

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 554

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION
2 59-1302, IDAHO CODE, TO DEFINE TERMS, TO REVISE A DEFINITION, AND TO
3 MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN
4 EFFECTIVE DATE.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms
10 defined in this section shall have the meaning given in this section unless a
11 different meaning is clearly required by the context.

12 (2) "Active member" means any employee who is not establishing the
13 right to receive benefits through his or her employer's participation in any
14 other retirement system established for Idaho public employees, if such par-
15 ticipation is mandated by applicable Idaho statutes other than this chapter.
16 In no case will an employee be entitled to any benefit under this chapter
17 for public service if such employee is establishing retirement benefit en-
18 titlements by other Idaho statutes or federal statutes other than military
19 service or social security for that same service.

20 (3) "Accumulated contributions" means the sum of amounts contributed
21 by a member of the system, together with regular interest credit thereon.

22 (4) "Actuarial equivalent" means a benefit equal in value to another
23 benefit, when computed on the basis of the actuarial tables in use by the sys-
24 tem.

25 (5) "Actuarial tables" means such tables as shall have been adopted by
26 the board in accordance with recommendations of the actuary.

27 (5A) "Alternate payee" means a spouse or former spouse of a member who is
28 recognized by an approved domestic retirement order as having a right to all
29 or a portion of the accrued benefits in the retirement system with respect to
30 such member.

31 (5B) "Approved domestic retirement order" means a domestic retirement
32 order that creates or recognizes the existence of an alternate payee's right
33 or assigns to an alternate payee the right to all or a portion of the accrued
34 benefits of a member under the retirement system, that directs the system to
35 establish a segregated account or disburse benefits to an alternate payee,
36 and that the executive director of the retirement system has determined
37 meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

38 (5C) "Average monthly salary" means the member's average salary during
39 the base period as calculated pursuant to rules adopted by the retirement
40 board.

41 (5D) (a) "Base period" means the period of fifty-four (54) consecutive
42 calendar months during which the member earned:

- 1 (i) The highest average salary; and
2 (ii) Membership service of at least one-half (1/2) the number of
3 months in the period, excluding months of service attributable to:
4 A. Military service;
5 B. Service qualifying as minimum benefit pursuant to sec-
6 tion 59-1342(5), Idaho Code; and
7 C. Worker's compensation income benefits.

8 (b) Effective October 1, 1993, the consecutive calendar months shall be
9 forty-eight (48). Effective October 1, 1994, the consecutive calendar
10 months shall be forty-two (42).

11 (c) Entitlement to a base period shall not vest until the effective date
12 of that base period. The retirement benefits shall be calculated on the
13 amounts, terms and conditions in effect at the date of the final contri-
14 bution by the member.

15 (d) If no base period exists for a member, the member's average monthly
16 salary shall be determined by the board, using standards not inconsis-
17 tent with those established in this subsection.

18 (e) To assure equitable treatment for all members, salary increments
19 inconsistent with usual compensation patterns may be disallowed by the
20 board in determining average monthly salary and base period.

21 (6) "Beneficiary" means the person who is nominated by the written des-
22 ignation of a member, duly executed and filed with the board, to receive the
23 death benefit.

24 (7) "Calendar year" means twelve (12) calendar months commencing on the
25 first day of January.

26 (7A) "Contingent annuitant" means the person designated by a member un-
27 der certain retirement options to receive benefit payments upon the death of
28 the member. The person so designated must be born and living on the effective
29 date of retirement.

30 (8) "Credited service" means the aggregate of membership service,
31 prior service and disabled service.

32 (9) "Date of establishment" means July 1, 1965, or a later date estab-
33 lished by the board or statute.

34 (10) "Death benefit" means the amount, if any, payable upon the death of
35 a member.

36 (11) "Disability retirement allowance" means the periodic payment be-
37 coming payable to a member who meets all applicable eligibility requirements
38 for disability retirement.

