

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 445

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION  
2 59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF "EMPLOYEE" AND TO RE-  
3 VISE PROVISIONS RELATING TO THOSE THAT DO NOT MEET THE DEFINITION OF  
4 "EMPLOYEE"; AND DECLARING AN EMERGENCY.  
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 upon the basis of the actuarial tables in use by the  
24 system.

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 which creates or recognizes the existence of an alternate payee's  
33 right or assigns to an alternate payee the right to all or a portion of the  
34 accrued benefits of a member under the retirement system, which directs the  
35 system to establish a segregated account or disburse benefits to an alter-  
36 nate payee, and which the executive director of the retirement system has de-  
37 termined 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 upon an active member's ceasing to be an employee while eligi-  
 38 ble 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  
 6 the commencement of a disability retirement allowance or at any reasonable  
 7 time thereafter shall constitute proof that the member is not disabled. The  
 8 board shall be empowered to select for such medical examination one (1) or  
 9 more physicians or surgeons who are licensed to practice medicine and per-  
 10 form surgery. The fees and expenses of such examination shall be paid from  
 11 the administration account of the fund. No member shall be required to un-  
 12 dergo such examination more often than once each year after he has received a  
 13 disability 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 which 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 upon an active member's ceasing to be an employee while eligible for  
 31 early retirement.

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

33 (a) Any person who normally works ~~twenty (20)~~ one thousand three hun-  
 34 dred eighty-seven (1,387) hours or more per week in a calendar year for  
 35 an employer or a school teacher who works half-time or more for an em-  
 36 ployer and who receives salary for services rendered for such employer;

37 (b) Elected officials or appointed officials of an employer who receive  
 38 a salary;

39 (c) A person who is separated from service with less than ~~five (5) con-~~  
 40 ~~secutive months~~ one thousand three hundred eighty-seven (1,387) hours  
 41 of employment with the same employer and who is reemployed or reinstated  
 42 by the same employer within thirty (30) days in the same calendar year;  
 43 or

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

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

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

3 (b) A person whose employment with any employer does not total ~~five~~  
4 ~~(5) consecutive months~~ one thousand three hundred eighty-seven (1,387)  
5 hours in a calendar year; 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 professional-  
12 technical program at and employed by a state college, university, com-  
13 munity college or professional-technical center when such employment  
14 is predicated on student status; or

15 (f) A person making contributions to the United States civil service  
16 commission under the United States Civil Service System Retirement Act  
17 except that a person who receives separate remuneration for work cur-  
18 rently performed for an employer and the United States government may  
19 elect to be a member of the retirement system in accordance with rules of  
20 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 or irrigation~~  
30 ~~district when the city, county or irrigation district has certified,~~  
31 ~~in writing to the system, the position is (i) seasonal or casual; and~~  
32 ~~(ii) affected by weather and the growing season, including parks, golf~~  
33 ~~course positions and irrigation positions; or~~

34 ~~(i) A person in a position that (i) is eligible for participation in~~  
35 ~~an optional retirement program established under section 33-107A or~~  
36 ~~33-107B, Idaho Code, or (ii) would be eligible for participation in~~  
37 ~~an optional retirement program established under section 33-107A or~~  
38 ~~33-107B, Idaho Code, if the person was not working less than half-time~~  
39 ~~or less than twenty (20) hours per week.~~

40 (15) "Employer" means the state of Idaho, or any political subdivision  
41 or governmental entity, provided such subdivision or entity has elected to  
42 come into the system. Governmental entity means any organization composed  
43 of units of government of Idaho or organizations funded only by government  
44 or employee contributions or organizations who discharge governmental re-  
45 sponsibilities or proprietary responsibilities that would otherwise be per-  
46 formed by government. All governmental entities are deemed to be political  
47 subdivisions for the purpose of this chapter.

48 (15A) "Final contribution" means the final contribution made by a mem-  
49 ber pursuant to sections 59-1331 through 59-1334, Idaho Code.

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

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

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

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

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

17 (20A) "Lifetime annuity" means periodic monthly payments of income by  
18 the retirement system to an alternate payee.

19 (20B) "Lump sum distribution" means a payment by the retirement system  
20 of the entire balance in the alternate payee's segregated account, together  
21 with regular interest credited thereon.

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

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

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

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

45 (b) Any active duty service in excess of five (5) years if at the conve-  
46 nience of the United States government, or in excess of four (4) years  
47 if not at the convenience of the United States government, provided  
48 additional membership service may be purchased as provided in section  
49 59-1362, Idaho Code.

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

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

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

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

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

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

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

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

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

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

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

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

41 (C) "Salary" does not include:

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

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

48 (c) Differential wage payments as defined in 26 U.S.C. 3401(h). A dif-  
49 ferential wage payment generally refers to an employer payment to an  
50 employee called to active duty in the uniformed services for more than

1 thirty (30) days that represents all or a portion of the compensation he  
2 would have received from the employer if he were performing services for  
3 the employer.

4 (31A) "Segregated account" means the account established by the retire-  
5 ment system for the alternate payee of a member who is not a retired member.  
6 It shall include the months of credited service and accumulated contribu-  
7 tions transferred from the member's account.

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

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

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

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

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

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

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

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

32 (d) Was not covered by a merit system for employees of the state of  
33 Idaho,

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

35 (37) The masculine pronoun, wherever used, shall include the feminine  
36 pronoun.

37 SECTION 2. An emergency existing therefor, which emergency is hereby  
38 declared to exist, this act shall be in full force and effect on and after its  
39 passage and approval.