, or full-time magistrate remains under the public
16 employees' retirement fund and may not be credited under the
17 judges' 1985 benefit system.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill 128, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-4-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) **Except as provided in subsection (b)**, a magistrate may:

- (1) participate in the public employees' retirement fund as provided in IC 5-10.3; or
- (2) elect to remain in the judges' retirement system under IC 33-13 if the magistrate had previously participated in the system.

(b) A person who serves as a full-time magistrate in an Indiana court after June 30, 1998, shall participate in the judges' retirement fund under IC 33-13-10.1."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 128 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 10, Nays 0.

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