39 (12) "Disabled" means:

40 (a) That the member is prevented from engaging in any occupation or em-
41 ployment for remuneration or profit as a result of bodily injury or dis-
42 ease, either occupational or nonoccupational in cause, but excluding
43 disabilities resulting from service in the armed forces of any country
44 other than the United States, or from an intentionally self-inflicted
45 injury; and

46 (b) That the member will likely remain so disabled permanently and con-
47 tinuously during the remainder of the member's life.

48 It is not necessary that a person be absolutely helpless or entirely unable
49 to do anything worthy of compensation to be considered disabled. If the per-
50 son is so disabled that substantially all the avenues of employment are rea-

1 sonably closed to the person, that condition is within the meaning of "dis-
 2 abled." In evaluating whether a person is disabled, medical factors and non-
 3 medical factors, including, but not limited to, education, economic and so-
 4 cial environment, training, and usable skills, may be considered.
 5 Refusal to submit to a medical examination ordered by the board before the
 6 commencement of a disability retirement allowance or at any reasonable time
 7 thereafter shall constitute proof that the member is not disabled. The board
 8 shall be empowered to select for such medical examination one (1) or more
 9 physicians or surgeons who are licensed to practice medicine and perform
 10 surgery. The fees and expenses of such examination shall be paid from the
 11 administration account of the fund. No member shall be required to undergo
 12 such examination more often than once each year after he has received a dis-
 13 ability retirement allowance continuously for two (2) years.

14 (12A) "Disabled service" means the total number of months elapsing from
 15 the first day of the month next succeeding the final contribution of a member
 16 prior to receiving a disability retirement allowance to the first day of the
 17 month following the date of termination of such disability retirement al-
 18 lowance. During such period, the member shall remain classified in the mem-
 19 bership category held during the month of final contribution. The total num-
 20 ber of months of disabled service credited for a person first becoming dis-
 21 abled after the effective date of this chapter shall not exceed the excess,
 22 if any, of three hundred sixty (360) over the total number of months of prior
 23 service and membership service.

24 (12B) "Domestic retirement order" means any judgment, decree, or order,
 25 including approval of a property settlement agreement that relates to the
 26 provision of marital property rights to a spouse or former spouse of a mem-
 27 ber, and is made pursuant to a domestic relations law, including the commu-
 28 nity property law of the state of Idaho or of another state.

29 (13) "Early retirement allowance" means the periodic payment becoming
 30 payable to a member who meets all applicable eligibility requirements for
 31 early retirement.

32 (13A) "Early retirement" means retirement by a member prior to age sixty
 33 (60) years for police officer members or age sixty-five (65) years for gen-
 34 eral members.

35 (14) (A) "Employee" means:

36 (a) Any person who normally works twenty (20) hours or more per week for
 37 an employer, or a schoolteacher who works half-time or more for an em-
 38 ployer and who receives salary for services rendered for such employer;

39 (b) Elected officials or appointed officials of an employer who receive
 40 a salary;

41 (c) A person who is separated from service with fewer than five (5) con-
 42 secutive months of employment and who is reemployed or reinstated by ~~the~~
 43 same an employer participating in the public employee retirement system
 44 of Idaho within thirty (30) days; or

45 (d) A person receiving differential wage payments as defined in 26
 46 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment
 47 generally refers to an employer payment to an employee called to active
 48 duty in the uniformed services for more than thirty (30) days that rep-
 49 represents all or a portion of the compensation he would have received from
 50 the employer if he were performing services for the employer.

