

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 180

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO WORK AND SAVE FOR RETIREMENT PROGRAM; AMENDING TITLE
2 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 97, TITLE 67, IDAHO
3 CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO ESTABLISH THE WORK
4 AND SAVE FOR RETIREMENT FUND, TO ESTABLISH THE WORK AND SAVE FOR RETIRE-
5 MENT ADMINISTRATIVE FUND, TO ESTABLISH PROVISIONS REGARDING A BOARD,
6 TO PROVIDE FOR POWERS AND DUTIES OF THE BOARD, TO ESTABLISH FIDUCIARY
7 DUTIES OF THE BOARD, TO PROVIDE FOR PROGRAM DESIGN AND INVESTMENT RE-
8 SPONSIBILITY BY THE BOARD, TO PROVIDE FOR CERTAIN PROGRAM COMPONENTS,
9 TO PROVIDE FOR THE CONFIDENTIALITY OF EMPLOYEE ACCOUNT INFORMATION, TO
10 PROVIDE FOR CERTAIN ANNUAL REPORTS, AND TO PROVIDE A PROGRAM TIMELINE.
11

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

13 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 97, Title 67, Idaho Code, and to read as follows:

16 CHAPTER 97

17 IDAHO WORK AND SAVE FOR RETIREMENT PROGRAM

18 67-9701. SHORT TITLE. This chapter shall be known and may be cited as
19 the "Idaho Work and Save for Retirement Program."

20 67-9702. DEFINITIONS. Unless the context requires otherwise, in this
21 chapter:

22 (1) "Account" means an account established for a covered employee to
23 save for retirement purposes as prescribed in this chapter.

24 (2) "Board" means the Idaho work and save for retirement program board
25 established under this chapter.

26 (3) "Compensation" means any wages or moneys within the meaning of
27 chapter 30, title 63, Idaho Code, received by a covered employee from a cov-
28 ered employer during the calendar year.

29 (4) "Covered employee" means an individual who is employed by a cov-
30 ered employer, is an independent contractor, or is self-employed and who has
31 wages or other compensation allocable to the state under the provisions of
32 chapter 30, title 63, Idaho Code, and who is at least eighteen (18) years of
33 age or older. Covered employee does not include:

34 (a) Any employee covered under the federal railway labor act (45 U.S.C.
35 151);

36 (b) Any employee on whose behalf an employer makes contributions to a
37 Taft-Hartley multiemployer pension trust fund; or

38 (c) Any individual who is an employee of the federal government, the
39 state of Idaho, any other state, or any local governmental unit, includ-

1 ing but not limited to a county, municipal corporation, or other unit or
2 instrumentality of government.

3 (5) "Covered employer" means a person or entity engaged in a business,
4 industry, profession, trade, or other enterprise in Idaho, whether for
5 profit or not-for-profit, excluding the federal government, the state of
6 Idaho, any other state, or any local governmental unit, including but not
7 limited to a county, municipal corporation, or other unit or instrumentality
8 of government. "Covered employer" does not include an employer that main-
9 tains a specified tax-favored retirement plan for its employees or that has
10 done so effective in form and operation at any time within the current or two
11 (2) preceding calendar years. If an employer does not maintain a specified
12 tax-favored retirement plan for the portion of a calendar year ending on or
13 after the effective date of this chapter and adopts such a plan effective for
14 the remainder of that calendar year, the employer is exempt from "covered
15 employer" status for the remainder of the year.

16 (6) "Fund" means the work and save for retirement program fund created
17 in the Idaho state treasury to place funds from covered employee contribu-
18 tions for saving and investment and to receive earnings on investments.

19 (7) "Internal Revenue Code" means the Internal Revenue Code of 1986, or
20 any successor law, in effect for the calendar year.

21 (8) "Investment manager" or "investment managers" means a person or
22 firm licensed under chapter 5, title 68, Idaho Code, and doing business with
23 the state under a contract approved by the board.

24 (9) "Program" means the Idaho work and save for retirement program cre-
25 ated in the office of the treasurer.

26 (10) "Program administrative fund" means the fund established under
27 this chapter in the state treasury to place funds from appropriations, con-
28 tributions, fees, and grants for the overall administrative functions of the
29 program.

30 (11) "Treasurer" means the Idaho state treasurer as provided in chapter
31 12, title 67, Idaho Code.

32 67-9703. RETIREMENT FUND -- PROGRAM FUND. (1) The work and save for re-
33 tirement program fund is hereby established in the state treasury for the ex-
34 press purpose of receiving and holding retirement contributions from cov-
35 ered employees. Any interest earned from participating employee contribu-
36 tions shall be credited into each participating employee's account in the
37 retirement fund. The supervision, management, protection, and administra-
38 tion of the retirement program fund shall be the responsibility of the board.

39 (2) Moneys in the work and save for retirement fund shall be kept sepa-
40 rate and distinct from moneys in the work and save for retirement administra-
41 tive fund.

