
**PRELIMINARY DRAFT
No. 3315**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2004 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 33-4-7-12; IC 33-13.

Synopsis: Addition of magistrates to 1985 judges' fund. Allows a person serving as a full-time magistrate on July 1, 2004, and requires a person who begins serving as a full-time magistrate after that date, to become a participant in the judges' 1985 benefit system. Allows magistrates who are participants in the judges' 1985 benefit system to purchase, at full actuarial cost, service credit for prior service covered by an Indiana public employees' retirement fund.

Effective: July 1, 2004.



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, 2004]: 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:**

10 **(1) is serving as a full-time magistrate on July 1, 2004, and**
11 **makes an election under IC 33-13-10.1-3.5; or**

12 **(2) begins serving as a full-time magistrate after July 1, 2004;**
13 **shall, beginning January 1, 2005, participate in the judges' 1985**
14 **benefit system under IC 33-13-10.1.**

15 SECTION 2. IC 33-13-8-2 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The following words
17 and phrases as used in this chapter, unless different meanings are
18 plainly indicated by their context, shall have the following respective
19 meanings:

20 "Americans with Disabilities Act" refers to the Americans with
21 Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and
22 regulations related to the Act.

23 "His" and "widow" means "her" and "widower" in the event the
24 participant is a woman.

25 "Fund" means the Indiana judges' retirement fund, the fund created
26 by this chapter.

27 "Board" means the board of trustees of the public employees'
28 retirement fund.

29 "Employer" means the state of Indiana.

30 "Judge" means any person who has served, is serving, or shall serve
31 as a regular judge of any of the following courts:



- 1 Supreme court of the state of Indiana.
 2 Court of appeals of the state of Indiana.
 3 Circuit court of any judicial circuit.
 4 Superior court of any county or counties.
 5 Criminal court of any county having a separate criminal court.
 6 Probate court of any county having a separate probate court.
 7 Juvenile court of any county having a separate juvenile court.
 8 Municipal court of any county.
 9 County court of any county or counties.

10 "Participant" means any judge participating in the fund. **After**
 11 **December 31, 2004, "participant" means a judge or full-time**
 12 **magistrate participating in the fund.**

13 "Services" means the period beginning on the first day upon which
 14 any person first became a judge, whether such date is prior or
 15 subsequent to March 11, 1953, and ending on the date under
 16 consideration, including all intervening employment as a judge,
 17 following resignation or expiration of any term of election or
 18 appointment. Services in any fraction of a month shall be considered
 19 as a month of service. However, no more than one (1) month shall be
 20 credited for services in any one (1) calendar month. If a judge is elected
 21 or appointed and serves one (1) or more terms or part of a term, then
 22 retires from office, but at a later period, or periods, is appointed or
 23 elected and serves as judge, the judge shall pay into said fund during
 24 all the periods served as judge, except as otherwise provided in this
 25 chapter, whether said periods be a connected period or disconnected
 26 period, but shall not be required to pay into said fund at any time when
 27 the judge is not serving as judge, or during any period of service as a
 28 senior judge under IC 33-4-8, except as otherwise provided in this
 29 chapter.

30 "Fiscal year" means the period beginning on July 1, in any year, and
 31 ending on June 30 of the succeeding year.

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

36 SECTION 3. IC 33-13-10.1-1 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies
 38 only to an individual who:

- 39 (1) begins service as a judge after August 31, 1985;
 40 (2) **is serving as a full-time magistrate on July 1, 2004, and**
 41 **makes an election under section 3.5 of this chapter; or**
 42 (3) **begins service as a full-time magistrate after July 1, 2004.**

43 SECTION 4. IC 33-13-10.1-3 IS AMENDED TO READ AS
 44 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Each person who:

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



1 shall become a participant in the fund.

2 **(b) An individual who is serving as a full-time magistrate on**
 3 **July 1, 2004, and makes an election under section 3.5 of this**
 4 **chapter is, beginning January 1, 2005, a participant in the judges'**
 5 **1985 benefit system under this chapter.**

6 **(c) An individual who begins serving as a full-time magistrate**
 7 **after July 1, 2004, is a participant in the judges' 1985 benefit**
 8 **system beginning on the later of the following:**

9 **(1) January 1, 2005.**

10 **(2) The date the individual begins service as a full-time**
 11 **magistrate.**

12 SECTION 5. IC 33-13-10.1-3.5 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2004]: **Sec. 3.5. A person who is serving as a**
 15 **full-time magistrate on July 1, 2004, may elect to become a**
 16 **member of the judges' 1985 benefit system under this chapter. An**
 17 **election under this section:**

18 **(1) must be made in writing;**

19 **(2) must be filed with the PERF board, on a form prescribed**
 20 **by the board, before October 1, 2004; and**