1 (B) "Employee" does not include employment as:
2 (a) A person rendering service to an employer in the capacity of an in-
3 dependent business, trade or profession; or
4 (b) A person whose employment with any employer does not total five (5)
5 consecutive months; or
6 (c) A person provided sheltered employment or made-work by a public em-
7 ployer in an employment or industries program maintained for the bene-
8 fit of such person; or
9 (d) An inmate of a state institution, whether or not receiving compen-
10 sation for services performed for the institution; or
11 (e) A student enrolled in an undergraduate, graduate, or career tech-
12 nical program at and employed by a state college, university, community
13 college or career technical center when such employment is predicated
14 on student status; or
15 (f) A person making contributions to the director of the office of per-
16 sonnel management under the United States civil service system retire-
17 ment act, except that a person who receives separate remuneration for
18 work currently performed for an employer and the United States govern-
19 ment may elect to be a member of the retirement system, in accordance
20 with rules of the board; or
21 (g) A person not under contract with a school district or charter
22 school, who on a day-to-day basis works as a substitute teacher replac-
23 ing a contracted teacher and is paid a substitute wage as established
24 by district policy or who on a day-to-day basis works as a substitute
25 assistant replacing a staff instruction assistant or a staff library
26 assistant and is paid a substitute wage as established by district pol-
27 icy; or
28 (h) A person occupying a position that does not exceed eight (8) con-
29 secutive months in a calendar year with a city, county, irrigation dis-
30 trict, cemetery district, or mosquito abatement district when the city,
31 county, irrigation district, cemetery district, or mosquito abatement
32 district has certified, in writing to the system, the position is:
33 (i) seasonal or casual; and (ii) affected by weather, including parks
34 positions, golf course positions, and irrigation positions; or
35 (i) A person in a position that: (i) is eligible for participation in
36 an optional retirement program established under section 33-107A or
37 33-107B, Idaho Code; or (ii) would be eligible for participation in
38 an optional retirement program established under section 33-107A or
39 33-107B, Idaho Code, if the person was not working less than half-time
40 or fewer than twenty (20) hours per week.
41 (15) "Employer" means the state of Idaho, or any political subdivision
42 or governmental entity, provided such subdivision or entity has elected to
43 come into the system. Governmental entity means any organization composed
44 of units of government of Idaho or organizations funded only by government
45 or employee contributions or organizations that discharge governmental re-
46 sponsibilities or proprietary responsibilities that would otherwise be per-
47 formed by government. All governmental entities are deemed to be political
48 subdivisions for the purpose of this chapter. Provided however, that on and
49 after the effective date of this act, all new employers added to the public

1 employee retirement system must be in compliance with internal revenue regu-
2 lations governing governmental retirement plans.

3 (15A) "Final contribution" means the final contribution made by a mem-
4 ber pursuant to sections 59-1331 through 59-1334, Idaho Code.

5 (16) "Firefighter" means:

6 (a) An employee, including paid firefighters hired on or after October
7 1, 1980, whose primary occupation is that of preventing and extinguish-
8 ing fires as determined by the rules of the board; or

9 (b) The state fire marshal or the state fire marshal's deputies.

10 (17) "Fiscal year" means the period beginning on July 1 in any year and
11 ending on June 30 of the next succeeding year.

12 (18) "Fund" means the public employee retirement fund established by
13 this chapter.

14 (19) "Funding agent" means any bank or banks, trust company or trust
15 companies, legal reserve life insurance company or legal reserve life insur-
16 ance companies, or combinations thereof, any thrift institution or credit
17 union or any investment management firm or individual investment manager
18 selected by the board to hold and/or invest the employers' and members' con-
19 tributions and to pay certain benefits granted under this chapter.

20 (20) "Inactive member" means a former active member who is not an em-
21 ployee and is not receiving any form of retirement allowance, who has not re-
22 quested a separation benefit, or for whom a separation benefit has not become
23 payable.

24 (20A) "Ineligible" means:

25 (a) Not eligible to participate and not required to contribute as an em-
26 ployee when:

27 (i) The employer is not a current member of the public employee
28 retirement system of Idaho (PERSI);

29 (ii) The employee is not an employee as defined in subsection (14)
30 of this section; or

31 (iii) The employee is participating in the judges retirement fund,
32 the firefighters retirement fund or the optional retirement plan;

33 (b) Not eligible for retirement where there has been no termination of
34 employment from an employer participating in PERSI, the judges retire-
35 ment fund, the firefighters retirement fund or the optional retirement
36 plan or a withdrawn employer; or

37 (c) Not eligible to receive a separation benefit where there has been
38 no termination of employment from an employer participating in PERSI,
39 the judges retirement fund, the firefighters retirement fund or the op-
40 tional retirement plan or a withdrawn employer.

