

HOUSE BILL No. 1038

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-35.

Synopsis: ESOP linked deposit program. Requires the treasurer of state (treasurer) to establish and administer a program to assist Indiana companies in obtaining financing from a financial institution for the purchase of company shares by an employee stock ownership plan (ESOP). Allows the treasurer and a financial institution to enter into an agreement under which: (1) the treasurer places a certificate of deposit (CD) with the financial institution at not more than 3% below the comparable Treasury Bill rate; and (2) the financial institution makes a loan to a company at a reduced percentage rate of interest that corresponds to the CD's reduced rate of interest.

Effective: July 1, 2025.

Teshka

January 8, 2025, read first time and referred to Committee on Financial Institutions.



First Regular Session of the 124th General Assembly (2025)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2024 Regular Session of the General Assembly.

HOUSE BILL No. 1038

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:

1 SECTION 1. IC 5-35 IS ADDED TO THE INDIANA CODE AS A
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
3 **2025]:**
4 **ARTICLE 35. ESOP LINKED DEPOSIT PROGRAM**
5 **Chapter 1. Definitions**
6 **Sec. 1. The definitions in this chapter apply throughout this**
7 **article.**
8 **Sec. 2. "Company" means a business entity that:**
9 (1) **is headquartered in Indiana; and**
10 (2) **establishes a tax-qualified ESOP.**
11 **Sec. 3. "ESOP" means an employee stock ownership plan under**
12 **26 U.S.C. 401(a).**
13 **Sec. 4. "Fund" refers to the linked deposit fund established by**
14 **IC 5-35-9-1.**
15 **Sec. 5. "Lender" means a financial institution (as defined in**
16 **IC 5-13-4-10) that:**
17 (1) **agrees to participate in the program;**



1 (2) is eligible to make commercial loans; and

2 (3) has been designated as a depository for public funds of the
3 state as provided in IC 5-13-9.5.

4 Sec. 6. "Loan" means a linked deposit loan.

5 Sec. 7. "Program" means the linked deposit program
6 established by the treasurer of state under this article.

7 **Chapter 2. Linked Deposit Program**

8 Sec. 1. The treasurer of state shall establish and administer the
9 linked deposit program to assist a company in obtaining financing
10 for the purchase of company shares by an ESOP. To participate in
11 the program, a company must satisfy one (1) of the following:

12 (1) The company must be:

13 (A) at least fifty-one percent (51%) employee owned; and

14 (B) seeking to increase the level of employee ownership of
15 the company to more than fifty-one percent (51%)
16 employee owned, as a result of the ESOP purchase.

17 (2) The company must be:

18 (A) less than fifty-one percent (51%) employee owned; and

19 (B) seeking to increase the level of employee ownership of
20 the company to at least fifty-one percent (51%) employee
21 owned, as a result of the ESOP purchase.

22 Sec. 2. The program shall allow the treasurer of state and a
23 lender to enter into a linked deposit agreement in the form
24 prescribed by the treasurer of state. Under the linked deposit
25 agreement:

26 (1) the treasurer of state shall place a certificate of deposit
27 with the lender at not more than three percent (3%) below the
28 comparable Treasury Bill rate as determined and calculated
29 by the treasurer of state; and

30 (2) the lender will make a loan of an equivalent value to a
31 company at a percentage rate of interest reduced by at least
32 the same number of percentage points that the certificate of
33 deposit under subdivision (1) was reduced upon placement
34 with the lender.

35 Sec. 3. A lender shall certify in writing to the treasurer of state,
36 in the form and manner prescribed by the treasurer of state, that
37 the loan complies with section 2(2) of this chapter.

38 **Chapter 3. Linked Deposit Loan Application**

39 Sec. 1. (a) To participate in the program, a company must apply
40 for a loan from a lender in the manner that is customarily required
41 by the lender.

42 (b) A lender shall make a credit decision with respect to a loan



1 application in accordance with all usual lending standards to
2 determine the creditworthiness of a company.

3 Sec. 2. If the lender approves the loan application, the lender
4 shall submit to the treasurer of state, a linked deposit application
5 completed by the lender and company.

6 Chapter 4. Linked Deposit Application

7 Sec. 1. The treasurer of state shall prescribe the form of a linked
8 deposit application. However the form must require at least the
9 following information:

10 (1) The amount of the company's loan.

11 (2) A copy of the company's business plan showing that at
12 least fifty-one percent (51%) of all interests in the company
13 are or will be owned or controlled by an ESOP.

14 (3) A feasibility study by an objective third party with a
15 positive determination that the company will generate
16 sufficient margin to repay the loan.

17 (4) A certification by the lender of the present borrowing rate
18 applicable to a company.

19 (5) A certification by the company that:

20 (A) the company is not currently participating in the
21 program; and

22 (B) the information contained in the linked deposit
23 application is, to the best of the company's knowledge, true
24 and correct.

25 (6) Any other information the treasurer of state requires.

26 Sec. 2. The treasurer of state shall approve or reject a linked
27 deposit application:

28 (1) not more than thirty (30) days after receipt of a complete
29 application; and

30 (2) in accordance with the guidelines adopted by the treasurer
31 of state.

