

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 558

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO PROVIDE THAT THE TERM "EMPLOYEE" DOES NOT INCLUDE ANY PERSON IN A POSITION THAT DOES NOT EXCEED EIGHT CONSECUTIVE MONTHS IN A CALENDAR YEAR IF THE EMPLOYER CERTIFIES THAT THE POSITION IS SEASONAL OR CASUAL AND AFFECTED BY WEATHER AND THE GROWING SEASON.

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 participation 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 entitlements 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 which 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, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which 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.

1 (5D) (a) "Base period" means the period of fifty-four (54) consecutive
2 calendar months during which the member earned:

3 (i) The highest average salary; and

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

6 A. Military service;

7 B. Service qualifying as minimum benefit pursuant to
8 section 59-1342(5), Idaho Code; and

9 C. Worker's compensation income benefits.

10 (b) Effective October 1, 1993, the consecutive calendar months shall be
11 forty-eight (48). Effective October 1, 1994, the consecutive calendar
12 months shall be forty-two (42).

13 (c) Entitlement to a base period shall not vest until the effective
14 date of that base period. The retirement benefits shall be calculated
15 on the amounts, terms and conditions in effect at the date of the final
16 contribution by the member.

17 (d) If no base period exists for a member, the member's average
18 monthly salary shall be determined by the board, using standards not
19 inconsistent with those established in this subsection.

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

23 (6) "Beneficiary" means the person who is nominated by the written
24 designation of a member, duly executed and filed with the board, to receive
25 the death benefit.

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

28 (7A) "Contingent annuitant" means the person designated by a member
29 under certain retirement options to receive benefit payments upon the death
30 of the member. The person so designated must be born and living on the
31 effective date of retirement.

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

34 (9) "Date of establishment" means July 1, 1965, or a later date
35 established by the board or statute.

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

38 (11) "Disability retirement allowance" means the periodic payment
39 becoming payable upon an active member's ceasing to be an employee while
40 eligible for disability retirement.

41 (12) "Disabled" means:

42 (a) That the member is prevented from engaging in any occupation or
43 employment for remuneration or profit as a result of bodily injury
44 or disease, either occupational or nonoccupational in cause, but
45 excluding disabilities resulting from service in the armed forces of
46 any country, or from an intentionally self-inflicted injury; and

47 (b) That the member will likely remain so disabled permanently and
48 continuously during the remainder of the member's life.

49 It is not necessary that a person be absolutely helpless or entirely unable
50 to do anything worthy of compensation to be considered disabled. If the

1 person is so disabled that substantially all the avenues of employment are
2 reasonably closed to the person, that condition is within the meaning of
3 "disabled." In evaluating whether a person is disabled, medical factors and
4 nonmedical factors including, but not limited to, education, economic and
5 social environment, training and usable skills may be considered.

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

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

25 (12B) "Domestic retirement order" means any judgment, decree, or order,
26 including approval of a property settlement agreement which relates to
27 the provision of marital property rights to a spouse or former spouse of
28 a member, and is made pursuant to a domestic relations law, including the
29 community property law of the state of Idaho or of another state.

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

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

34 (a) Any person who normally works twenty (20) hours or more per week
35 for an employer or a school teacher who works half-time or more for
36 an employer and who receives salary for services rendered for such
37 employer; or

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

40 (c) A person who is separated from service with less than five (5)
41 consecutive months of employment and who is reemployed or reinstated by
42 the same employer within thirty (30) days.

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

44 (a) A person rendering service to an employer in the capacity of an
45 independent business, trade or profession; or

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

48 (c) A person provided sheltered employment or made-work by a public
49 employer in an employment or industries program maintained for the
50 benefit of such person; or

1 (d) An inmate of a state institution, whether or not receiving
2 compensation for services performed for the institution; or

3 (e) A student enrolled in an undergraduate, graduate, or
4 professional-technical program at and employed by a state college,
5 university, community college or professional-technical center when
6 such employment is predicated on student status; or

7 (f) A person making contributions to the United States civil service
8 commission under the United States Civil Service System Retirement
9 Act except that a person who receives separate remuneration for work
10 currently performed for an employer and the United States government
11 may elect to be a member of the retirement system in accordance with
12 rules of the board; or

13 (g) A person occupying a position that does not exceed eight (8)
14 consecutive months in a calendar year ~~with a city or county~~ when the ~~city~~
15 ~~or county~~ employer has certified, in writing to the system, the position
16 is (i) seasonal or casual; and (ii) affected by weather and the growing
17 season, including parks, ~~and~~ golf course positions and irrigation
18 positions; or

19 (h) A person in a position that (i) is eligible for participation in
20 an optional retirement program established under section 33-107A or
21 33-107B, Idaho Code, or (ii) would be eligible for participation in
22 an optional retirement program established under section 33-107A or
23 33-107B, Idaho Code, if the person was not working less than half-time
24 or less than twenty (20) hours per week.

