

# HOUSE BILL No. 1057

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-39-7.

**Synopsis:** Prosecuting attorneys retirement fund. Changes various provisions of the prosecuting attorneys retirement fund law to incorporate several features that are the same as or similar to features found in the 1985 judges' retirement system, including limiting the participant contribution period to 22 years, changing the manner in which a participant's eligibility for permanent disability benefits is determined, and allowing a participant to designate the participant's children to receive the participant's survivor benefit. (The introduced version of this bill was prepared by the pension management oversight commission.)

**Effective:** July 1, 2013.

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**McMillin**

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January 7, 2013, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## HOUSE BILL No. 1057



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 33-39-7-12, AS AMENDED BY P.L.13-2011,  
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 12. (a) Except as **otherwise** provided in  
4 ~~subsection (b)~~, **this section**, each participant shall make contributions  
5 to the fund as follows:  
6 (1) A participant described in section 8(a)(1) of this chapter shall  
7 make contributions of six percent (6%) of each payment of salary  
8 received for services after December 31, 1989.  
9 (2) A participant described in section 8(a)(2) or 8(a)(3) of this  
10 chapter shall make contributions of six percent (6%) of each  
11 payment of salary received for services after June 30, 1994.  
12 A participant's contributions shall be deducted from the participant's  
13 monthly salary by the auditor of state and credited to the fund.  
14 (b) The state may pay the contributions for a participant. **The state**  
15 **may elect to pay the contribution for the participant as a pickup**  
16 **under Section 414(h) of the Internal Revenue Code.**  
17 (c) **After a participant has contributed to the fund as provided**



1 **in subsection (a) for twenty-two (22) years, the participant is not**  
 2 **required to make additional contributions to the fund.**

3 ~~(c)~~ **(d)** After December 31, 2011, the auditor of state shall submit  
 4 the contributions paid by or on behalf of a participant under this section  
 5 by electronic funds transfer in accordance with section 12.5 of this  
 6 chapter.

7 SECTION 2. IC 33-39-7-15, AS AMENDED BY P.L.33-2006,  
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2013]: Sec. 15. A participant whose employment in a position  
 10 described in section 8 of this chapter is terminated is entitled to a  
 11 retirement benefit computed under section 16 or 18 of this chapter,  
 12 beginning on the date specified by the participant in a written  
 13 application, if all of the following conditions are met:

14 (1) The application for retirement benefits and the choice of the  
 15 retirement date is filed on a form provided by the board, and the  
 16 retirement date is:

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

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

19 (C) not more than six (6) months before the date the  
 20 application is received by the board.

21 However, if the board determines that a participant is incompetent  
 22 to file for benefits and choose a retirement date, the retirement  
 23 date may be any date that is the first of the month after the time  
 24 the participant became incompetent.

25 (2) The participant:

26 (A) is at least sixty-two (62) years of age and has at least eight

27 (8) years of service credit; or

28 ~~(B) meets the requirements for disability benefits under~~  
 29 ~~section 17 of this chapter.~~

30 **(B) has become permanently disabled.**

31 (3) The participant is not receiving and is not entitled to receive  
 32 any salary for services currently performed, except for services  
 33 rendered as a senior prosecuting attorney under IC 33-39-1.

34 SECTION 3. IC 33-39-7-16, AS AMENDED BY P.L.16-2011,  
 35 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2013]: Sec. 16. (a) This section does not apply to a participant  
 37 who ~~meets the requirements for disability benefits under~~ **becomes**  
 38 **permanently disabled, as described in** section 17 of this chapter.

39 (b) Except as provided in subsections (c) and (d), the amount of the  
 40 annual retirement benefit to which a participant who applies for a  
 41 retirement benefit and who is at least sixty-five (65) years of age is  
 42 entitled equals the product of:

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

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

4	Participant's Years	Percentage
5	of Service	
6	Less than 8	0
7	8	24%
8	9	27%
9	10	30%
10	11	33%
11	12	50%
12	13	51%
13	14	52%
14	15	53%
15	16	54%
16	17	55%
17	18	56%
18	19	57%
19	20	58%
20	21	59%
21	22 or more	60%

22 **If a participant has a partial year of service in addition to at least**  
 23 **eight (8) full years of service, an additional percentage is calculated**  
 24 **under this subsection by prorating between the applicable**  
 25 **percentages, based on the number of months in the partial year of**  
 26 **service.**

27 (c) If a participant who applies for a retirement benefit is not at least  
 28 sixty-five (65) years of age, the participant is entitled to receive a  
 29 reduced annual retirement benefit that equals the benefit that would be  
 30 payable if the participant were sixty-five (65) years of age reduced by  
 31 one-fourth percent (0.25%) for each month that the participant's age at  
 32 retirement precedes the participant's sixty-fifth birthday.

