IC 33-38-7

Chapter 7. 1977 Retirement, Disability, and Death System

IC 33-38-7-1

Application of chapter

Sec. 1. This chapter applies only to an individual who begins service as a judge before September 1, 1985.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-2

"Americans with Disabilities Act" defined

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-3

"Board" defined

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-4

"Employer" defined

Sec. 4. As used in this chapter, "employer" means the state of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-5

"Fund" defined

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by IC 33-38-6-12.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-6

"Internal Revenue Code" defined

Sec. 6. As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent consistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-7

"Participant" defined

Sec. 7. As used in this chapter, "participant" means a judge who participates in the fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-8
"Salary" defined

Sec. 8. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-9
"Services" defined

Sec. 9. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge, whether the date is before, on, or after March 11, 1953, and ending on the date under consideration and includes all intervening employment as a judge.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-10
Participants; contributions

Sec. 10. (a) A person who completed at least eight (8) years of service as a judge before July 1, 1953, may become a participant in the fund and be subject to this chapter if the person qualifies for benefits under section 11 of this chapter. A person who is a judge on July 1, 1953, shall become a participant in the fund and be subject to this chapter, beginning on July 1, 1953, unless twenty (20) days before July 1, 1953, the judge files with the board a written notice of election not to participate in the fund.

(b) A person who:

(1) becomes a judge after July 1, 1953, and before September 1, 1985; and

(2) is not a participant in the fund;

becomes a participant in the fund and is subject to this chapter, beginning on the date the person becomes a judge, unless within twenty (20) days after that date the judge files with the board a written notice of election not to participate in the fund. An election filed under this subsection is irrevocable.

(c) A person who irrevocably:

(1) elects not to participate in the fund; or

(2) withdraws from the fund under section 13 of this chapter;

is ineligible to participate and to receive benefits under this chapter.

(d) Participation of a judge in the fund continues until the date on which the judge:

(1) becomes an annuitant;

(2) dies; or

(3) accepts a refund;

but a person is not required to pay into the fund during any period that the person is not serving as a judge, except as otherwise provided in this chapter.

(e) A participant is considered to have made a one (1) time irrevocable salary reduction agreement of six percent (6%) of each

payment of salary that a participant would otherwise have received for services as a judge.

(f) The auditor of state and the county auditor shall pay and credit to the fund the amounts described in subsection (e) as provided in IC 33-38-6-21 and IC 33-38-6-22. However, no amounts shall be paid on behalf of a participant for more than twenty-two (22) years.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-11

Retirement annuities; termination of employment; requirements; computation of amount

Sec. 11. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.

(b) A participant whose employment as judge is terminated, regardless of cause, is entitled to a retirement annuity beginning on the date specified by the participant in a written application, if the following conditions are met:

(1) The date the annuity begins is not:

(A) before the date of final termination of employment by the participant; or

(B) the date thirty (30) days before the receipt of the participant's written application by the board.

(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 a salary from the state for services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

(c) A participant:

(1) who:

(A) elects to accept retirement after June 30, 1977; and

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

(2) who:

(A) elects to accept retirement after June 30, 1999;

(B) is at least fifty-five (55) years of age; and

(C) meets the requirements under subsection (b)(2)(B);

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

(d) The annual retirement benefit for a participant who meets the requirements of subsection (c) equals the product of:

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

(2) the percentage prescribed in the following table:

TABLE A

Participant's Years	Percentage

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

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. A participant who elects to accept retirement before July 1, 1977, is entitled to an annual retirement benefit that equals the average of the benefit computed under this subsection and the benefit the participant would have received under IC 33-38-6 as in effect on June 30, 1977.

(e) If the annual retirement benefit of a participant who began service as a judge before July 1, 1977, as computed under subsection (d), is less than the amount the participant would have received under IC 33-38-6 as in effect on June 30, 1977, the participant is entitled to receive the greater amount as the participant's annual retirement benefit instead of the benefit computed under subsection (d).

(f) Except as provided in subsections (b)(2)(B) and (d), if a participant who elects to accept retirement after June 30, 1977, has not attained sixty-five (65) years of age, the participant 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-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

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

(2) survivors of participants who die while in service after August 1, 1992; or

(3) survivors of participants who die while not in service but while entitled to a future benefit.

(g) A participant who is permanently disabled is entitled to an annual benefit equal to the product of:

(1) the salary being paid for the office that the participant held at the time of separation from service; multiplied by

(2) the percentage prescribed in the following table:

TABLE B

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

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

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

(1) the sum of:

(A) two thousand dollars ($2,000); plus

(B) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of the participant's death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits prior to the participant's death; or

(2) the amount determined under the following table:

TABLE C

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

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

(1) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before death; or

(2) the amount determined under TABLE C in subsection (h)(2).

