

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 551

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION
2 59-1305, IDAHO CODE, TO PROVIDE FOR BOARD SUBPOENA AUTHORITY AND TO MAKE
3 TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EF-
4 FECTIVE DATE.
5

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

7 SECTION 1. That Section 59-1305, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 59-1305. POWERS AND DUTIES OF BOARD -- INDEMNIFICATION. (1) The board
10 shall have the power and duty, subject to the limitations of this chapter,
11 of managing the system. It shall have the powers and privileges of a corpo-
12 ration, including the right to sue and be sued in its own name as such board.
13 Members of the retirement board, retirement system staff and retirement
14 system mortgage and investment committee members shall, jointly and indi-
15 vidualy, be provided a defense and indemnified against all claims, demands,
16 judgments, costs, charges and expenses, including court costs and attor-
17 ney's fees, and against all liability losses and damages of any nature what-
18 soever that arise out of and in the course and scope of their official duties
19 and functions, but only if the defense and indemnity for such person's wrong-
20 ful act or omission are not provided by chapter 9, title 6, Idaho Code, and
21 the wrongful act or omission of the person was not intentional, willful or
22 wanton misconduct, fraudulent, or a knowing violation of law. The board may,
23 as a fiduciary of the trust, determine to provide a defense and indemnity
24 hereunder. The board may, as a fiduciary of the trust, determine to refuse
25 a defense, or disavow and refuse to pay any judgment against a board member,
26 retirement system staff, or retirement system mortgage and investment com-
27 mittee member if it is determined that such person was not within the course
28 and scope of his official duties and functions or his conduct was intentional
29 misconduct, willful, wanton, fraudulent, or a knowing violation of the law.
30 Any defense and indemnity provided under this section shall be an expense of
31 the trust, and the board is authorized but not required to purchase insurance
32 to protect against such risks notwithstanding any other provision of law.
33 No contribution or indemnification, or reimbursement for legal fees and
34 expenses related to such defense or indemnification, shall be sought from
35 any person defended or indemnified under this section unless the court in
36 which the underlying claim was brought finds that the act or omission of the
37 person was outside the course and scope of his official duties and functions
38 or was intentional, willful or wanton misconduct, fraudulent, or a knowing
39 violation of law. Any action by the trust against a board member, retirement
40 system staff, or mortgage and investment committee member, and any action by
41 a person against the trust for contribution, indemnification or necessary
42 legal fees and expenses, shall be tried to the court in the same civil lawsuit

1 brought on the claim against the retirement board member, retirement system
2 staff, or retirement system mortgage and investment committee member. The
3 venue of all actions in which the board is a party shall be Ada county, Idaho.

4 (2) The board shall appoint an executive director to serve at its dis-
5 cretion. The executive director shall be the secretary to the board, bonded
6 as is required by the board, and shall perform such duties as assigned by the
7 board. The executive director shall be authorized to designate a staff mem-
8 ber as acting director or secretary in the director's absence.

9 (3) The board shall authorize the creation of whatever staff it deems
10 necessary for sound and economical administration of the system. The exec-
11 utive director shall hire the persons for the staff who shall hold their re-
12 spective positions subject to the rules of a merit system for state employ-
13 ees. The salaries and compensation of all persons employed for purposes of
14 administering the system shall be fixed by the board and as otherwise pro-
15 vided by law.

16 (4) The board shall obtain all actuarial, audit, legal and medical ser-
17 vices it deems appropriate for the system. It shall cause a competent actu-
18 ary who is a member of the academy of actuaries and who is familiar with pub-
19 lic systems of pensions to be retained on a consulting basis. The actuary
20 shall be the technical advisor of the board on matters regarding the opera-
21 tion of the system. During the first year of operation of the system and at
22 least once every four (4) years thereafter, the actuary shall make a general
23 investigation of the suitability of the actuarial tables used by the system.
24 The board shall adopt the actuarial tables and assumptions in use by the sys-
25 tem and may change the same in its sole discretion at any time. The actuary
26 shall make an annual valuation of the liabilities and reserves of the system,
27 and an annual determination of the amount of contributions required from the
28 employers under this chapter, and certify the results thereof to the board.
29 The actuary shall also perform such other duties as may be assigned by the
30 board. An independent financial audit shall be conducted annually or as fre-
31 quently as otherwise determined by the board.

32 (5) The board shall establish the system's office or offices to be used
33 for the meetings of the board and for the general purposes of the administra-
34 tive personnel. The board shall provide for the installation of a complete
35 and adequate system of accounts and records for administering this chapter.
36 All books and records shall be kept in the system's offices.

37 (6) If the board determines that it has previously overpaid or under-
38 paid benefits provided under this chapter or chapter 14, title 72, Idaho
39 Code, it shall correct the prior error. In the event of prior underpayment,
40 the board shall forthwith pay the amount of the underpayment together with
41 regular interest thereon. In the event of prior overpayment, the board may
42 offset future benefit payments by the amount of the prior overpayment to-
43 gether with regular interest thereon. Any such decision to offset future
44 benefit payments shall be administratively and judicially reviewable as
45 provided in section 59-1314, Idaho Code. Nothing herein contained shall be
46 construed to limit the rights of a member or the board to pursue any other
47 remedy provided by law.

48 (7) (a) For the collection of an overpayment, the board shall have the
49 power to issue subpoenas to financial institutions to compel the pro-

1 duction of evidence to determine if persons other than a deceased re-
2 tiree or a deceased beneficiary have access to an account.

3 (b) Any subpoena issued pursuant to this section may be enforced by the
4 district courts of Ada county. The court shall have jurisdiction to
5 hear the parties, determine the reasonableness of the subpoena, and to
6 set aside, modify, or enforce the subpoena by its order in accordance
7 with the evidence. Any failure to obey such court order may be punished
8 by the court as a contempt thereof.

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