32 Sec. 3. If the treasurer of state rejects the linked deposit
33 application, the treasurer of state shall provide a written notice of
34 rejection to the lender and company that states the reasons for
35 rejecting the application.

36 Sec. 4. (a) If the treasurer of state approves the linked deposit
37 application, the treasurer of state shall:

38 (1) provide written notice of the approval to the lender and
39 the company; and

40 (2) place a certificate of deposit with the lender at a rate
41 below current market rates, as provided in IC 5-35-2-2.

42 (b) The treasurer of state may purchase a certificate of deposit



1 under subsection (a) using either or both of the following:

2 (1) Excess state funds under IC 5-13-10-1.

3 (2) Funds in the linked deposit fund established by
4 IC 5-35-9-1.

5 **Chapter 5. Linked Deposit Loan**

6 **Sec. 1. The following apply to a loan made by a lender under the**
7 **program:**

8 (1) The lender shall fund a loan in accordance with the linked
9 deposit agreement entered into with the treasurer of state.

10 (2) A loan may not exceed one million dollars (\$1,000,000).

11 (3) The purpose of the loan must be to finance an ESOP
12 purchase of company shares to increase employee ownership
13 as provided in IC 5-35-2-1.

14 **Sec. 2. A company may have only one (1) outstanding loan**
15 **under the program at any time. However, a loan may be**
16 **refinanced. The treasurer of state shall establish criteria regarding**
17 **the amount of a loan for refinancing.**

18 **Sec. 3. A loan may not be made to any of the following:**

19 (1) An officer or director of the lender or an entity in which
20 any officer or director of the lender maintains a controlling
21 interest.

22 (2) An officer or employee of the office of the treasurer of
23 state or any entity in which any officer or employee of the
24 office of the treasurer of state maintains a controlling interest.

25 (3) An immediate family member of an officer or employee of
26 the office of the treasurer of state.

27 **Chapter 6. Certificates of Deposit**

28 **Sec. 1. A certificate of deposit placed with a lender under the**
29 **program may have any maturity:**

30 (1) considered appropriate by the treasurer of state; and

31 (2) not to exceed two (2) years.

32 **Sec. 2. (a) Subject to subsection (b), at the discretion of the**
33 **treasurer of state and with the approval of the lender:**

34 (1) a certificate of deposit may be renewed not more than
35 three (3) times; and

36 (2) each renewal may have a maturity of not more than two
37 (2) years.

38 **(b) A certificate of deposit may only be renewed if:**

39 (1) the loan principal has been reduced by at least five percent
40 (5%); and

41 (2) all interest has been paid to date from the time of the prior
42 loan or renewal.



1 (c) Interest shall be paid at the times determined by the
2 treasurer of state.

3 **Chapter 7. Liability**

4 **Sec. 1.** The state and treasurer of state are not liable to a lender
5 for payment of the principal or interest on a loan made to a
6 company.

7 **Sec. 2.** Any delay in payments in default on the part of a
8 company does not affect the linked deposit agreement between the
9 lender and the treasurer of state.

10 **Chapter 8. Annual Report**

11 **Sec. 1.** Not later than July 1, 2027, and before July 1 of each
12 year thereafter, the treasurer of state shall submit a report on the
13 status of the program to the following:

14 (1) The governor.

15 (2) The lieutenant governor.

16 (3) The legislative council in an electronic format under
17 IC 5-14-6.

18 **Chapter 9. Linked Deposit Fund**

19 **Sec. 1. (a)** The linked deposit fund is established. The fund shall
20 be administered by the treasurer of state. Money in the fund may
21 be used for placing certificates of deposit with lenders to implement
22 the program.

23 (b) The fund consists of money appropriated by the general
24 assembly.

25 (c) The expenses of administering the fund shall be paid from
26 money in the fund.

27 **Sec. 2. (a)** The treasurer of state shall invest the money in the
28 fund not currently needed to meet the obligations of the fund in the
29 same manner as other public funds may be invested. Interest that
30 accrues from these investments shall be deposited in the fund.

31 (b) Money in the fund at the end of a state fiscal year does not
32 revert to the state general fund.

33 **Chapter 10. Guidelines**

34 **Sec. 1.** The treasurer of state shall adopt guidelines to
35 implement this article, including guidelines governing:

36 (1) the form and content of applications for linked deposits;

37 (2) a process for requesting renewal of a linked deposit;

38 (3) loan refinancing;

39 (4) monitoring compliance of lenders and companies;

40 (5) the form and terms of linked deposit agreements;

41 (6) standards for approval or rejection of linked deposit
42 applications; and



1 (7) any other guidelines the board determines are necessary
2 to implement and administer the program.

3 **Sec. 2. In adopting the guidelines described in section 1 of this**
4 **chapter, the treasurer of state may collaborate with or seek**
5 **guidance from:**

- 6 (1) the state board of finance under IC 4-9.1;
7 (2) the board for depositories under IC 5-13; and
8 (3) any other state agency.