42 67-9704. RETIREMENT FUND -- ADMINISTRATIVE FUND. (1) The work and save
43 for retirement administrative fund is hereby established in the state trea-
44 sury. Any interest earned from funds in this fund shall be credited to the
45 work and save for retirement administrative fund. Moneys in the administra-
46 tive fund are continuously appropriated to the board.

47 (2) The administrative fund shall consist of:

1 (a) Moneys that may be appropriated to the administrative fund by the
2 legislature to facilitate the planning, initiation, and operation of
3 the program until such time as the program is self-sufficient. Any ap-
4 propriation by the legislature to the program shall be remitted to the
5 state general fund according to directives from the legislature;

6 (b) Fees paid by covered employees in order to maintain an account in
7 the program;

8 (c) Any interest earned from investment of idle administrative fund
9 moneys;

10 (d) Moneys that may be transferred to the administrative fund from the
11 federal government, other state agencies, or local governments; and

12 (e) Any gifts or donations made to the state of Idaho for deposit in this
13 fund.

14 (3) The board shall use the moneys in the administrative fund to pay ad-
15 ministrative and operational costs and expenses of the program.

16 (4) Moneys in the work and save for retirement administrative fund
17 shall be kept separate and distinct from moneys in the work and save for re-
18 tirement program fund.

19 67-9705. BOARD -- MEMBERS. (1) The Idaho work and save for retirement
20 program board is hereby established in the office of the Idaho state trea-
21 surer. The program shall be governed by a board of nine (9) members as fol-
22 lows:

23 (a) The state treasurer or a designee of the state treasurer;

24 (b) The director of the Idaho department of finance or a designee of the
25 Idaho department of finance;

26 (c) The director of the Idaho department of labor or a designee of the
27 Idaho department of labor;

28 (d) One (1) member of the Idaho house of representatives recommended
29 by the speaker of the house of representatives and one (1) member of the
30 Idaho senate recommended by the president pro tempore of the senate. Of
31 the two (2) members of the Idaho legislature provided for in this sec-
32 tion, one (1) shall represent the majority party and one (1) shall rep-
33 resent the minority party; and

34 (e) The following members appointed by the governor:

35 (i) A member who is a covered employer;

36 (ii) A member who is a covered employee;

37 (iii) A person who is licensed under the uniform prudent investor
38 act pursuant to chapter 5, title 68, Idaho Code, and possesses
39 skill, knowledge, and experience in the field of personal retire-
40 ment investment products or retirement program designs; and

41 (iv) A member who is or represents persons who are retired.

42 (2) The term of office of the first board shall be staggered with four
43 (4) members serving for two (2) years and five (5) members serving for four
44 (4) years. Thereafter, the term of office of each member of the board is four
45 (4) years, but a member serves at the pleasure of the governor. A member is
46 eligible for reappointment. If there is a vacancy for any cause, the gover-
47 nor shall make an appointment to become immediately effective for the unex-
48 pired term.

1 (3) The members appointed to the board under subsection (1) of this
2 section shall elect a member to serve as the chairperson of the board. The
3 chairperson shall serve for two (2) years and may be reelected by the board.

4 (4) A majority of the voting members of the board constitutes a quorum
5 for the transaction of business.

6 (5) The office of the state treasurer shall provide staff support to the
7 board.

8 (6) Each member of the board shall serve without compensation but shall
9 receive reimbursement for expenses as provided by section 59-509(b), Idaho
10 Code. All such expenses shall be paid from the work and save for retirement
11 administrative fund.

12 67-9706. POWERS AND DUTIES -- BOARD. The powers and duties of the
13 board shall be to:

14 (1) Design, develop, implement, maintain, govern, and promulgate rules
15 with respect to a contribution retirement program for covered employers that
16 do not provide a retirement program and for covered employees;

17 (2) Develop and maintain a website and other means as appropriate and
18 secure for covered employers and covered employees to enroll in the program;

19 (3) Serve as the administrator of the fund or to create and manage a
20 process for recruitment and retention of a qualified firm, person, entity,
21 or entities and to make and enter into contracts, agreements, or arrange-
22 ments with any firm, person, entity, or entities that meet professional
23 qualifications established by the board and according to state law to serve
24 as the administrator of the fund;

25 (4) Create and manage a process for recruitment and retention of a qual-
26 ified firm, person, entity, or entities and to make and enter into contracts,
27 agreements, or arrangements with any firm, person, entity, or entities that
28 meet professional qualifications established by the board and according to
29 state law to act as the custodian of the fund for carrying out the purposes
30 set forth in this chapter;

31 (5) Create and manage a process for recruitment and retention of a qual-
32 ified firm, person, entity, or entities and to make and enter into contracts,
33 agreements, or arrangements with any firm, person, entity, or entities that
34 meet professional qualifications established by the board and according to
35 state law to act as the program fund investment manager for carrying out the
36 purposes set forth in this chapter;

37 (6) Ensure that this chapter is not preempted by the employee retire-
38 ment income security act of 1974, 29 U.S.C. 1001, et seq;

39 (7) Guide and advise the fund investment manager according to the fidu-
40 ciary standards of the uniform prudent investor act, chapter 5, title 68,
41 Idaho Code. Subject to such requirements, the board is empowered to limit,
42 control, and designate the types, kinds, and amounts of investments in the
43 program;

44 (8) Establish procedures for the timely and fair resolution of any dis-
45 putes related to accounts or program operation;

46 (9) Cause the program and accounts to be established and operated in ac-
47 cordance with best practices for retirement saving:

48 (a) To encourage participation, saving, sound investment practices,
49 and appropriate selection and establishment of default investments;

1 (b) To promote portability of benefits; and

2 (c) To avoid preemption of the program by federal law.

