Members

Sen. Phil Boots, Chairperson
Sen. Greg Walker
Sen. Lindel Hume
Sen. Karen Tallian
Rep. Woody Burton
Rep. Jeffrey Thompson
Rep. David Niezgodski
Rep. Charles Moseley
Steve Meno
Kip White
Gary Lewis
Kurt Meade

PENSION MANAGEMENT OVERSIGHT COMMISSION

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***Authority:** IC 2-5-12-1*

MEETING MINUTES[1]

Meeting Date:	**October 21, 2013**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

Members Present: **Sen. Phil Boots, Chairperson; Sen. Greg Walker; Sen. Lindel Hume; Sen. Karen Tallian; Rep. Woody Burton; Rep. Jeffrey Thompson; Rep. David Niezgodski; Rep. Charles Moseley; Kip White; Kurt Meade.**

Members Absent: **Steve Meno; Gary Lewis.**

Senator Phil Boots, Chairperson, called the meeting to order at 10:04 a.m. The Commission members then introduced themselves.

Update on Retirement Medical Benefit Accounts

Deanna Oware, Deputy Director at the Indiana State Budget Agency, presented on the state of the Retirement Medical Benefits Accounts (Exhibit A). These accounts, which were created in SEA 501-2007, provide retirement medical benefit accounts for members of the General Assembly, state elected officers, and most employees of the executive, legislative, and judicial branches. Ms. Oware spoke in regards to contributions, benefits, outreach, funding, and other statistics pertinent to the administration of the accounts.

Benefits for Municipal EMS Workers

[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

The Commission discussed PD 3302 (Exhibit B), which authorizes a municipal corporation to provide programs of disability insurance to its emergency medical services providers who become disabled as the result of an injury or illness.

After lengthy Commission discussion, Senator Tallian moved that PD 3302 be recommended by the Commission as model legislation, with the caveat that the language be amended so that the requirement that a municipality must provide a benefit that is at least 50% of the emergency medical service provider's weekly salary be struck to provide more flexibility for individual municipalities. Mr. Michael Whited with the Professional Fire Fighters Union of Indiana agreed with the proposed amendment language.

The Commission voted unanimously to recommend PD 3302, as amended, for introduction in the 2014 session of the General Assembly.

PERF and TRF Annuity Savings Account (ASA) Annuitization

Senator Tallian outlined her proposed motion, which states:

(1) The Commission considered the four proposals considered by the INPRS Board regarding the issuance of annuities to retirees for their ASAs.
(2) The Commission recommends that INPRS pursue an option that would keep the annuitization of ASAs in-house and to not proceed with a 3rd party contract. Instead, INPRS should periodically establish an interest rate that will not create an unfunded liability in their managed funds.
(3) The Commission recommends the General Assembly not set a statutory interest rate at this time.
(4) The Commission recommends that the date to undertake these activities occur not earlier than October 1, 2014.

After discussing the motion, the motion was passed by unanimous vote without amendments. Senator Hume asked that his vote reflect his displeasure with the date of October 1, 2014, as he believes potential retirees require more time to plan for retirement, and there should be no annuity rate change prior to, at minimum, January 1, 2015.

State-Assisted Retirement Plans

Senator Walker introduced PD 3342 (Exhibit C), which outlines a state-assisted retirement plan and made a motion that the Commission recommend the legislation.

The Commission unanimously recommended PD 3342 for introduction in the 2014 session of the General Assembly.

Discussion of Judicial Pension Plan

Senator Boots then referred to PD 3259 (Exhibit D), which establishes the 2014 Judges' Retirement, Disability, and Death System (2014 Judges' System). This system conforms closely to the features of the Prosecuting Attorneys Retirement System (PARF) for individuals who become judges or magistrates after June 30, 2014. Senator Boots indicated that this preliminary draft was for discussion purposes only, and the Commission would not be asked to make a recommendation on the legislation at this time.

COLAs, Thirteenth Checks, and Minimum Pension Benefit Scenarios

Representative Thompson introduced PD 3285 (Exhibit E), which establishes a formula for annual postretirement benefit adjustments for members, survivors, and beneficiaries of PERF and TRF. Representative Thompson explained that the formula included in the preliminary draft is meant to provide a postretirement increase that will benefit those that have been retired for many years as well as those retirees who had many years of service.

The Commission members discussed this language at length, with some showing concern about the potential fiscal impact and others having questions as to whether the postretirement benefit increase would be awarded as a 13th Check or as a COLA. As a result of the discussion, Chairman Boots requested that the Commission not consider a motion to recommend the legislation.

Senator Tallian and Senator Walker offered a motion that does not include a recommendation of the actual preliminary draft per se, but rather a recommendation of the postretirement benefit increase formula within the draft. The motion reads:

(1) Should the Indiana General Assembly adopt a 13th Check or a COLA, the formula contained within PD 3285 is the formula that should be utilized to calculate the level of benefit increase.

The Commission adopted the motion 9-0, with Representative Thompson abstaining.

Determination of Authors for PDs Recommended by the Commission

(1) PD 3342 (State-Assisted Retirement Plan). Senators Tallian and Walker agreed to be authors of PD 3342.
(2) PD 3302 (Benefits for Municipal EMS Workers). Senators Boots and Hume agreed to be authors of PD 3302.
(3) PD 3285 (PERF and TRF Benefit Adjustments). Senators Tallian, Hume, and Walker will author a Senate version, and Representatives Moseley and Burton agreed to be authors of a House version.

Consideration of Draft Final Report (Exhibit F)

The Commission unanimously accepted the draft final report with the understanding that actions taken during today's meeting will be included in the Commission's final report.

Adjournment

Chairman Boots thanked Commission members and other participants for their work during the interim.

The Chairperson adjourned the meeting at 11:00 a.m.

Exhibit A
Meeting 3 10-21-2013

Senate Enrolled Act 501
Retirement Medical Benefits Accounts
2013 Annual Update

Deanna Oware
Deputy Director
Indiana State Budget Agency

SEA 501 – Background

- SEA 501-2007 established a retirement medical benefits account for members of the general assembly, state elected officers and most employees of the executive, legislative and judicial branches
- Two components – active participants and retirees
- Only a retired participant and covered dependents are entitled to receive benefits from the account

SEA 501 – Active Participants

- Active portion is funded on an actuarial basis (55-60% of current employees will reach eligibility)

- Annual state contribution to each full-time, active employee's account based on age

Age	Annual Contribution
Less than 30	$500
30-40	$800
40-49	$1,100
At least 50	$1,400

SEA 501 – Retired Participants

- Retiree portion is fully funded based on actual retirements
- SEA 501 established the account as a Health Reimbursement Arrangement
- The account is funded with (1) any annual contributions received from the state on behalf of an active participant, (2) if applicable, a “bonus contribution” from the state and (3) investment earnings
- Funds may be used to pay premiums for individual or group health, medical, dental and vision coverage and long-term care premiums