41 All state agencies, political subdivisions or governmental entities
42 that qualify as an employer as defined in subsection (15) of this section
43 or prior to April 4, 2017, were considered an employer and are currently
44 participating in PERSI are, for purposes of PERSI, deemed one (1) employer
45 beginning on the effective date of this act.

46 (20B) "Lifetime annuity" means periodic monthly payments of income by
47 the retirement system to an alternate payee.

48 (20C) "Lump sum distribution" means a payment by the retirement system
49 of the entire balance in the alternate payee's segregated account, together
50 with regular interest credited thereon.

1 (21) "Member" means an active member, inactive member or a retired mem-
2 ber.

3 (22) "Membership service" means military service that occurs after
4 the commencement of contributions payable under sections 59-1331 through
5 59-1334, Idaho Code, and service with respect to which contributions are
6 payable under sections 59-1331 through 59-1334, Idaho Code, which, except
7 for benefit calculations described in sections 59-1342 and 59-1353, Idaho
8 Code, includes service transferred to a segregated account under an approved
9 domestic retirement order.

10 (23) "Military service" means any period of active duty service in the
11 armed forces of the United States, including the national guard and re-
12 serves, under the provisions of title 10, title 32, and title 37, United
13 States code, that commences fewer than ninety (90) days after the person
14 ceases to be an employee and ends fewer than ninety (90) days before the per-
15 son again becomes an employee. Provided, if a member fails to again become
16 an employee as a result of his death while in active duty service, the member
17 shall be entitled to military service through the date of death. Provided
18 further, if a member fails to again become an employee due to a disability re-
19 tirement resulting from service in the armed forces of the United States, the
20 member shall be entitled to military service through the date the disability
21 allowance becomes payable. In no event shall military service include:

22 (a) Any period ended by dishonorable discharge or during which termina-
23 tion of such service is available but not accepted; or

24 (b) Any active duty service in excess of five (5) years if at the conve-
25 nience of the United States government, or in excess of four (4) years
26 if not at the convenience of the United States government, provided
27 additional membership service may be purchased as provided in section
28 59-1362, Idaho Code.

29 (24) (a) "Police officer" for retirement purposes shall be as defined in
30 section 59-1303, Idaho Code.

31 (b) "POST" means the Idaho peace officer standards and training council
32 established in chapter 51, title 19, Idaho Code.

33 (25) "Prior service" means any period prior to July 1, 1965, of military
34 service or of employment for the state of Idaho or any political subdivision
35 or other employer of each employee who is an active member or in military ser-
36 vice or on leave of absence on the date of establishment, provided, however,
37 an employee who was not an active member or in military service or on leave
38 of absence on the date of establishment shall receive credit for the member's
39 service prior to July 1, 1965, on the basis of recognizing two (2) months of
40 such service for each month of membership service. For the purpose of com-
41 puting such service, no deduction shall be made for any continuous period of
42 absence from service or military service of six (6) months or less.

43 (26) "Regular interest" means interest at the rate set from time to time
44 by the board.

45 (27) "Retired member" means a former active member receiving a retire-
46 ment allowance.

47 (28) "Retirement" means the acceptance of a retirement allowance under
48 this chapter upon termination of employment and, unless otherwise provided
49 by law, requires a termination of employment from an employer participating

1 in PERSI, the judges retirement fund, the firefighters retirement fund or
2 the optional retirement plan.

3 (29) "Retirement board" or "board" means the board provided for in sec-
4 tions 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

5 (30) "Retirement system" or "system" means the public employee retire-
6 ment system of Idaho.

7 (31) (A) "Salary" means:

8 (a) The total salary or wages paid to a person who meets the definition
9 of employee by an employer for personal services performed and reported
10 by the employer for income tax purposes, including the cash value of all
11 remuneration in any medium other than cash.