21 **(3) is irrevocable.**

22 SECTION 6. IC 33-13-10.1-5 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. Any participant who:

24 (1) ceases service:

25 **(A) as a judge; or**

26 **(B) after December 31, 2004, as a judge or a full-time**
 27 **magistrate;**

28 other than by death or disability; and

29 (2) is not eligible for a retirement benefit under this chapter;

30 is entitled to withdraw from the fund, beginning on the date specified
 31 by the participant in a written application. The date upon which the
 32 withdrawal begins may not be before the date of final termination of
 33 employment or the date thirty (30) days before the receipt of the
 34 application by the board. Upon the withdrawal, the participant is
 35 entitled to receive the total sum contributed, payable within sixty (60)
 36 days from **the** date of withdrawal application or in such monthly
 37 installments as the participant may elect.

38 SECTION 7. IC 33-13-10.1-6, AS AMENDED BY P.L.194-1999,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2004]: Sec. 6. Any participant whose employment as a judge,
 41 **or after December 31, 2004, as a judge or a full-time magistrate,** is
 42 terminated is entitled to a retirement benefit computed under section
 43 7 of this chapter, beginning on the date specified by the participant in
 44 a written application, if all of the following conditions are met:

45 (1) The date upon which the benefit begins is not before the date
 46 of final termination of employment of the participant or the date



1 thirty (30) days before the receipt of the application by the board.

2 (2) The participant:

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

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

8 (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 SECTION 8. IC 33-13-10.1-14, AS AMENDED BY P.L.61-2002,
13 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2004]: Sec. 14. (a) This section applies to a person who:

15 (1) is:

16 (A) a judge; or

17 (B) **after December 31, 2004, a judge or a full-time**
18 **magistrate;**

19 participating under this chapter;

20 (2) before becoming:

21 (A) a judge; or

22 (B) **after December 31, 2004, a judge or a full-time**
23 **magistrate;**

24 was appointed by a court to serve as a full-time referee, full-time
25 commissioner, or full-time magistrate;

26 (3) was a member of the public employees' retirement fund during
27 the employment described in subdivision (2); and

28 (4) received credited service under the public employees'
29 retirement fund for the employment described in subdivision (2).

30 (b) If a person becomes a participant in the judges' 1985 benefit
31 system under section 1 of this chapter, credit for prior service by the
32 judge, **or after December 31, 2004, the judge or the full-time**
33 **magistrate**, as a full-time referee, full-time commissioner, or full-time
34 magistrate shall be granted under this chapter by the board if:

35 (1) the prior service was credited under the public employees'
36 retirement fund;

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

41 (3) the judge **or the full-time magistrate** pays in a lump sum or
42 in a series of payments determined by the board, not exceeding
43 five (5) annual payments, the amount the judge **or the full-time**
44 **magistrate** would have contributed if the judge **or the full-time**
45 **magistrate** had been a member of the judges' 1985 benefit system
46 during the prior service.



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

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

7 (e) The following provisions apply to a person described in
 8 subsection (a):

9 (1) A minimum benefit applies to participants receiving credit in
 10 the judges' 1985 benefit system from service covered by the
 11 public employees' retirement fund. The minimum benefit is
 12 payable at sixty-five (65) years of age or when the participant is
 13 at least fifty-five (55) years of age and meets the requirements
 14 under section 6(2)(B) of this chapter and equals the actuarial
 15 equivalent of the vested retirement benefit that is:

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

18 (B) based solely on:

19 (i) creditable service;

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

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

24 (2) If the requirements of subsection (b)(2) and (b)(3) are
 25 satisfied, the board shall transfer from the public employees'
 26 retirement fund to the judges' 1985 benefit system the amount
 27 credited to the annuity savings account and the present value of
 28 the retirement benefit payable at sixty-five (65) years of age or at
 29 least fifty-five (55) years of age under section 6(2)(B) of this
 30 chapter that is attributable to the transferring participant.

31 (3) The amount the state and the participant must contribute to the
 32 judges' 1985 benefit system under subsection (b) shall be reduced
 33 by the amount transferred to the judges' 1985 benefit system by
 34 the board under subdivision (2).

35 (4) If the requirements of subsection (b)(2) and (b)(3) are
 36 satisfied, credit for prior service in the public employees'
 37 retirement fund as a full-time referee, full-time commissioner, or
 38 full-time magistrate is waived. Any credit for the prior service
 39 under the judges' 1985 benefit system may be granted only under
 40 subsection (b).