SEA 501 – Retired Participants

- The bonus contribution applies to a participant who:
  - Retires after June 30, 2007 and before July 1, 2017; and
  - Has ten (10) years of service as an elected officer or has fifteen (15) years of service as an employee of the legislative, judicial or executive branch; and
  - Is eligible for and has applied to receive a normal, unreduced retirement benefit from a public employee retirement fund

- The bonus contribution equals the participant's years of service multiplied by $1,000

SEA 501 – CEP and ISP

- Conservation Officers, Excise Police, and State Police have established their own defined benefit retiree health plans (per IC 5-10-8-6)
  - Plans heavily subsidize retirees resulting in significant OPEB liability

- These groups removed from 501 eligibility, and Active contributions now directed to their respective plans' trusts to reduce OPEB liability per HEA 1001 (2011)
  - Exception for ISP employees who had previously waived coverage under ISP health plan and those who opt out of ISP health care plan when transferring in from a 501-eligible state agency

SEA 501 – Communication/Outreach

- Participation by the State Budget Agency at State Personnel pre-retirement seminars
- Correspondence with nearly 30,000 employees informing them of the annual contribution and interest earnings, and directing them to resources for additional information
- Section of the State Budget Agency website dedicated to SEA 501 that now includes the ability to access your account balance on line
  - Includes the Plan Document, contract with Key Benefits, claim forms, the presentation made to employees at the information sessions, and frequently asked questions

SEA 501 – Statistics

- Through FY13, there were 5,082 retired participants with average contribution of $27,570
  - Added 738 retirees in FY13
  - Average contribution was $25,923
- 28,567 active employees received a contribution on June 30, 2013, ranging from $500 to $1,400
  - Average contribution of $1,109
- Total claims paid in FY13 were $14.6M ($12.4M in FY12)
  - Over 28,000 individual claims; average claim = $523
  - Total paid claims to date of $48.3M

SEA 501 – Statistics

- Interest of $142,188 was distributed pro rata to the retiree and active accounts based upon their June 30, 2013 account balance. The is the net of interest after the administrative expenses of the plan are deducted.

- Administrative costs totaled $353,336 in FY13

- A RFP for the administration of the plan was conducted in late 2012 and Key Benefit Administrators was awarded the contract. They have been the TPA of the program since it's inception.

SEA 501 – Fiscal Impact

- Actual cost in FY13
  - Annual state contributions – 28,567 at an average contribution of $1,109 = $31.7M. Actuarial funding at 58% = **$18.4M**
  - Bonus contributions for retired participants – 738 (FY13 retirements only) at an average credit of $25,923 = **$19.1M**
  - TOTAL COST = **$37.5M**
- Prior to HEA 1001 (2011), 5.74% of cigarette tax revenues deposited directly into the Retiree Health Trust Fund
  - Cigarette tax revenue redirected to general fund for FY12 and FY13; repays GF for FY08-11 overpayments
  - Study confirmed plan was 117% actuarially funded as of June 2012; current valuation will estimate necessary future state contributions and confirm current funded status
  - Cigarette tax revenue (4%) will again be deposited directly into Retiree Health Trust Fund starting in FY14 per statute

PRELIMINARY DRAFT
No. 3302

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10-17.

Synopsis: Emergency medical services disability benefits. Authorizes a municipal corporation to provide programs of disability insurance (programs) to its emergency medical service providers who become disabled as the result of an injury or illness: (1) that is not covered by worker's compensation or occupational diseases compensation; or (2) for which worker's compensation or occupational diseases compensation has been exhausted. Provides that a benefit must be at least 50% of the provider's weekly salary or wages as of the date the disability began. Provides that the elimination or waiting period before a benefit begins may not be greater than: (1) 30 days, for a short term disability program; or (2) 120 days, for a long term disability program. Allows a municipal corporation to provide the programs by purchasing policies of group insurance or establishing a self-insurance program. Requires the fiscal body of a municipal corporation to approve the establishment of a self-insurance program. Allows the programs to exclude part-time employees and individuals who provide services to the municipal corporation under a contract.

Effective: July 1, 2014.

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:

SECTION 1. IC 5-10-17 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 17. Emergency Medical Service Provider Disability Benefits

Sec. 1. This chapter applies to an emergency medical services provider who is:

(1) employed by a municipal corporation; and

(2) not eligible for a disability benefit under IC 36-8-6, IC 36-8-7, IC 36-8-7.5, or IC 36-8-8.

Sec. 2. As used in this chapter, "emergency medical services provider" has the meaning set forth in IC 16-41-10-1.

Sec. 3. As used in this chapter, "fiscal body" has the meaning set forth in IC 36-1-2-6.

Sec. 4. As used in this chapter, "municipal corporation" has the meaning set forth in IC 5-10-9-1.

Sec. 5. (a) A municipal corporation may provide programs of disability insurance to its emergency medical services providers who become disabled as the result of an injury or illness:

(1) that is not covered by:

(A) worker's compensation (IC 22-3-2 through IC 22-3-6); or

(B) occupational diseases compensation (IC 22-3-7); or

(2) for which coverage under worker's compensation or occupational diseases compensation has been exhausted.

(b) A program established under subsection (a):

(1) must provide a benefit that is at least fifty percent (50%) of the emergency medical services provider's weekly salary or wages as of the date the disability began; and

(2) may not have an elimination or waiting period of greater than the following before a benefit begins:

(A) Thirty (30) days, for a short term disability program.
(B) One hundred twenty (120) days, for a long term disability program.

(c) A municipal corporation may provide the programs of disability insurance described in subsection (a) through either of the following:
(1) By purchasing policies of group insurance.
(2) By establishing self-insurance programs.

(d) A municipal corporation may exclude from coverage under a program of disability insurance an emergency medical services provider who:
(1) is a part-time employee (as defined by the municipal corporation); or
(2) provides services to the municipal corporation under a contract.

(e) The establishment of a self-insurance program under this section is subject to the approval of the municipal corporation's fiscal body.

PRELIMINARY DRAFT
No. 3342

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 4-38; IC 6-3-3-13.

Synopsis: State-assisted retirement plans. Establishes a state-assisted retirement plan (plan) for purposes of encouraging Indiana residents to increase their rate of savings and to build assets for the use of a participant or the participant's beneficiaries or survivors after the participant's retirement. Establishes the Indiana retirement savings board (board) consisting of five members appointed by the governor, the treasurer of state, and the director of the office of management and budget. Provides that the board selects an administrator and oversees the plan. Requires that the plan be qualified under Section 401(a) or another applicable section of the Internal Revenue Code. Provides that an employer can participate in the plan only if the employer does not offer its employees a pension or retirement system of any kind. Provides that participation in the plan is voluntary for eligible employers and employees, and permits self-employed individuals to participate in the plan. Provides that the plan may not be construed as a debt, a liability, or an obligation of the state, and that the state does not guarantee amounts deposited into an account or investment returns earned by an account. Provides a tax credit, not to exceed $250, for payroll contributions to the plan made by a participant who has not previously participated in a pension or retirement plan of any kind.

Effective: July 1, 2014.

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

SECTION 1. IC 4-38 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

ARTICLE 38. STATE-ASSISTED RETIREMENT PLAN

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Account" refers to a plan account established for a participant under IC 4-38-3-5.