33 (d) Benefits payable to a participant under this section are reduced  
 34 by the pension, if any, that would be payable to the participant from the  
 35 public employees' retirement fund if the participant had retired from the  
 36 public employees' retirement fund on the date of the participant's  
 37 retirement from the prosecuting attorneys retirement fund. Benefits  
 38 payable to a participant under this section are not reduced by annuity  
 39 payments made to the participant from the public employees' retirement  
 40 fund.

41 (e) If benefits payable from the public employees' retirement fund  
 42 exceed the benefits payable from the prosecuting attorneys retirement

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1 fund, the participant is entitled at retirement to withdraw from the  
 2 prosecuting attorneys retirement fund the total sum contributed plus  
 3 interest at a rate specified by rule by the board.

4 SECTION 4. IC 33-39-7-17 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. (a) Except as  
 6 provided in subsection (b); a participant who becomes disabled while  
 7 in active service in a position described in section 8 of this chapter may  
 8 retire for the duration of the disability if:

- 9 (1) the participant has at least five (5) years of creditable service;  
 10 (2) the participant has qualified for Social Security disability  
 11 benefits and has furnished proof of the Social Security  
 12 qualification to the board; and  
 13 (3) at least once each year until the participant becomes sixty-five  
 14 (65) years of age a representative of the board verifies the  
 15 continued disability.

16 For purposes of this section, a participant who has qualified for  
 17 disability benefits under the federal civil service system is considered  
 18 to have met the requirement of subdivision (2) if the participant  
 19 furnishes proof of the qualification to the board.

20 (b) Benefits may not be provided under this chapter for any  
 21 disability that:

- 22 (1) results from an intentionally self-inflicted injury or attempted  
 23 suicide while sane or insane;  
 24 (2) results from the participant's commission or attempted  
 25 commission of a felony; or  
 26 (3) begins within two (2) years after a participant's entry or  
 27 reentry into active service in a position described in section 8 of  
 28 this chapter and was caused or contributed to by a mental or  
 29 physical condition that manifested itself before the participant  
 30 entered or reentered active service.

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

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

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

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1 **examination, unless on that date the participant is at least sixty-five**  
 2 **(65) years of age.**

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

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

9 SECTION 5. IC 33-39-7-18 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) Except as  
 11 provided in subsection (b), ~~the amount of the annual benefit payable to~~  
 12 ~~a participant who meets the requirements for disability benefits under~~  
 13 ~~section 17 of this chapter becomes permanently disabled, as~~  
 14 ~~described in section 17 of this chapter, is entitled to an annual~~  
 15 ~~benefit~~ equal to the product of:

- 16 (1) the annual salary that was paid to the participant at the time of
- 17 separation from service; multiplied by
- 18 (2) the percentage prescribed in the following table:

19 Participant's Years	Percentage
20 of Service	
21 Less than 5	0
22 5-10	40%
23 11	41%
24 12	42%
25 13	43%
26 14	44%
27 15	45%
28 16	46%
29 17	47%
30 18	48%
31 19	49%
32 20 or more	50%

33 **If a participant has a partial year of service in addition to at least**  
 34 **ten (10) years of service, an additional percentage is calculated**  
 35 **under this subsection by prorating between the applicable**  
 36 **percentages, based on the number of months in the partial year of**  
 37 **service.**

38 (b) Benefits payable to a participant under this section are reduced  
 39 by the amounts, if any, that are payable to the participant from the  
 40 public employees' retirement fund.

