

Dear Senators PATRICK, Guthrie, Ward-Engelking, and  
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
PERSI (Public Employee Retirement System of Idaho):  
IDAPA 59.01.02 - PERSI Rules for Eligibility - Proposed Rule (Docket No. 59-0102-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 06/27/2017. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 07/26/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

**FROM:** Principal Legislative Research Analyst - Ryan Bush

**DATE:** June 8, 2017

**SUBJECT:** PERSI (Public Employee Retirement System of Idaho)

IDAPA 59.01.02 - PERSI Rules for Eligibility - Proposed Rule (Docket No. 59-0102-1701)

The Public Employee Retirement System of Idaho (PERSI) submits notice of proposed rulemaking at IDAPA 59.01.02 - PERSI Rules for Eligibility. This rulemaking defines the term "employer" to be in compliance with Internal Revenue Service regulations on governmental retirement plans as directed by the Idaho Legislature in House Bill 145 (2017).

PERSI states that negotiated rulemaking was not conducted because the Retirement Board is obligated to conform to the federal tax code to maintain qualified plan tax status. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to PERSI in Section 59-1306, Idaho Code.

cc: PERSI (Public Employee Retirement System of Idaho)  
Don Drum

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.02. – PERSI RULES FOR ELIGIBILITY**

### **DOCKET NO. 59-0102-1701**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 59-1306.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 21, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 59-1302(15), Idaho Code, was amended in the 2017 legislative session. The definition of “Employer” as applied to all new employers must be in compliance with the Internal Revenue Service regulations governing governmental retirement plans.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the Retirement Board’s obligation under Section 59-1306, Idaho Code, to conform to the federal tax code to maintain qualified plan tax status. The 2017 legislative change requires following Internal Revenue Service regulations. The requirement to follow Internal Revenue Service regulations contradicts the need for negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cheryl George at (208) 287-9231.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 28, 2017.

DATED this 27th day of April, 2017.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 North 8th Street  
P.O. Box 83720  
Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 59-0102-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**005. DEFINITIONS (RULE 5).**

The following definitions are supplemental to those provided by Section 59-1302, Idaho Code. (1-1-94)

**01. Board.** “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

**02. Compensation.** “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. (1-1-94)

**03. Date of Retirement.** “Date of retirement” means the effective date on which a retirement allowance becomes payable. (1-1-94)

**04. Employee.** “Employee” means a person as defined in Section 59-1302(14), Idaho Code. (1-1-94)

**05. Employer.** “Employer” means the state of Idaho or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. A political subdivision and government entity also means an entity that meets each of the requirements of paragraphs (a), (b), and (c) of this subsection, taking into account all of the facts and circumstances. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. ( )

**a.** Sovereign powers. Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power. ( )

**b.** Governmental purpose. The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity’s enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit. ( )

**c.** Governmental control. A State or local governmental unit exercises control over the entity. For this purpose, control is defined in subparagraph (i) of this paragraph and a State or local governmental unit exercises such control only if the control is vested in persons described in subparagraph (ii) of this paragraph. ( )

**i.** Definition of control. “Control” means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations. ( )

ii. Control vested in a State or local governmental unit or an electorate. Control is vested in persons described as a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities or an electorate established under applicable State or local law of general application, provided the electorate is not a private faction. ( )

iii. Definition of “private faction”. A private faction is any electorate if the outcome of the exercise of control described in subparagraph (i) of this paragraph is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity’s governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity’s actions. For purposes of this definition, an electorate is a private faction if any three private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control. Provided however, an electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than 10 persons. For example, if an electorate consists of 20 private persons with equal, five-percent shares of the total votes, that electorate is not a private faction because a minimum of 11 members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of 20 private persons with unequal voting shares in which some combination of 10 or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this subparagraph. The following rules apply for purposes of determining numbers of voters and voting control in subparagraph (iii) of this paragraph, related parties (as defined in 26 CFR § 1.150-1(b)) are treated as a single person; and in computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled. ( )

**056. Employment.** “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that employer. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. (1-1-94)

**067. Firefighters’ Retirement Fund.** “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (1-1-94)

**078. General Member.** “General member” is a PERSI member not classified as a police officer, firefighter, or paid firefighter. (1-1-94)

**089. Paid Firefighter.** “Paid firefighter” includes a former FRF members and paid firefighters as defined by Section 59-1391(f), Idaho Code, hired October 1, 1980, and thereafter. (4-7-11)

**109. Police Officer.** “Police officer” means an employee who is serving in a position designated by Section 59-1303(3), Idaho Code, or in a position so designated by the Retirement Board as provided by Section 59-1303(4), Idaho Code. (1-1-94)

**101. Primary Employer.** The primary employer is the employer from whom the employee receives the highest aggregate salary per month. (1-1-94)

**172. Public Employee Retirement System of Idaho.** “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. (1-1-94)

**123. Retirement Board.** “Retirement Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, and of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

**134.** **Same Position.** “Same position” as set forth in Section 59-1303(7), Idaho Code, means the same job classification or position title including continued employment in any revised job classification or new position title evolving from that same position as the result of personnel reclassification procedures provided the continued employment remains within the same state agency or within the same department of a political subdivision. (1-1-94)

**145.** **Surviving Spouse.** “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. (1-1-94)

**156.** **Teacher.** “Teacher” is defined as a school employee who is required to be certified. (1-1-94)