Sec. 3. "Board" refers to the Indiana retirement savings board established by IC 4-38-2-1.

Sec. 4. "Compensation" means wages, salary, commissions, and any other form of remuneration, as defined by the plan, paid for personal services by an employer to a participant.

Sec. 5. "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.

Sec. 6. "Participant" means an individual who has elected to participate in the plan.

Sec. 7. "Participating employer" means a person or entity that:

(1) meets the eligibility requirements established by the plan to participate in the plan as an employer; and

(2) elects to participate in the plan.

Sec. 8. "Plan" refers to the state-assisted retirement plan established under IC 4-38-3-1.

Chapter 2. Indiana Retirement Savings Board

Sec. 1. The Indiana retirement savings board is established.

Sec. 2. (a) The board consists of the following:

(1) The following two (2) ex officio members:

(A) The treasurer of state.

(B) The director of the office of management and budget.

(2) Five (5) appointed members who:

(A) are appointed by the governor; and
(B) have knowledge, skill, and experience in professional financial accounting, business, economics, finance, or investments.

(b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.

(c) Not more than three (3) of the appointed members of the board may belong to the same political party.

(d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.

(e) The governor may reappoint an appointed member of the board.

(f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.

(g) The treasurer of state shall serve as the chair of the board. The director of the office of management and budget shall serve as the vice chair of the board.

(h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.

(i) An ex officio member of the board may designate a person to serve as an ex officio member of the board in the ex officio member's absence.

Sec. 3. (a) An appointed member of the board is not entitled to the minimum salary per diem provided under IC 4-10-11-2. Each appointed member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(b) An ex officio member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

Sec. 4. (a) Five (5) members of the board constitute a quorum.

(b) The affirmative vote of a majority of the members on the board is necessary for the board to take action.

(c) The board shall meet at the call of the chair and at other times as the board considers necessary.

Sec. 5. (a)The board shall do all of the following:

(1) Adopt provisions to implement the plan, subject to obtaining the approval of the Internal Revenue Service in a manner that satisfies the board that the plan is qualified under Section 401(a) or another applicable section of the Internal Revenue Code, through:

(A) rules or emergency rules adopted under IC 4-22-2; or
(B) guidelines, procedures, or policies established by the board.
(2) Administer the plan as provided under section 6 of this chapter.
(3) Conform the plan to federal tax advantages or incentives, as in existence periodically, to the extent consistent with the purposes and objectives of this article.
(4) Prepare an annual report for the plan and promptly transmit the annual report to the governor and the general assembly. The board shall make available, upon request, copies of the annual report to participants, participating employers, and the public. A report transmitted under this subdivision must be in an electronic format under IC 5-14-6.
(5) Interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly in light of the purposes and objectives of this article.
(b) The board may do any of the following:
(1) Adopt a plan document that the board considers appropriate or necessary to administer the plan.
(2) Request from the Internal Revenue Service any rulings or determination letters that the board considers necessary or appropriate in order to implement or administer the plan.
(3) Make contracts and sue and be sued as the Indiana retirement savings board.
(4) Contract with public or private persons or entities for the provision of all or any portion of the services the board considers necessary for the management and operation of the plan, including the administration of the plan and the investment of plan assets.
(5) Recommend legislation to the governor and general assembly.
(6) Exercise all powers necessary, convenient, or appropriate to:
(A) carry out and effectuate the purposes and objectives of this article; and
(B) conduct the board's business.
Sec. 6. (a) The board shall select and enter into a written contract with one (1) or more persons to provide all or part of the services involved in the administration of the plan. The board shall select these persons through a competitive bidding process established using specifications considered appropriate by the board. This section does not require a limitation on the number or variety of plan investment options selected by the board as the result of a bidding process.
(b) A person with whom the board contracts under this section

must be authorized and licensed by the state and applicable federal regulatory agencies as required by law to offer the services that the person contracts to provide.

Chapter 3. Plan Establishment; General Provisions

Sec. 1. A state-assisted retirement plan is established for purposes of encouraging Indiana residents to increase their rate of savings and to build assets for the use of a participant or the participant's beneficiaries or survivors after the participant's retirement.

Sec. 2. (a) The plan shall be maintained as a separate trust account for the exclusive benefit of participants and their beneficiaries and survivors.

(b) The board shall serve as the trustee of the trust account.

(c) The trust account for the plan must be preserved, invested, and expended only under this article and may not be used for any other purpose.

Sec. 3. (a) The plan must establish eligibility requirements that an employer must meet to become a participating employer.

(b) Only an employer that does not offer its employees a pension or retirement system of any kind may be a participating employer.

(c) The action of an employer to become a participating employer is voluntary.

Sec. 4. An individual who is:

(1) employed by a participating employer; or

(2) self-employed;

may elect to be a participant in the plan.

Sec. 5. (a) The plan shall establish a separate account for each individual who elects to be a participant in the plan under section 4 of this chapter.

(b) A participant may contribute to the participant's account, in the manner and at intervals established by the plan.

(c) The plan must allow a participant to make contributions to the plan using the following:

(1) Deductions from the participant's compensation using a participating employer's payroll system.

(2) Deductions from the participant's savings or checking account.

Sec. 6. A participating employer may contribute to the account of a participant whom the employer employs, in the manner and at intervals established by the plan.

Sec. 7. (a) The following are the property of a participant at all times:

(1) Money deposited in an account by:

(A) the participant; or

(B) on behalf of the participant.

(2) Investment returns on the participant's account.

(b) A participant shall direct the investment of all amounts in the participant's account among the investment alternatives provided under the plan.

(c) Amounts held in a participant's account may not be used by the participant as security for a loan.

Sec. 8. The plan shall include provisions for the operation of the plan, including methods for:

(1) making a contribution;

(2) changing the amount of a contribution;

(3) distributing the amounts in a participant's account;

(4) allowing a participant to designate one (1) or more beneficiaries to receive the participant's account in the event of the participant's death;

(5) choosing and changing investment alternatives;

(6) reporting account information to a participant; and

(7) determining and paying the administrative costs of the plan.

Chapter 4. Miscellaneous Provisions

Sec. 1. Accounts and earnings or interest on accounts are exempt from taxation in Indiana to the extent that those accounts, earnings, or interest are exempt from federal taxation under the Internal Revenue Code.

Sec. 2. (a) The plan established by this article may not be construed as a debt, a liability, or an obligation of the state.

(b) All documents used to communicate with a participant, beneficiary, or survivor in connection with transactions involving a participant's account must clearly state the following:

(1) That the account is not insured by the state.

(2) That the state does not guarantee:

(A) amounts deposited into an account; or

(B) investment returns earned by amounts in an account.

Sec. 3. A participating employer is not responsible for and may not be held liable for any loss or damage resulting from the operation or performance of the plan authorized under this article.

SECTION 2. IC 6-3-3-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 13. (a) This section applies to the first year during which a taxpayer who has not previously participated in a pension or retirement plan of any kind becomes a participant in the state-assisted retirement plan.**

(b) As used in this section, "account" has the meaning set forth in IC 4-38-1-2.

