

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 190

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION
2 59-1302, IDAHO CODE, TO PROVIDE THAT ANY ORGANIZATIONS, OTHER THAN
3 THOSE COMPOSED OF UNITS OF GOVERNMENT OF IDAHO, AS A CONDITION OF MEET-
4 ING THE DEFINITION OF "EMPLOYER" FOR PURPOSES OF THE PUBLIC EMPLOYEE
5 RETIREMENT SYSTEM, AND PARTICIPATING IN THE PUBLIC EMPLOYEE RETIREMENT
6 SYSTEM, SHALL BE SUBJECT TO THE SAME PUBLIC RECORDS PROVISIONS AS SET
7 FORTH IN SECTIONS 9-337 THROUGH 9-347, IDAHO CODE, INCLUSIVE, AS ANY
8 PUBLIC AGENCY OR INDEPENDENT PUBLIC BODY CORPORATE AND POLITIC IN THE
9 STATE OF IDAHO.
10

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

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

14 59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms
15 defined in this section shall have the meaning given in this section unless a
16 different meaning is clearly required by the context.

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

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

27 (4) "Actuarial equivalent" means a benefit equal in value to another
28 benefit, when computed upon the basis of the actuarial tables in use by the
29 system.

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

32 (5A) "Alternate payee" means a spouse or former spouse of a member who is
33 recognized by an approved domestic retirement order as having a right to all
34 or a portion of the accrued benefits in the retirement system with respect to
35 such member.

36 (5B) "Approved domestic retirement order" means a domestic retirement
37 order which creates or recognizes the existence of an alternate payee's
38 right or assigns to an alternate payee the right to all or a portion of the
39 accrued benefits of a member under the retirement system, which directs the
40 system to establish a segregated account or disburse benefits to an alter-
41 nate payee, and which the executive director of the retirement system has de-
42 termined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

1 (5C) "Average monthly salary" means the member's average salary during
2 the base period as calculated pursuant to rules adopted by the retirement
3 board.

4 (5D) (a) "Base period" means the period of fifty-four (54) consecutive
5 calendar months during which the member earned:

6 (i) The highest average salary; and

7 (ii) Membership service of at least one-half (1/2) the number of
8 months in the period, excluding months of service attributable to:

9 A. Military service;

10 B. Service qualifying as minimum benefit pursuant to sec-
11 tion 59-1342(5), Idaho Code; and

12 C. Worker's compensation income benefits.

13 (b) Effective October 1, 1993, the consecutive calendar months shall be
14 forty-eight (48). Effective October 1, 1994, the consecutive calendar
15 months shall be forty-two (42).

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

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

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

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

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

31 (7A) "Contingent annuitant" means the person designated by a member un-
32 der certain retirement options to receive benefit payments upon the death of
33 the member. The person so designated must be born and living on the effective
34 date of retirement.

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

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

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

41 (11) "Disability retirement allowance" means the periodic payment be-
42 coming payable upon an active member's ceasing to be an employee while eligi-
43 ble for disability retirement.

44 (12) "Disabled" means:

45 (a) That the member is prevented from engaging in any occupation or em-
46 ployment for remuneration or profit as a result of bodily injury or dis-
47 ease, either occupational or nonoccupational in cause, but excluding
48 disabilities resulting from service in the armed forces of any country,
49 or from an intentionally self-inflicted injury; and

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

3 It is not necessary that a person be absolutely helpless or entirely unable
4 to do anything worthy of compensation to be considered disabled. If the per-
5 son is so disabled that substantially all the avenues of employment are rea-
6 sonably closed to the person, that condition is within the meaning of "dis-
7 abled." In evaluating whether a person is disabled, medical factors and non-
8 medical factors including, but not limited to, education, economic and so-
9 cial environment, training and usable skills may be considered.

10 Refusal to submit to a medical examination ordered by the board before
11 the commencement of a disability retirement allowance or at any reasonable
12 time thereafter shall constitute proof that the member is not disabled. The
13 board shall be empowered to select for such medical examination one (1) or
14 more physicians or surgeons who are licensed to practice medicine and per-
15 form surgery. The fees and expenses of such examination shall be paid from
16 the administration account of the fund. No member shall be required to un-
17 dergo such examination more often than once each year after he has received a
18 disability retirement allowance continuously for two (2) years.