12 (b) The total amount of any voluntary reduction in salary agreed to by
13 the member and employer where the reduction is used as an alternative
14 form of remuneration to the member.

15 (B) Salary in excess of the compensation limitations set forth in sec-
16 tion 401(a) (17) of the Internal Revenue Code shall be disregarded for
17 any person who becomes a member of the system on or after July 1, 1996.
18 The system had no limitations on compensation in effect on July 1, 1993.
19 The compensation limitations set forth in section 401(a) (17) of the In-
20 ternal Revenue Code shall not apply for an "eligible employee." For pur-
21 poses of this subsection, "eligible employee" is an individual who was a
22 member of the system before July 1, 1996.

23 (C) "Salary" does not include:

24 (a) Contributions by employers to employee-held medical savings ac-
25 counts, as those accounts are defined in section 63-3022K, Idaho Code.

26 (b) Lump sum payments inconsistent with usual compensation patterns
27 made by the employer to the employee only upon termination from service
28 including, but not limited to, vacation payoffs, sick leave payoffs,
29 early retirement incentive payments and bonuses.

30 (c) Differential wage payments as defined in 26 U.S.C. 3401(h). A dif-
31 ferential wage payment generally refers to an employer payment to an
32 employee called to active duty in the uniformed services for more than
33 thirty (30) days that represents all or a portion of the compensation he
34 would have received from the employer if he were performing services for
35 the employer.

36 (d) Employer payments to employees for or related to travel, mileage,
37 meals, lodging or subsistence expenses, without regard to the taxabil-
38 ity of such payments for federal income tax purposes and without regard
39 to the form of payment, including payment made as reimbursement of an
40 itemized expense voucher and payment made of an unvouchered expense al-
41 lowance.

42 (31A) "Segregated account" means the account established by the retire-
43 ment system for the alternate payee of a member who is not a retired member.
44 It shall include the months of credited service and accumulated contribu-
45 tions transferred from the member's account.

46 (32) "Separation benefit" means the amount, if any, pursuant to section
47 59-1359, Idaho Code.

48 (33) "Service" means being shown on an employer's payroll as an employee
49 receiving a salary. For each calendar month, service is credited only when a
50 member is an employee as defined in subsection (14) (A) of this section and is

1 employed for fifteen (15) days or more during the calendar month. Employment
2 of fourteen (14) days or less during any calendar month shall not be cred-
3 ited. No more than one (1) month of service shall be credited for all service
4 in any month.

5 (34) "Service retirement allowance" means the periodic payment becom-
6 ing payable upon an active member's ceasing to be an employee while eligible
7 for service retirement.

8 (34A) "Service retirement" means retirement by a member at or after age
9 sixty (60) years for police officer members or at or after age sixty-five
10 (65) years for general members.

11 (35) "State" means the state of Idaho.

12 (35A) "Termination from employment" means the employee has separated
13 from employment, the employee has ended service with the employer and the em-
14 ployer has notified PERSI of the termination.

15 (36) "Vested member" means an active or inactive member who has at least
16 five (5) years of credited service, except that a member who at the time of
17 his separation from service:

18 (a) Held an office to which he had been elected by popular vote or having
19 a term fixed by the constitution, statute or charter or was appointed to
20 such office by an elected official; or

21 (b) Was the head or director of a department, division, agency, statu-
22 tory section or bureau of the state; or

23 (c) Was employed on or after July 1, 1965, by an elected official of
24 the state of Idaho and occupied a position exempt from the provisions of
25 chapter 53, title 67, Idaho Code; and

26 (d) Was not covered by a merit system for employees of the state of
27 Idaho;

28 is vested without regard to the length of credited service.

29 (37) The masculine pronoun, wherever used, shall include the feminine
30 pronoun.

31 SECTION 2. An emergency existing therefor, which emergency is hereby
32 declared to exist, this act shall be in full force and effect on and after
33 July 1, 2022.