(c) As used in this section, "contribution" means the amount of money directly provided to an account by a taxpayer using a participating employer's payroll system. A contribution does not include rollovers to an account from another qualified retirement

plan to the extent permitted by the Internal Revenue Code and applicable regulations and guidance.

(d) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from an account that is not a qualified withdrawal.

(e) As used in this section, "participant" has the meaning set forth in IC 4-38-1-6.

(f) As used in this section, "participating employer" has the meaning set forth in IC 4-38-1-7.

(g) As used in this section, "plan" has the meaning set forth in IC 4-38-1-8.

(h) As used in this section, "qualified withdrawal" means a withdrawal or distribution from an account that is made:

(1) as the result of the participant's termination of employment with a participating employer to the extent the withdrawal or distribution is required or permitted by the plan or the Internal Revenue Code; or

(2) after the death or disability of the participant.

(i) As used in this section, "taxpayer" means:

(1) an individual filing a single return; or

(2) a married couple filing a joint return.

(j) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed under IC 6-3-1 through IC 6-3-7 for the first taxable year during which the taxpayer is a participant in the state-assisted retirement plan equal to the least of the following:

(1) The amount of the total contributions made through a participating employer's payroll system to an account by the taxpayer during the taxable year.

(2) Two hundred fifty dollars ($250).

(3) The amount of the taxpayer's adjusted gross income tax imposed under IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3 or IC 6-3.1 for the taxable year.

(k) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(l) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(m) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(n) A taxpayer must repay all or a part of the credit in a taxable

year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

(1) the total amount of nonqualified withdrawals made from the account during the taxable year; or

(2) the amount of the credit received under subsection (j).

(o) Any required repayment under subsection (n) shall be reported by the participant on the participant's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(p) A nonresident participant who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident participant does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(q) The chair of the Indiana retirement savings board shall submit or cause to be submitted to the department a copy of all information returns or statements issued to participants for each taxable year for:

(1) nonqualified withdrawals made from accounts for the taxable year; or

(2) account closings for the taxable year.

PRELIMINARY DRAFT
No. 3259

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-23-5-13; IC 33-38.

Synopsis: Judges' and magistrates' pensions. Establishes the 2014 judges' retirement, disability, and death system (2014 judges' system), which conforms closely to the features of the prosecuting attorneys retirement system. Provides that an individual who becomes a judge or a magistrate after June 30, 2014, shall participate in the 2014 judges' system.

Effective: July 1, 2014.

A BILL FOR AN ACT to amend the Indiana Code concerning pensions and to make an appropriation.

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

SECTION 1. IC 33-23-5-13, AS AMENDED BY P.L.122-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) Except as provided in ~~subsection (b),~~ **subsections (b) and (c),** 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 33-38 if the magistrate had previously participated in the system.

(b) A person who:

(1) is serving as a full-time magistrate on July 1, 2010, and makes an election under IC 33-38-8-10.5; or

(2) begins serving as a full-time magistrate after July 1, 2010, **and before July 1, 2014,**

shall, beginning January 1, 2011, participate in the judges' 1985 benefit system under IC 33-38-8.

(c) A person who begins serving as a full-time magistrate after June 30, 2014, shall participate in the judges' 2014 benefit system under IC 33-38-8.3.

SECTION 2. IC 33-38-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. The fund must satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3:**

(1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter, IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

(2) A part of the corpus or income of the fund may not be used or diverted to a purpose other than the exclusive benefit of the participants and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits a participant would otherwise receive under the fund.

(4) If the fund is terminated or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin not later than December 31 of the calendar year immediately following the calendar year in which the participant died.

(6) The board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) The salary taken into account under this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3** may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

SECTION 3. IC 33-38-6-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) Conditions for participation in the fund, contributions to the fund, withdrawal from the fund, and eligibility for and computation of benefits for participants and their survivors are governed by IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

(b) Notwithstanding any provision of this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3,** the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A participant on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act but is not entitled to receive credit for service for benefit purposes.

(c) Notwithstanding any provision of this chapter, IC 33-38-7, ~~and~~

IC 33-38-8, **and IC 33-38-8.3,** a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

SECTION 4. IC 33-38-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. The amount appropriated under section 17 of this chapter for participants' retirement benefits shall be used for retirement benefits under IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

SECTION 5. IC 33-38-6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 19. The fund shall be construed to be a trust, separate and distinct from all other entities, maintained to secure payment of benefits to the participants and their beneficiaries, as prescribed in IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

SECTION 6. IC 33-38-6-21.5, AS ADDED BY P.L.13-2011, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2011, under this chapter, IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3:**

(b) An employer shall submit through the use of electronic funds transfer:

(1) employer payments made to fund the retirement, disability, and survivor benefits described in this chapter, IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3;** and

(2) contributions paid by or on behalf of a participant under section 21 of this chapter, IC 33-38-7-10, ~~or~~ IC 33-38-8-11, **or IC 33-38-8.3-4.**

(c) An employer shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records required by the board under this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3.**

(d) The board shall establish by rule the due dates for all reports, records, and contributions required under this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3.**

SECTION 7. IC 33-38-6-23, AS AMENDED BY P.L.35-2012, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 23. (a) The board of trustees of the Indiana public retirement system (referred to as "the system" in this section) shall administer the fund, which may be commingled for investment purposes with any public pension and retirement fund administered by the system.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

(2) In accordance with the powers and duties granted it in

IC 5-10.3-3-7.1, IC 5-10.3-5-3 through IC 5-10.3-5-6, IC 5-10.5-4, and IC 5-10.5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter, ~~and~~ IC 33-38-7, ~~and~~ IC 33-38-8, **and IC 33-38-8.3.**

(4) Authorize deposits.

(c) A determination by the board may be appealed under the procedures in IC 4-21.5.

(d) The powers and duties of:

(1) the director and the actuary of the board; and

(2) the attorney general;

with respect to the fund are those specified in IC 5-10.3-3, IC 5-10.3-4, IC 5-10.5-4, and IC 5-10.5-6.

(e) The board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter.

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

SECTION 8. IC 33-38-6-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 24. Notwithstanding any other provision of this chapter, IC 33-38-7, ~~or~~ IC 33-38-8, **or IC 33-38-8.3,** to the extent required by Internal Revenue Code Section 401(a)(31) of the Internal Revenue Code, as added by the Unemployment Compensation Amendments of 1992 (P.L. 102-318), and any amendments and regulations related to Section 401(a)(31) of the Internal Revenue Code, the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

SECTION 9. IC 33-38-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 8.3. 2014 Retirement, Disability, and Death System

Sec. 1. This chapter applies only to an individual who begins service as a judge or a full-time magistrate after June 30, 2014.

Sec. 2. (a) Except as otherwise provided in subsection (b), the definitions set forth in IC 33-38-6 apply throughout this chapter.

(b) The following definitions apply throughout this chapter:

(1) "Eligible position" means a position of employment as:

(A) a judge; or

(B) a full-time magistrate.

(2) "Service" refers to the period:

(A) beginning on the first day on which an individual becomes a judge or a full-time magistrate; and

(B) ending on the date under consideration.