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

29 (12B) "Domestic retirement order" means any judgment, decree, or order,
30 including approval of a property settlement agreement which relates to the
31 provision of marital property rights to a spouse or former spouse of a mem-
32 ber, and is made pursuant to a domestic relations law, including the commu-
33 nity property law of the state of Idaho or of another state.

34 (13) "Early retirement allowance" means the periodic payment becoming
35 payable upon an active member's ceasing to be an employee while eligible for
36 early retirement.

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

38 (a) Any person who normally works twenty (20) hours or more per week for
39 an employer or a school teacher who works half-time or more for an em-
40 ployer and who receives salary for services rendered for such employer;
41 or

42 (b) Elected officials or appointed officials of an employer who receive
43 a salary; or

44 (c) A person who is separated from service with less than five (5) con-
45 secutive months of employment and who is reemployed or reinstated by the
46 same employer within thirty (30) days.

47 (B) "Employee" does not include employment as:

48 (a) A person rendering service to an employer in the capacity of an in-
49 dependent business, trade or profession; or

1 (b) A person whose employment with any employer does not total five (5)
2 consecutive months; or

3 (c) A person provided sheltered employment or made-work by a public em-
4 ployer in an employment or industries program maintained for the bene-
5 fit of such person; or

6 (d) An inmate of a state institution, whether or not receiving compen-
7 sation for services performed for the institution; or

8 (e) A student enrolled in an undergraduate, graduate, or professional-
9 technical program at and employed by a state college, university, com-
10 munity college or professional-technical center when such employment
11 is predicated on student status; or

12 (f) A person making contributions to the United States civil service
13 commission under the United States Civil Service System Retirement Act
14 except that a person who receives separate remuneration for work cur-
15 rently performed for an employer and the United States government may
16 elect to be a member of the retirement system in accordance with rules of
17 the board; or

18 (g) A person not under contract with a school district or charter
19 school, who on a day to day basis works as a substitute teacher replac-
20 ing a contracted teacher and is paid a substitute wage as established
21 by district policy or who, on a day to day basis works as a substitute
22 assistant replacing a staff instruction assistant or a staff library
23 assistant and is paid a substitute wage as established by district pol-
24 icy; or

25 (h) A person occupying a position that does not exceed eight (8) con-
26 secutive months in a calendar year with a city, county or irrigation
27 district when the city, county or irrigation district has certified,
28 in writing to the system, the position is (i) seasonal or casual; and
29 (ii) affected by weather and the growing season, including parks, golf
30 course positions and irrigation positions; or

31 (i) A person in a position that (i) is eligible for participation in
32 an optional retirement program established under section 33-107A or
33 33-107B, Idaho Code, or (ii) would be eligible for participation in
34 an optional retirement program established under section 33-107A or
35 33-107B, Idaho Code, if the person was not working less than half-time
36 or less than twenty (20) hours per week.

37 (15) "Employer" means the state of Idaho, or any political subdivision
38 or governmental entity, provided such subdivision or entity has elected to
39 come into the system. Governmental entity means any organization composed
40 of units of government of Idaho or organizations funded only by government
41 or employee contributions or organizations who discharge governmental re-
42 sponsibilities or proprietary responsibilities that would otherwise be per-
43 formed by government. All governmental entities are deemed to be political
44 subdivisions for the purpose of this chapter. Provided however, that any or-
45 ganizations, other than those composed of units of government of Idaho, as a
46 condition of meeting the definition of "employer" for purposes of this chap-
47 ter, and participating in the public employee retirement system, shall be
48 subject to the same public records provisions as set forth in sections 9-337
49 through 9-347, Idaho Code, inclusive, as any public agency or independent
50 public body corporate and politic in the state of Idaho.

1 (15A) "Final contribution" means the final contribution made by a mem-
2 ber pursuant to sections 59-1331 through 59-1334, Idaho Code.