25 (15) "Employer" means the state of Idaho, or any political subdivision
26 or governmental entity, provided such subdivision or entity has elected to
27 come into the system. Governmental entity means any organization composed
28 of units of government of Idaho or organizations funded only by government
29 or employee contributions or organizations who discharge governmental
30 responsibilities or proprietary responsibilities that would otherwise
31 be performed by government. All governmental entities are deemed to be
32 political subdivisions for the purpose of this chapter.

33 (15A) "Final contribution" means the final contribution made by a
34 member pursuant to sections 59-1331 through 59-1334, Idaho Code.

35 (16) "Firefighter" means an employee, including paid firefighters
36 hired on or after October 1, 1980, whose primary occupation is that of
37 preventing and extinguishing fires as determined by the rules of the board.

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

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

42 (19) "Funding agent" means any bank or banks, trust company or trust
43 companies, legal reserve life insurance company or legal reserve life
44 insurance companies, or combinations thereof, any thrift institution or
45 credit union or any investment management firm or individual investment
46 manager selected by the board to hold and/or invest the employers' and
47 members' contributions and pay certain benefits granted under this chapter.

48 (20) "Inactive member" means a former active member who is not an
49 employee and is not receiving any form of retirement allowance, but for whom
50 a separation benefit has not become payable.

1 (20A) "Lifetime annuity" means periodic monthly payments of income by
2 the retirement system to an alternate payee.

3 (20B) "Lump sum distribution" means a payment by the retirement system
4 of the entire balance in the alternate payee's segregated account, together
5 with regular interest credited thereon.

6 (21) "Member" means an active member, inactive member or a retired
7 member.

8 (22) "Membership service" means military service which occurs after
9 the commencement of contributions payable under sections 59-1331 through
10 59-1334, Idaho Code, and service with respect to which contributions are
11 payable under sections 59-1331 through 59-1334, Idaho Code, which, except
12 for benefit calculations described in sections 59-1342 and 59-1353, Idaho
13 Code, includes service transferred to a segregated account under an approved
14 domestic retirement order.

15 (23) "Military service" means any period of active duty service in the
16 armed forces of the United States including the national guard and reserves,
17 under the provisions of title 10, title 32, and title 37, United States code,
18 which commences less than ninety (90) days after the person ceases to be an
19 employee and ends less than ninety (90) days before the person again becomes
20 an employee. Provided, if a member fails to again become an employee due
21 to being killed while in active duty service, the member shall be entitled
22 to military service through the date of death. In no event shall military
23 service include:

24 (a) Any period ended by dishonorable discharge or during which
25 termination of such service is available but not accepted; or

26 (b) Any active duty service in excess of five (5) years if at the
27 convenience of the United States government, or in excess of four
28 (4) years if not at the convenience of the United States government,
29 provided additional membership service may be purchased as provided in
30 section 59-1362, Idaho Code.

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

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

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

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

47 (27) "Retired member" means a former active member receiving a
48 retirement allowance.

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

1 (29) "Retirement board" or "board" means the board provided for in
2 sections 59-1304 and 59-1305, Idaho Code, to administer the retirement
3 system.

4 (30) "Retirement system" or "system" means the public employee
5 retirement system of Idaho.

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

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

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

14 (B) Salary in excess of the compensation limitations set forth in
15 section 401(a)(17) of the Internal Revenue Code shall be disregarded for
16 any person who becomes a member of the system on or after July 1, 1996. The
17 system had no limitations on compensation in effect on July 1, 1993. The
18 compensation limitations set forth in section 401(a)(17) of the Internal
19 Revenue Code shall not apply for an "eligible employee." For purposes of this
20 subsection, "eligible employee" is an individual who was a member of the
21 system before July 1, 1996.

22 (C) "Salary" does not include:

23 (a) Contributions by employers to employee held medical savings
24 accounts, as those accounts are defined in section 63-3022K, Idaho
25 Code.

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

30 (31A) "Segregated account" means the account established by the
31 retirement system for the alternate payee of a member who is not a retired
32 member. It shall include the months of credited service and accumulated
33 contributions transferred from the member's account.

34 (32) "Separation benefit" means the amount, if any, payable upon or
35 subsequent to separation from service.

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

43 (34) "Service retirement allowance" means the periodic payment
44 becoming payable upon an active member's ceasing to be an employee while
45 eligible for service retirement.

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

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

- 1 (a) Held an office to which he had been elected by popular vote or having
2 a term fixed by the constitution, statute or charter or was appointed to
3 such office by an elected official; or
4 (b) Was the head or director of a department, division, agency,
5 statutory section or bureau of the state; or
6 (c) Was employed on or after July 1, 1965, by an elected official of
7 the state of Idaho and occupied a position exempt from the provisions
8 of chapter 53, title 67, Idaho Code; and
9 (d) Was not covered by a merit system for employees of the state of
10 Idaho,
11 is vested without regard to the length of credited service.
12 (37) The masculine pronoun, wherever used, shall include the feminine
13 pronoun.