The term includes all intervening employment as a judge or a full-time magistrate.

Sec. 3. A person who:

(1) begins service as a judge or a full-time magistrate after June 30, 2014; and

(2) is not a participant in the fund;

shall become a participant in the fund.

Sec. 4. (a) Except as otherwise provided in this section, a participant shall make contributions to the fund of six percent (6%) of each payment of salary received for services as a judge or a full-time magistrate.

(b) The employer may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(c) A participant is not required to contribute to the fund during any period in which the participant is not serving as a judge or full-time magistrate.

(d) After a participant has contributed to the fund for twenty-two (22) years as provided in this section, the participant is not required to make additional contributions to the fund.

(e) Participants' contributions, other than participants' contributions paid by the employer, shall be deducted from the monthly salary of each participant by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-38-6-21 and IC 33-38-6-22.

(f) The auditor of state and the county auditor shall submit the contributions paid by or on behalf of a participant under this section by electronic funds transfer in accordance with IC 33-38-6-21.5.

Sec. 5. (a) A participant who:

(1) ceases service as a judge or full-time magistrate, other than by death or disability; and

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

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application to the board. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon withdrawal the participant is entitled to receive the total sum contributed plus interest at a rate specified by rule by the board, payable not later than sixty (60) days from the date of the withdrawal application.

(b) Notwithstanding IC 33-38-6-11, a participant who withdraws from the fund under subsection (a) and becomes a participant again at a later date is not entitled to service credit for years of service before the withdrawal, unless the participant pays into the fund the full amount received by the participant when the participant withdrew from the fund, plus interest at a rate specified by rule by the board. The board shall grant a participant service

credit for years of service by the participant before the participant's withdrawal from the fund if the participant makes the repayment required by this subsection in a lump sum or a series of payments determined by the board, not exceeding five (5) annual installments.

Sec. 6. (a) Interest shall be credited annually on June 30 at a rate specified by rule by the board on all amounts credited to a participant as of June 30 of the preceding year.

(b) Contributions begin to accumulate interest at the beginning of the fiscal year after the year in which the contributions are due.

(c) When a participant retires or withdraws, a proportional interest credit determined under this chapter shall be paid for the period elapsed since the last date on which interest was credited.

Sec. 7. A participant whose employment in an eligible position is terminated is entitled to a retirement benefit computed under section 8 or 10 of this chapter, beginning on the date specified by the participant in a written application to the board, if all the following conditions are met:

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

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

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

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

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

(2) The participant:

(A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;

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

(C) has become permanently disabled.

(3) The participant is not receiving and is not entitled to receive any salary for services currently performed.

Sec. 8. (a) This section does not apply to a participant who receives benefits for a permanent disability under section 10 of this chapter.

(b) A participant who:

(1) applies for a retirement benefit; and

(2) is at least:

(A) sixty-five (65) years of age; or

(B) fifty-five (55) years of age and the participant's age in

years plus the participant's years of service is at least eighty-five (85);

is entitled to an annual retirement benefit as calculated in subsection (c).

(c) Except as provided in subsections (d), (e), and (f), the amount of the annual retirement benefit to which a participant described in subsection (b) is entitled equals the product of:

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

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

Participant's Years of Service	Percentage
Less than 8	0
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 is calculated under this subsection by prorating between the applicable percentages, based on the number of months in the partial year of service.

(d) Except as provided in subsections (e) and (f), and section 11(c)(2)(B) of this chapter, a participant who:

(1) applies for a retirement benefit; and

(2) is not described in subsection (b);

is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-fourth percent (0.25%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday.

(e) Except as provided in subsection (f), benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the

public employees' retirement fund on the date of the participant's retirement from the judges' retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement fund.

(f) This subsection applies to a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the participant from the public employees' retirement fund if the participant:

(1) had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan; and

(2) had retired from the public employees' retirement fund on the date of the participant's retirement from the judges' retirement fund.

(g) If benefits payable from the public employees' retirement fund exceed the benefits payable from the judges' retirement fund, a participant is entitled at retirement to withdraw from the judges' retirement fund the total sum contributed plus interest at a rate specified by rule by the board.

Sec. 9. (a) A participant is considered to have a permanent disability if the board has received written certifications by at least two (2) licensed and practicing physicians, appointed by the board, that:

(1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and

(2) the condition is likely to be permanent.

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

(1) at least sixty-five (65) years of age; or

(2) at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85).

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated to prove that a participant is qualified for disability benefits under this section must be:

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

(2) treated as confidential medical records.

Sec. 10. (a) Except as provided in subsections (b) and (c), a participant who becomes permanently disabled, as described in section 9 of this chapter, is entitled to an annual benefit equal to the product of:

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

(2) the percentage prescribed in the following table:

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%

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

(b) Except as provided in subsection (c), benefits payable to a participant under this section are reduced by the amounts, if any, that are payable to the participant from the public employees' retirement fund.

(c) This subsection applies to a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the participant from the public employees' retirement fund if the participant had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan.

Sec. 11. (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 in this section instead of

designating one (1) or more of the participant's surviving dependent children to receive the benefit directly.

(b) If a participant:

(1) dies; and

(2) on the date of death:

(A) was receiving benefits under this chapter;

(B) was in service in an eligible position and had completed at least eight (8) years of service in an eligible position;

(C) had a permanent disability as described in section 9 of this chapter; or

(D) was not in service in an eligible position, had completed at least eight (8) years of service in an eligible position, 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 (c), (e), or (f).

(c) The amount of the annual benefit payable to a beneficiary to whom subsection (b) applies is equal to the greater of:

(1) twelve thousand dollars ($12,000); or

(2) fifty percent (50%) of the amount of retirement benefit:

(A) the participant was drawing at the time of death; or

(B) to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death. However, the reduction described in section 8(d) of this chapter does not apply to the calculation of a survivor benefit under this clause.

(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 the remainder of the spouse's 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.

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

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

(5) Upon the cessation of benefits to one (1) designated child, if there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share the benefit equally. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated

children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.

(6) The benefit is payable to the participant's surviving spouse if any of the following occur:

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

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

(C) A designation is not made.

(e) Except as provided in subsection (f), benefits payable to a designated beneficiary under this section are reduced by the amount, if any, that is payable to the surviving spouse or the surviving dependent children from the public employees' retirement fund as a result of the participant's death after subtracting the participant's contributions and earnings attributable to the participant's contributions in the participant's annuity savings account.

(f) This subsection applies to a surviving spouse of a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a surviving spouse of a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the spouse from the public employees' retirement fund under the joint and survivor option under IC 5-10.2-4-7, computed at fifty percent (50%) of the participant's decreased retirement benefit, if the participant had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan.

Sec. 12. (a) If:

(1) a participant's spouse does not survive the participant; and

(2) the participant did not designate one (1) or more of the participant's surviving dependent children to receive the benefit provided in section 11 of this chapter;

the participant's surviving dependent children are, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 11 of this chapter.

(b) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, the dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 11 of this chapter.

(c) If there is more than one (1) dependent child under subsection (b), the dependent children are entitled to share the

benefit equally.

