

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 69

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO; AMENDING SECTION
59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF "EMPLOYEE."

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

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

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

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

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

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

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

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

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

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

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

(i) The highest average salary; and

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

3 A. Military service;

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

6 C. Worker's compensation income benefits.

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

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

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

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

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

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

25 (7A) "Contingent annuitant" means the person designated by a member un-
26 der certain retirement options to receive benefit payments upon the death of
27 the member. The person so designated must be born and living on the effective
28 date of retirement.

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

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

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

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

38 (12) "Disabled" means:

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

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

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

1 abled." In evaluating whether a person is disabled, medical factors and non-
2 medical factors including, but not limited to, education, economic and so-
3 cial environment, training and usable skills may be considered.

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

13 (12A) "Disabled service" means the total number of months elapsing from
14 the first day of the month next succeeding the final contribution of a member
15 prior to receiving a disability retirement allowance to the first day of the
16 month following the date of termination of such disability retirement al-
17 lowance. During such period, the member shall remain classified in the mem-
18 bership category held during the month of final contribution. The total num-
19 ber of months of disabled service credited for a person first becoming dis-
20 abled after the effective date of this chapter shall not exceed the excess,
21 if any, of three hundred sixty (360) over the total number of months of prior
22 service and membership service.

23 (12B) "Domestic retirement order" means any judgment, decree, or order,
24 including approval of a property settlement agreement that relates to the
25 provision of marital property rights to a spouse or former spouse of a mem-
26 ber, and is made pursuant to a domestic relations law, including the commu-
27 nity property law of the state of Idaho or of another state.

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

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

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

35 (b) Elected officials or appointed officials of an employer who receive
36 a salary;

37 (c) A person who is separated from service with fewer than five (5) con-
38 secutive months of employment and who is reemployed or reinstated by the
39 same employer within thirty (30) days; or

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

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

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

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

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

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

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

10 (f) A person making contributions to the director of the office of
11 personnel management under the United States civil service system re-
12 tirement act except that a person who receives separate remuneration
13 for work currently performed for an employer and the United States gov-
14 ernment may elect to be a member of the retirement system in accordance
15 with rules of the board; or

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

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

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

36 On and after the effective date of this act, all new employees added to
37 the public employee retirement system must work for an employer that is in
38 compliance with internal revenue regulations governing governmental re-
39 retirement plans.

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 that 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. Provided however, that on and
48 after the effective date of this act, all new employers added to the public
49 employee retirement system must be in compliance with internal revenue regu-
50 lations governing governmental retirement plans.

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, who has not re-
18 quested a separation benefit, or for whom a separation benefit has not become
19 payable.

20 (20A) "Ineligible" means:

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

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

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

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

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

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

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

42 (20B) "Lifetime annuity" means periodic monthly payments of income by
43 the retirement system to an alternate payee.

44 (20C) "Lump sum distribution" means a payment by the retirement system
45 of the entire balance in the alternate payee's segregated account, together
46 with regular interest credited thereon.

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

49 (22) "Membership service" means military service that occurs after
50 the commencement of contributions payable under sections 59-1331 through

1 59-1334, Idaho Code, and service with respect to which contributions are
2 payable under sections 59-1331 through 59-1334, Idaho Code, which, except
3 for benefit calculations described in sections 59-1342 and 59-1353, Idaho
4 Code, includes service transferred to a segregated account under an approved
5 domestic retirement order.

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

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

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

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

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

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

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

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

43 (28) "Retirement" means the acceptance of a retirement allowance under
44 this chapter upon termination of employment and, unless otherwise provided
45 by law, requires a termination of employment from an employer participating
46 in PERSI, the judges retirement fund, the firefighters retirement fund or
47 the optional retirement plan.

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

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

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

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

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

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

19 (C) "Salary" does not include:

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

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

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

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

38 (31A) "Segregated account" means the account established by the retire-
39 ment system for the alternate payee of a member who is not a retired member.
40 It shall include the months of credited service and accumulated contribu-
41 tions transferred from the member's account.

42 (32) "Separation benefit" means the amount, if any, pursuant to section
43 59-1359, Idaho Code.

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

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

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

5 (35A) "Termination from employment" means the employee has separated
6 from employment, the employee has ended service with the employer and the em-
7 ployer has notified PERSI of the termination.

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

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

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

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

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

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

22 (37) The masculine pronoun, wherever used, shall include the feminine
23 pronoun.