3 (16) "Firefighter" means an employee, including paid firefighters
4 hired on or after October 1, 1980, whose primary occupation is that of pre-
5 venting and extinguishing fires as determined by the rules of the board.

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

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

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

16 (20) "Inactive member" means a former active member who is not an em-
17 ployee and is not receiving any form of retirement allowance, but for whom a
18 separation benefit has not become payable.

19 (20A) "Lifetime annuity" means periodic monthly payments of income by
20 the retirement system to an alternate payee.

21 (20B) "Lump sum distribution" means a payment by the retirement system
22 of the entire balance in the alternate payee's segregated account, together
23 with regular interest credited thereon.

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

26 (22) "Membership service" means military service which occurs after
27 the commencement of contributions payable under sections 59-1331 through
28 59-1334, Idaho Code, and service with respect to which contributions are
29 payable under sections 59-1331 through 59-1334, Idaho Code, which, except
30 for benefit calculations described in sections 59-1342 and 59-1353, Idaho
31 Code, includes service transferred to a segregated account under an approved
32 domestic retirement order.

33 (23) "Military service" means any period of active duty service in the
34 armed forces of the United States including the national guard and reserves,
35 under the provisions of title 10, title 32, and title 37, United States code,
36 which commences less than ninety (90) days after the person ceases to be an
37 employee and ends less than ninety (90) days before the person again becomes
38 an employee. Provided, if a member fails to again become an employee due to
39 being killed while in active duty service, the member shall be entitled to
40 military service through the date of death. In no event shall military ser-
41 vice include:

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

44 (b) Any active duty service in excess of five (5) years if at the conve-
45 nience of the United States government, or in excess of four (4) years
46 if not at the convenience of the United States government, provided
47 additional membership service may be purchased as provided in section
48 59-1362, Idaho Code.

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

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

3 (25) "Prior service" means any period prior to July 1, 1965, of military
4 service or of employment for the state of Idaho or any political subdivision
5 or other employer of each employee who is an active member or in military ser-
6 vice or on leave of absence on the date of establishment, provided, however,
7 an employee who was not an active member or in military service or on leave
8 of absence on the date of establishment shall receive credit for the member's
9 service prior to July 1, 1965, on the basis of recognizing two (2) months of
10 such service for each month of membership service. For the purpose of com-
11 puting such service, no deduction shall be made for any continuous period of
12 absence from service or military service of six (6) months or less.

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

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

17 (28) "Retirement" means the acceptance of a retirement allowance under
18 this chapter upon termination of employment.

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

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

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

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

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

31 (B) Salary in excess of the compensation limitations set forth in sec-
32 tion 401(a)(17) of the Internal Revenue Code shall be disregarded for any
33 person who becomes a member of the system on or after July 1, 1996. The sys-
34 tem had no limitations on compensation in effect on July 1, 1993. The compen-
35 sation limitations set forth in section 401(a)(17) of the Internal Revenue
36 Code shall not apply for an "eligible employee." For purposes of this subsec-
37 tion, "eligible employee" is an individual who was a member of the system be-
38 fore July 1, 1996.

39 (C) "Salary" does not include:

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

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

46 (31A) "Segregated account" means the account established by the retire-
47 ment system for the alternate payee of a member who is not a retired member.
48 It shall include the months of credited service and accumulated contribu-
49 tions transferred from the member's account.

1 (32) "Separation benefit" means the amount, if any, payable upon or sub-
2 sequent to separation from service.

3 (33) "Service" means being shown on an employer's payroll as an employee
4 receiving a salary. For each calendar month, service is credited only when a
5 member is an employee as defined in subsection (14) (A) of this section and is
6 employed for fifteen (15) days or more during the calendar month. Employment
7 of fourteen (14) days or less during any calendar month shall not be cred-
8 ited. No more than one (1) month of service shall be credited for all service
9 in any month.

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

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

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

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

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

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

25 (d) Was not covered by a merit system for employees of the state of
26 Idaho,
27 is vested without regard to the length of credited service.

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