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

(e) Except as provided in subsection (f), benefits payable to a dependent child are reduced by the amount, if any, that is payable to the dependent child from the public employees' retirement fund after subtracting the participant's contributions and earnings attributable to the participant's contributions in the participant's annuity savings account.

(f) This subsection applies to a dependent child of a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a dependent child of a participant under this section are reduced by the actuarial equivalent of the pension portion of the retirement benefit, if any, that would be payable to the spouse (assuming the spouse would have had the same birth date as the participant) from the public employees' retirement fund under the joint and survivor option under IC 5-10.2-4-7, computed at fifty percent (50%) of the participant's decreased retirement benefit, if the participant had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan.

Sec. 13. (a) If benefits are not payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board by the survivors or the participant's estate, the total of the participant's contributions, plus interest at a rate specified by rule by the board and minus any payments made to the participant, shall be paid to:

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

(2) any dependents of the participant, if a spouse or designated child does not survive; or

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

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

PRELIMINARY DRAFT
No. 3285

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10.2-5-44.

Synopsis: PERF and TRF pension benefit adjustments. Establishes a formula for a postretirement benefit adjustment for members, survivors, and beneficiaries of the public employees' retirement fund (PERF) and the Indiana state teachers' retirement fund (TRF), to be determined in 2014. Specifies that such a postretirement benefit adjustment may not be made after 2014.

Effective: July 1, 2014.

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

SECTION 1. IC 5-10.2-5-44 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 44. (a) This section applies to an individual who receives a monthly benefit payable after June 30, 2014, as:**

(1) a member of the public employees' retirement fund or the Indiana state teachers' retirement fund; or

(2) a survivor or beneficiary of a member described in subdivision (1).

(b) Before December 1, 2014, the board shall determine the adjustment in the amount payable by a fund to a member after June 30, 2015, in an amount equal to the result of STEP FOUR of the following formula:

STEP ONE: Multiply:

(A) the lesser of:

(i) the number of years of creditable service used to compute the member's retirement benefit under IC 5-10.2-4-4; or

(ii) thirty (30) years; by

(B) ten dollars ($10).

STEP TWO: Multiply:

(A) the pension portion (plus postretirement increases to the pension portion) of the monthly retirement benefit provided by employer contributions paid to the member on July 1 of the year in which the adjustment is being determined under this subsection; by

(B) twelve (12).

STEP THREE: Multiply:

(A) the lesser of:

(i) the STEP TWO result; or

(ii) thirty thousand dollars ($30,000); by

(B) one percent (1%).

STEP FOUR: Add:

(A) the STEP ONE result; and

(B) the STEP THREE result.

The board may not adjust the amount payable by a fund to a member after November 30, 2014.

(c) The adjustment determined under subsection (b) may be paid by either of the following methods, to be determined by an act of the general assembly:

(1) In twelve (12) equal installments as an increase in the pension portion (plus postretirement increases to the pension portion) provided by employer or state contributions of the monthly retirement benefit.

(2) As a one (1) time lump sum amount that is not an increase in the pension portion of the monthly retirement benefit.

(d) If the adjustment determined under subsection (b) is payable as an increase in the pension portion of the monthly retirement benefit, the adjustment:

(1) applies to a monthly benefit payable after June 30, 2015;

(2) does not apply to benefits payable in a one (1) time lump sum; and

(3) is in addition to any other increase provided by law.

(e) If the adjustment determined under subsection (b) is payable as a one (1) time lump sum amount, the fund shall pay the adjustment amount not later than July 1, 2015.

(f) If two (2) or more survivors or beneficiaries of a member are entitled to an amount paid under subsection (e), the amount shall be allocated to the survivors or beneficiaries in shares using the same percentages determined under IC 5-10.2-3-7.5 or IC 5-10.4-4-10 to pay the monthly benefit to the survivors or beneficiaries.

FINAL REPORT

Pension Management Oversight Commission

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation (IC 2-5-12) directing the Pension Management Oversight Commission to do the following:

(1) Study the investment and management practices of the boards of the public retirement funds.
(2) Determine what constitutes adequate wage replacement levels at retirement (including benefits from public retirement funds and Social Security) for public employees.
(3) Study the impact of federal law and proposals concerning pensions, annuities, and retirement benefits.
(4) Study the retirement funds established in IC 36-8.
(5) Study methods and levels of funding for public retirement funds.
(6) Study other topics as assigned by the Legislative Council.
(7) Study other topics as directed by the Commission's chair.

The Commission consists of 12 members: 4 Representatives, 4 Senators, and 4 lay members who must be experts in the areas of finance, investments, or pension fund management. The chair of the Legislative Council appoints the chair of the Commission.

The Legislative Council assigned the Commission the additional responsibility of studying issues related to the retiree health benefit system of the Indiana State Police Pre-1987 Benefit System (IC 10-12-3) and the Indiana State Police 1987 Benefit System (IC 10-12-4).

II. INTRODUCTION AND REASONS FOR STUDY

This year the Commission reviewed the following:

(1) The retiree health benefit systems of the Indiana State Police.
(2) Whether the Commission should endorse a voluntary municipal disability program for Emergency Medical Service (EMS) workers.
(3) The recent Indiana Public Retirement System (INPRS) Annuity Savings Account (ASA) changes.
(4) Whether the Commission should endorse a voluntary private sector state-assisted retirement plan.

(5) The Indiana Judicial Retirement System in comparison to the state pension systems for public employees, teachers, and prosecutors and whether the Indiana Judicial Retirement System should be changed at this time.

(6) Whether certain public pension retirees, survivors, and beneficiaries should receive cost-of-living adjustments (COLAs) to their benefits or thirteenth pension checks.

draft

III. SUMMARY OF WORK PROGRAM

The Commission met on the following dates:

August 27, 2013, at the State House in Indianapolis.
September 23, 2013, at the State House in Indianapolis.
October 21, 2013, at the State House in Indianapolis.

IV. SUMMARY OF TESTIMONY

A more detailed summary of the testimony may be found in the meeting minutes, which may be accessed from the General Assembly homepage at www.in.gov/legislative.

A. INPRS Annual Report

Steve Russo, Executive Director of INPRS, presented his annual overview to the Commission on the state of INPRS. Specifically, Director Russo discussed the funding status, revenue sources, and funding options for the seven different pension plans administered by INPRS. Director Russo addressed rule changes made by the Government Accounting Standards Board (GASB) that will affect the method for calculating and reporting net pension liability and pension expense. Director Russo updated the Commission on the status of the 401(h) accounts, as well as the ASA-only Public Employee Retirement Fund (PERF) plan. Director Russo outlined recent changes that the INPRS Board has made in regard to the annuitization of PERF and Teachers' Retirement Fund (TRF) members' ASA balances upon or after retirement. Prior practice was to calculate these annuities using a 7.5% interest rate and outdated mortality tables.

Director Russo also described the history of ASAs and the Guaranteed Fund. Specifically, he discussed the different ASA investment options now available to PERF and TRF members, as well as fees and rates of return.