(j) If a participant:

(1) dies after June 30, 1983; and

(2) on the date of the participant's death:

(A) was receiving benefits under this chapter;

(B) had completed at least eight (8) years of service and was in service as a judge;

(C) was permanently disabled; or

(D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;

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

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

(1) died after June 30, 1983, and before July 1, 1985; and

(2) was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the surviving spouse of a permanently disabled participant entitled to benefits under subsection (i).

(l) The annuity payable to a surviving child or children under subsection (h), (i), or (j), is subject to the following:

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

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

(3) Each child entitled to an annuity shall 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.

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

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

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

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

(C) A designation is not made.

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

As added by P.L.98-2004, SEC.17.

IC 33-38-7-12

Permanent disability of participants; transcripts, records, and other materials

Sec. 12. (a) Benefits provided under this section are subject to IC 33-38-6-13.

(b) A participant is considered permanently disabled if the board has received a written certificate by at least two (2) licensed and practicing physicians, appointed by the board, indicating 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.

(c) The participant shall be reexamined by at least two (2) physicians appointed by the board at the times as 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, then 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 meets the requirements under section 11(b)(2)(B) of this chapter.

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

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

(2) treated as confidential medical records.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-13

Withdrawal of participant from fund

Sec. 13. (a) Except as otherwise provided in this chapter, a participant:

(1) whose employment as a judge is terminated regardless of cause; and

(2) who has less than twelve (12) years service;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. However, the date on which the withdrawal begins may not be before the date of final termination of employment of the participant, or the date thirty (30) days before the receipt of the application by the board.

(b) Upon the withdrawal, a participant is entitled to receive out of the fund an amount equal to the total sum contributed to the fund on behalf of the participant, payable within sixty (60) days after date of the withdrawal application or in monthly installments as the

participant may elect.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-14
Payments to participant's surviving spouse, dependents, or estate
Sec. 14. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.
(b) If annuities are not payable to the survivors of a participant who dies after July 1, 1983, the surviving spouse or child or children of the participant, if any, as determined by the participant, and if none survive, then any dependent or dependents surviving shall draw from the fund the amount that the participant paid into the fund plus interest as determined by the board. If no spouse, child or children, or other dependents survive, then the amount plus interest minus any payments made to the participant shall be paid to the executor or administrator of the participant's estate.
(c) The amount owed a spouse, child or children, or other dependent, or estate under this section is payable within sixty (60) days after date of the withdrawal application or in the monthly installments as the recipient may elect.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-15
Annuities; payment to dependent children
Sec. 15. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.
(b) If a participant's spouse does not survive the participant, and a child is not designated and entitled to receive an annuity under section 11 of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to an annuity in an amount equal to the annuity the participant's spouse would have received under section 11 of this chapter.
(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, then that dependent child is entitled to receive an annuity in an amount equal to the annuity the spouse was receiving or would have received under section 11 of this chapter.
(d) If there is more than one (1) dependent child, the dependent children are entitled to share the annuity equally.
(e) 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.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-16
Benefits limitations under Internal Revenue Code
Sec. 16. Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the benefit limitations of Section 415 of the Internal Revenue Code

shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988 (P.L.100-647). This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code (other than Section 415(b)(2)(G)) applied without regard to Section 415(b)(2)(F) to anyone who did not first become a participant before January 1, 1990.
As added by P.L.98-2004, SEC.17.

IC 33-38-7-17
Service credit; contributions after retirement for subsequent service as judge

Sec. 17. (a) A judge is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge is not entitled to more than one (1) month of credit for services performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

(1) at any time when the judge is not serving as judge; or

(2) during any period of service as a senior judge under IC 33-23-3.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-18
Credit for prior service; rollover distributions; trustee to trustee transfers

Sec. 18. (a) This section applies to a person who:

(1) is a judge participating under this chapter;

(2) before becoming a judge was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;

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

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

(b) If a person becomes a participant in the judges' 1977 benefit system under section 1 of this chapter, credit for prior service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

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

(2) the state contributes to the judges' 1977 benefit system the amount the board determines necessary to amortize the prior

service liability over a period determined by the board, but not more than ten (10) years; and

(3) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1977 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.

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

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

(1) A minimum benefit applies to participants receiving credit in the judges' 1977 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age and equals the actuarial equivalent of the vested retirement benefit that is:

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

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

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

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1977 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1977 benefit system may be granted only under subsection (b).

(5) Credit for prior service in the public employees' retirement fund for service other than as a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1977 benefit system.

(f) To the extent permitted by the Internal Revenue Code and the

applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-19

Credit for prior service; rollover distributions; trustee to trustee transfers

Sec. 19. (a) This section applies only to a person who:

(1) is a judge participating under this chapter;

(2) before becoming a judge was a member of an Indiana public employees' retirement fund;

(3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 18 of this chapter;

(4) has not attained vested status under a public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1977 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under an Indiana public employees' retirement fund; and

(2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1977 benefit system as the total actual cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1977 benefit system the amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the appropriate board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in a public employees' retirement fund is waived.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.