41 (f) To the extent permitted by the Internal Revenue Code and the
 42 applicable regulations, the judges' 1985 benefit system may accept, on
 43 behalf of a participant who is purchasing permissive service credit
 44 under subsection (b), a rollover of a distribution from any of the
 45 following:

46 (1) A qualified plan described in Section 401(a) or Section 403(a)



- 1 of the Internal Revenue Code.
- 2 (2) An annuity contract or account described in Section 403(b) of
3 the Internal Revenue Code.
- 4 (3) An eligible plan that is maintained by a state, a political
5 subdivision of a state, or an agency or instrumentality of a state or
6 political subdivision of a state under Section 457(b) of the
7 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 Code.
- 10 (g) To the extent permitted by the Internal Revenue Code and the
11 applicable regulations, the judges' 1985 benefit system may accept, on
12 behalf of a participant who is purchasing permissive service credit
13 under subsection (b), a trustee to trustee transfer from any of the
14 following:
- 15 (1) An annuity contract or account described in Section 403(b) of
16 the Internal Revenue Code.
- 17 (2) An eligible deferred compensation plan under Section 457(b)
18 of the Internal Revenue Code.
- 19 SECTION 9. IC 33-13-10.1-14.5, AS AMENDED BY P.L.61-2002,
20 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2004]: Sec. 14.5. (a) This section applies only to a person
22 who:
- 23 (1) is:
- 24 (A) a judge; **or**
- 25 (B) **after December 31, 2004, a judge or a full-time**
26 **magistrate;**
- 27 participating under this chapter;
- 28 (2) before becoming:
- 29 (A) a judge; **or**
- 30 (B) **after December 31, 2004, a judge or a full-time**
31 **magistrate;**
- 32 was a member of an Indiana public employees' retirement fund;
- 33 (3) received credited service under an Indiana public employees'
34 retirement fund for the employment described in subdivision (2),
35 and the credited service is not eligible for prior service credit
36 under section 14 of this chapter;
- 37 (4) has not attained vested status under an Indiana public
38 employees' retirement fund for the employment described in
39 subdivision (2); and
- 40 (5) has at least eight (8) years of service credit in the judges'
41 retirement system.
- 42 (b) If a person becomes a participant in the judges' 1985 benefit
43 system under this chapter, credit for service described in subsection (a)
44 shall be granted under this chapter by the board if:
- 45 (1) the prior service was credited under an Indiana public
46 employees' retirement fund; and



- 1 (2) the judge **or the full-time magistrate** pays in a lump sum or
2 in a series of payments determined by the board, not exceeding
3 five (5) annual payments, the amount determined by the actuary
4 for the 1985 benefit system as the total cost of the service.
- 5 (c) If the requirements of subsection (b) are not satisfied, a
6 participant is entitled to credit only for years of service after the date of
7 participation in the 1985 benefit system.
- 8 (d) An amortization schedule for contributions paid under this
9 section must include interest at a rate determined by the board.
- 10 (e) If the requirements of subsection (b) are satisfied, the
11 appropriate board shall transfer from the retirement fund described in
12 subsection (a)(2) to the judges' 1985 benefit system the amount
13 credited to the judge's **or the full-time magistrate's** annuity savings
14 account and the present value of the retirement benefit payable at
15 sixty-five (65) years of age that is attributable to the transferring
16 participant.
- 17 (f) The amount a participant must contribute to the judges' 1985
18 benefit system under subsection (b) shall be reduced by the amount
19 transferred to the judges' 1985 benefit system by the board under
20 subsection (e).
- 21 (g) If the requirements of subsection (b) are satisfied, credit for prior
22 service in an Indiana public employees' retirement fund is waived.
- 23 (h) To the extent permitted by the Internal Revenue Code and the
24 applicable regulations, the judges' 1985 benefit system may accept, on
25 behalf of a participant who is purchasing permissive service credit
26 under subsection (b), a rollover of a distribution from any of the
27 following:
- 28 (1) A qualified plan described in Section 401(a) or Section 403(a)
29 of the Internal Revenue Code.
- 30 (2) An annuity contract or account described in Section 403(b) of
31 the Internal Revenue Code.
- 32 (3) An eligible plan that is maintained by a state, a political
33 subdivision of a state, or an agency or instrumentality of a state or
34 political subdivision of a state under Section 457(b) of the
35 Internal Revenue Code.
- 36 (4) An individual retirement account or annuity described in
37 Section 408(a) or Section 408(b) of the Internal Revenue Code.
- 38 (i) To the extent permitted by the Internal Revenue Code and the
39 applicable regulations, the judges' 1985 benefit system may accept, on
40 behalf of a participant who is purchasing permissive service credit
41 under subsection (b), a trustee to trustee transfer from any of the
42 following:
- 43 (1) An annuity contract or account described in Section 403(b) of
44 the Internal Revenue Code.
- 45 (2) An eligible deferred compensation plan under Section 457(b)
46 of the Internal Revenue Code.