B. Benefits for Municipal EMS Workers

Mr. Tom Hanify, Mr. Michael Whited, and Mr. Tony Murray from the Professional Fire

Fighters Union of Indiana presented on their request to provide an optional short-term disability program for EMS workers who did not fall under similar existing programs for firefighters or police. Specifically, the worker would receive up to one year of temporary disability (depending on whether the injury or disability occurred in the line of duty) or six months of temporary disability (for injuries not occurring in the line of duty) with compensation in an amount of 50% of their salary.

The Commission reviewed PD 3302. PD 3302 authorizes a municipal corporation to provide programs of disability insurance to its emergency medical services providers who become disabled as the result of an injury or illness: (1) that is not covered by worker's compensation or occupational diseases compensation; or (2) for which worker's compensation or occupational diseases compensation has been exhausted. The draft provides that a benefit must be at least 50% of the provider's weekly salary or wages as of the date the disability began, and that the elimination or waiting period before a benefit begins may not be greater than: (1) 30 days for a short-term disability program; or (2) 120 days for a long-term disability program. The draft also allows a municipal corporation to provide the programs by purchasing policies of group insurance or establishing a self-insurance program. The draft requires the fiscal body of a municipal corporation to approve the establishment of a self-insurance program. Finally, the draft allows the programs to exclude part-time employees and individuals who provide services to the municipal corporation under a contract.

C. Indiana State Police (ISP) Retiree Health Benefits

Superintendent Carter and Major Phillip Parker discussed the ISP health care plan for retirees. Typically, the state has not directly paid for any of this liability, with the plan being historically operated as a pay-as-you-go plan. Due to GASB changes, this is no longer an option. Therefore, plan premiums, employer premiums, federal government subsidies, as well as other funding sources have been used in recent years to fund a 401(h) program to raise the funded ratio of the plan. In FY 2014 and FY 2015, the state will pay roughly one-half of ISP's annual required contribution into the plan each year. Ongoing state contributions towards this obligation of one-half of the required contribution is optimal, according to Major Parker. The goal is to have the plan fully funded within 15 years.

D. PERF and TRF ASA Annuitization

The Commission heard from several individuals regarding the recent decision by the INPRS Board to provide ASA annuities with market interest rates through a 3rd party provider. The individuals that spoke against the recent board decision included representatives from the Indiana State Teachers Association (ISTA), the Indiana Retired Teachers Association (IRTA), AFL-CIO, American Federation of State, County, and Municipal Employees (AFSCME), Retired Indiana Public Employees Association

(RIPEA), Indiana State Employees Association, and the Indiana Federation of Teachers.

Senator Tallian introduced a motion to be included in the Commission's Final Report. The motion reads as follows:

(1) The Commission considered the four proposals considered by the INPRS Board regarding the issuance of annuities to retirees for their ASAs.
(2) The Commission recommends that INPRS pursue an option that would keep the annuitization of ASAs in-house and to not proceed with a 3rd party contract. Instead INPRS should periodically establish an interest rate that will not create an unfunded liability in their managed funds.
(3) The Commission recommends the General Assembly not set a statutory interest rate at this time.
(4) The Commission recommends that the date to undertake these activities occur not earlier than October 1, 2014.

E. State-Assisted Retirement Plan

Senator Walker discussed his proposal for a state-assisted retirement plan (SB 380-2013). Senator Walker discussed the concept behind these plans and indicated that they are voluntary and very much resemble the College Choice 529 Plan administered by the Treasurer of State. Senator Walker indicated that a one-time tax credit, similar to the 529 income tax credit, may help jump-start this program. June Lyle from AARP Indiana and Jim Holden from the Office of the Treasurer of Indiana both spoke in support of this concept.

The Commission reviewed PD 3342. This PD establishes a state-assisted retirement plan (plan) for purposes of encouraging Indiana residents to increase their rate of savings and to build assets for the use of a participant or the participant's beneficiaries or survivors after the participant's retirement. The draft establishes the Indiana retirement savings board (board) consisting of five members appointed by the governor, the treasurer of state, and the director of the office of management and budget, and provides that the board selects an administrator and oversees the plan. The draft also requires that the plan be qualified under Section 401(a) or another applicable section of the Internal Revenue Code. An employer can participate in the plan only if the employer does not offer its employees a pension or retirement system of any kind. Participation in the plan is voluntary for eligible employers and employees, and self-employed individuals may also participate in the plan. The plan may not be construed as a debt, a liability, or an obligation of the state, and the state does not guarantee amounts deposited into an account or investment returns earned by an account. Finally, the draft establishes a tax credit, not to exceed $250, for payroll contributions to the plan made by a participant who has not previously participated in a pension or retirement plan of any kind.

F. Discussion of Judicial Pension Plan

The Commission reviewed materials that compared the judicial retirement plan in Indiana to other Midwestern states as well as a separate comparison of Indiana's judicial plan with those of the prosecutors, public employees (PERF), and teachers (TRF). Judge John Baker from the Indiana Court of Appeals spoke to the Commission on this issue and urged the Commission not to create a new judicial retirement system.

The Commission reviewed PD 3259, which establishes the 2014 Judges' Retirement, Disability, and Death System (2014 Judges' System) and which conforms closely to the features fo the Prosecuting Attorneys Retirement System (PARF) for individuals who become judges or magistrates after June 30, 2014.

G. COLAs, Thirteenth Checks, and Minimum Pension Benefit Scenarios

John O'Neal from ISTA and Nancy Tolson with IRTA requested that the Commission consider recommending legislation to establish a COLA for retired public employees and teachers, as these individuals have not received a COLA for several years. Representative Burton indicated that he has interest in reviving minimum benefit legislation that provides a guaranteed monthly benefit amount for older retirees. Representative Thompson reported that he wanted to again raise the hybrid postretirement benefit increase concept from the 2012 Commission Final Report (PD 3292 - 2012).

The Commission considered PD 3285, which establishes a formula for annual postretirement benefit adjustments for members, survivors, and beneficiaries of PERF and TRF. The bill creates a formula that takes both years of service and current annual benefits into account. Specifically, the formula is based on two factors: an increase of $10 for each year of service (up to 30 years of service) plus an increase of 1% on current annual benefits (not to exceed $300). The maximum available increase under this formula is $600 in additional annual benefits. The bill allows that benefit adjustments that result from the formula may be given either in the form of a permanent COLA or as a one-time 13th check. The bill provides no additional new benefit after January 1, 2015 (other than the ongoing COLA benefit from the first year, in the event the increase is granted as a COLA).