41 SECTION 6. IC 33-39-7-19, AS AMENDED BY P.L.33-2006,  
 42 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2013]: Sec. 19. (a) A participant may designate the participant's surviving spouse or one (1) or more of the participant's surviving dependent children to receive the benefit provided by this section upon the death of the participant. A participant may designate a trust or a custodian account under IC 30-2-8.5 that is established for one (1) or more of the participant's surviving dependent children to receive the benefit provided by this section instead of designating one (1) or more of the participant's surviving dependent children to receive the benefit directly.

(a) ~~(b)~~ The surviving spouse of If a participant: who:

(1) dies; and

(2) on the date of death:

(A) was receiving benefits under this chapter;

(B) **was in service and** had completed at least eight (8) years of service in a position described in section 8 of this chapter;

or

(C) ~~met the requirements for~~ **had a permanent** disability benefits ~~under as described in~~ section 17 of this chapter; or

(D) **was not in service in a position described in section 8 of this chapter, had completed at least eight (8) years of service in a position described in section 8 of this chapter, and was entitled to a future benefit;**

the participant's beneficiary designated under subsection (a) is entitled, regardless of the participant's age, to the benefit prescribed by subsection ~~(b)~~: (c).

~~(b)~~ (c) The surviving spouse amount of the annual benefit payable to a beneficiary to whom subsection (b) applies is entitled to a benefit for life equal to the greater of:

(1) ~~seven twelve~~ thousand dollars (~~\$7,000~~); **(\$12,000)**; or

(2) fifty percent (50%) of the amount of retirement benefit 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 benefits on the date of death, with reductions as necessary under section 16(c) of this chapter.

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

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

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

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

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

8 (5) Upon the cessation of benefits to one (1) designated child,  
 9 if there are one (1) or more other children then surviving and  
 10 still entitled to benefits, the remaining children shall share the  
 11 benefit equally. If the surviving spouse of the participant is  
 12 surviving upon the cessation of benefits to all designated  
 13 children, the surviving spouse shall then receive the benefit  
 14 for the remainder of the spouse's life.

15 (6) The benefit shall be payable to the participant's surviving  
 16 spouse if any of the following occur:

17 (A) No child or children named as a beneficiary by the  
 18 participant survive the participant.

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

22 (C) A designation is not made.

23 (e) Benefits payable to a surviving spouse designated  
 24 beneficiary under this section are reduced by the amounts, if any, that  
 25 are payable to the surviving spouse or the surviving dependent  
 26 children from the public employees' retirement fund as a result of the  
 27 participant's death.

28 SECTION 7. IC 33-39-7-20 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 20. (a) If:

30 (1) a participant's spouse does not survive the participant; and  
 31 (2) the participant did not designate one (1) or more of the  
 32 participant's surviving dependent child of a participant is;  
 33 children to receive the benefit provided by section 19 of this  
 34 chapter;

35 the participant's surviving dependent children are, upon the death  
 36 of the participant, entitled to a benefit equal to the benefit the  
 37 participant's spouse would have received under section 19 of this  
 38 chapter.

39 (b) If a surviving spouse of a decedent participant dies and a  
 40 dependent child of the surviving spouse and the decedent participant  
 41 survives them, that dependent child is entitled to receive a benefit equal  
 42 to the benefit the spouse was receiving or would have received under

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1 section 19 of this chapter.

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

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

7 (e) Benefits payable to a dependent child are reduced by the  
8 amounts, if any, that are payable to the dependent child from the public  
9 employees' retirement fund.

10 SECTION 8. IC 33-39-7-21, AS AMENDED BY P.L.16-2011,  
11 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2013]: Sec. 21. (a) If benefits are not payable to the survivors  
13 of a participant who dies, and if a withdrawal application is filed with  
14 the board by the survivors or the participant's estate, the total of the  
15 participant's contributions, plus interest at a rate specified by rule by  
16 the board and minus any payments made to the participant, shall be  
17 paid to:

18 (1) the surviving spouse of the participant **or the children of the**  
19 **participant, as designated by the participant;**

20 (2) any ~~dependent~~ or dependents of the participant, if a spouse **or**  
21 **designated child** does not survive; or

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

24 (b) The amount owed a spouse, ~~dependent~~ or **designated children,**  
25 **other** dependents, or estate under subsection (a) is payable not later  
26 than sixty (60) days after the date of receipt of the withdrawal  
27 application, **or in monthly installments, as the recipient elects.**

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