H. Update on 501 Retirement Medical Accounts

SUMMARY OF THIS TOPIC TO BE INSERTED AFTER FINAL COMMISSION MEETING.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following recommendations:

SUMMARY OF RECOMMENDATIONS TO BE INSERTED AFTER FINAL COMMISSION MEETING.

draft

<u>W I T N E S S L I S T</u>

Honorable John Baker, Indiana Court of Appeals
Superintendent Carter, Indiana State Police
Dan Doonan, American Federation of State, County and Municipal Employees
Tony Green, Chief Legal and Compliance Officer, Indiana Public Retirement System
Nancy Guyott, AFL-CIO
Jim Holden, Chief Deputy & General Counsel, Office of the Treasurer of Indiana
David Larson, Indiana State Employees Association
Amy Levander, Indiana Judges Association
June Lyle, State Director, AARP Indiana
Bill Murphy, Retired Indiana Public Employees Association
Tony Murray, Professional Fire Fighters Union of Indiana
Deanna Oware, State Budget Agency
Major Phillip Parker, Indiana State Police
Steve Russo, Executive Director, Indiana Public Retirement System
Sally Sloan, Indiana Federation of Teachers
Nancy Tolson, Indiana Retired Teachers Association
Michael Whited, Professional Fire Fighters Union of Indiana
Gail Zeheralis, Indiana State Teachers Association

draft

Exhibit F
Meeting 3 10-21-2013

October 10, 2013

Pension Management Oversight Committee Members
Sen. Phil Boots, Chairperson
Sen. Greg Walker
Sen. Lindel Hume
Sen. Karen Tallian
Rep. Woody Burton
Rep. Jeffrey Thompson
Rep. David Niezgodski
Rep. Charles Moseley
Steve Meno
Kip White
Gary Lewis
Kurt Meade
Pension Management Oversight Committee - Fax: (317) 232-2554

Dear Pension Management Oversight Committee Members

I am a state employee with 31 years of service and the changes made by the IMPRS board will have a big effect on my retirement decision. I intended to annuitize my ASA upon retirement sometime in 2016. I am not an actuary, but I am pretty good with numbers. Below are some of the concerns I have regarding the changes.

The proposed changes to the administration and benefits of PERF-covered employees will substantially reduce benefits to employees. This was done with very little public notice. Until recently these proposed actions were not listed on the PERF web site nor discussed in the PERF newsletters. Only after articles in the Indianapolis Star (August 28, 2013) and The Indiana Law Blog (August 30, 2013) were these changes really publicized.

Only last year (September 14, 2012 - **20120926-IR-035120542ONA**) the PERF Board amended the rules, so at that time the rules were not up for substantial changes. At any rate the PERF members were not made aware of new proposals on either the PERF website or in the PERF newsletters.

Lowering expectations for long-term rate of return on investments to 6.75% supports the Board's position to lower benefits to PERF-covered employees and move to a market-based option rather than the annuitized option; but as the economy improves, the expectation is likely understated. It is nice to have lower expectations to meet so that they can be "Exceeded". Other states have maintained their higher expectations of long-term returns on investments based on long-term investment history. According to IMPRS the **6.75% rate or return is the lowest expectation of the 126 public systems** monitored by the annual Public Fund Survey. These are benefits which should be funded and not considered "unfunded liabilities." Reasonable benefits, including stable employment, are major reasons why people choose state employment.

The lowering of the guaranteed fund rate is also a support for pushing PERF benefits down with the specter of "unfunded liabilities." However, while the funds have moved to daily liquidity, normally only a small portion of the fund is subject to immediate liquidity. Moderate term investments would return much more than the current rate of the guaranteed fund of 0.26%.

From PERF site document 2817.pdf:
"Previously, INPRS used a rate that was greater than the system expected to earn with its investments. The board's decision to end this practice was based solely on the need to protect the financial health of the plan for current and future retirees. INPRS' actuaries estimate the system has taken on a potential $181 million loss for annuities already converted. They forecast an additional $343 million loss if there were no change."

What factors were used to forecast the "**potential**" losses: a 6.75% rate of return over what length of time? Is it appropriate to use a 20-year municipal bond index rate to establish the estimated rate of return? Did other states use this process and how do they come up with higher estimated rates of return? If the rate of return is 7.5% or 8.0% what would the potential losses or gains be? Maybe an assessment of assumptions and results should be made by an independent outside consultant.

Note: The Compound Annual Growth Rate of the S&P 500 over the last 30 years is over 11%.

From PERF site document 2815.pdf:
"The overall strength of the INPRS system today contributed to the board's ability to adopt the 6.75 percent assumed return, Russo noted. 'While many states have struggled to make necessary contributions to their pension funds, Indiana is in an enviable position due to the strong financial discipline of state officials and lawmakers,' he said.

"Indiana pension facts:

- Indiana has the **lowest burden per household** to fully fund public pensions in the country.
- Indiana has the **second lowest** combined pension and long-term debt liability as a percentage of GDP in the country."

While keeping the burden on Indiana households low and keeping contributions by states to pension funds low are important considerations, maintaining benefits to employees is important too.

Employees have been urged to plan for retirement for 10, 15, or 20 years in advance and many have done just that. These changes wreck plans by changing benefits with less than a year's notice. If the new mortality tables and a rate different than the 7.5% are adopted, the affected parties will only have been given several months' notice. After October 1, 2014, employees with many years of service will not merely loose "$77/mo." These employees will lose hundreds of dollars in retirement benefits each month.

A real world example: Assume a 63-year-old senior level employee has a salary of $50,000 and has an ASA of $100,000. Many senior employees are eligible for retirement and at IDEM about 400 employees have salaries of $50,000 or more. The loss of monthly income from a 4.25% return vs. the 7.5% annuitized return would be about $175/mo. or $2,100/yr. If investments were made wisely and the 2008 crash was missed, funds reinvested as the market recovered the ASA could easily be 2 to 3 times as much. The loss to those employees could be $350 to $525/mo. or $4,200 to $6,300/yr.

Note: The change and potential loss of benefits will almost certainly drive staff to retirement now rather than over the next few years. This will really test the liquidity of the guaranteed fund since many of the biggest ASAs have probably shifted to safer investments as they prepare to retire.

Another thought: Since the focus of the recently proposed changes to the rules seems to be immediate liquidity for the guaranteed fund and various investment options offered by contractor along with a market-based ASA strategy, maybe the legislature should consider a contractor for administration of the entire fund instead of employing a nine-member board of directors and 80 IMPRS state employees. Administration of such a large fund would probably be very attractive to many groups given the economy of scale.

Other proposed loss of benefits appear to be a combination of up to 30 days paid vacation and 50% of unused sick up to $5,000 paid into a Retirement Medical Benefit account with a maximum of $5,000. I believe that currently both the vacation is paid in cash and up $5,000 of excess sick day pay is applicable to deposit into a Retirement Medical Benefit account. While this is not a decision by the IMPRS board it is relevant in that it would appear to cap the amount and to lower the applicable income of the final quarter of work for employees that have both 225 hrs of vacation and enough sick time to be above $5,000.

I can think of no better way to destroy the work ethic of dedicated state employees than to strip them of the benefits they have worked 20, 30, or 40 years for. Many senior employees have hundreds of hours of unused vacation and sick time balances which they kept just in case they run into a catastrophic health crisis while employed. These employees spent time on the job rather than taking off work.

If I am incorrect regarding the effects of these changes and issues, I welcome a better explanation and analysis of real life examples of employees nearing retirement under current and proposed rules from PERF representatives. I will be making arrangements to meet with PERF representatives shortly to plan my potential retirement.

Respectfully,

Steven M Blaser

Steven M. Blaser
[redacted]