3 (10) Set and collect necessary fees from covered employees for applica-
4 tion processing, account management, or administrative duties of the pro-
5 gram;

6 (11) Ensure that fees shall be kept as low as practicable but may be ad-
7 justed by the board after a reasonable startup period as determined by the
8 board to accommodate any appropriations the legislature may make into the
9 fund;

10 (12) Evaluate the need for, and procure as needed, pooled private insur-
11 ance for the program;

12 (13) Develop and implement ongoing strategies and outreach activities
13 in coordination and collaboration with the Idaho department of labor to dis-
14 seminate materials for covered employer and employee information and educa-
15 tion about the program, including but not be limited to: program operations;
16 requirements; benefits and costs to enroll, to disenroll, to withdraw funds
17 for retirement, and to roll over into other retirement programs; procedures
18 to continue contribution payments in the event the covered employee changes
19 employment status; and contact information to learn more about the program;
20 and

21 (14) Annually prepare and adopt a written policy of investment risk
22 management that includes risk management and oversight activities. This
23 investment policy shall prohibit the board and program from borrowing for
24 investment purposes. The board shall consider the statement of investment
25 policy and make necessary changes at a public hearing. The policy of invest-
26 ment shall be presented in the annual report to the legislature.

27 67-9707. FIDUCIARY DUTY OF THE BOARD. (1) The board, the individual
28 members of the board, any person or entity contracted by the board, all per-
29 sons serving as staff to the program, or anyone representing the state of
30 Idaho shall:

31 (a) Discharge their duties solely in the interest of the program's ben-
32 eficiaries;

33 (b) Minimize expenses in the administration of the program; and

34 (c) Govern program investors with the care, skill, prudence, and dili-
35 gence as a prudent person acting in a like capacity would.

36 (2) The board may make and enter into arrangements including contracts,
37 agreements, memoranda of understanding, or other written instruments
38 designed to collaborate, cooperate, coordinate, contract, or combine re-
39 sources, investments, or administrative functions with other states or
40 their agencies or instrumentalities that may maintain or are establishing
41 retirement savings programs when they are compatible with the program. Such
42 arrangements may include shared, common, or pooled investments of program
43 funds with funds of other states' retirement programs as permitted by law.
44 Such arrangements with other states may be utilized to the extent necessary
45 or desirable for the effective and efficient design, administration, and
46 implementation of the program consistent with the purposes set forth in
47 this chapter. A primary purpose for multistate arrangements is to achieve
48 economies of scale and other efficiencies to minimize costs for the program
49 and its covered employers and covered employees.

1 67-9708. PROGRAM DESIGN AND INVESTMENT OPTIONS. The board shall re-
2 search and select administrative options and recommend investment models to
3 operate the program unilaterally for Idaho or to coordinate the program with
4 other states as those states pursue program development and enrollment of
5 similar retirement savings programs, to establish interstate agreements to
6 pool funds together to enhance investment opportunities, and to manage for
7 low administrative costs to covered employees.

8 67-9709. PROGRAM COMPONENTS. (1) The program shall include the fol-
9 lowing components developed by the treasurer and approved by the board:

10 (a) A process to facilitate voluntary enrollment into the program for
11 covered employers, covered employees, and self-employed persons;

12 (b) A default contribution rate or dollar amount and default invest-
13 ment option for a covered employee and procedures for a covered employee
14 to increase or decrease their respective level of payroll contribution
15 within the default contributions levels set by the board according to
16 limits allowed by the Internal Revenue Code;

17 (c) Mechanisms allowing a covered employer to withhold payroll deduc-
18 tions from a covered employee's paycheck for the express purpose of mak-
19 ing a covered employee contribution to the program funds;

20 (d) A process for direct deposit of contributions into covered employee
21 investments in the program. Covered employers are not allowed to make
22 employer contributions to the covered employee's accounts;

23 (e) Procedures for covered employees to make non-payroll contribu-
24 tions into an account in addition to covered employer payroll deducted
25 amounts;

26 (f) An account reporting system that requires separate records and ac-
27 counting for each covered employer and covered employee enrolled;

28 (g) An account status notification process for covered employees to be
29 notified about and track their investments pursuant to this chapter;

30 (h) Procedures to allow portability of benefits, including the ability
31 to make tax-free rollovers or transfers from accounts under the program
32 to other non-program retirement accounts or to tax-qualified plans that
33 accept such rollovers or transfers provided any rollover is initiated
34 by the covered employee;

35 (i) Requirements, procedures, and schedules for covered employee with-
36 drawals from their account for retirement purposes;

37 (j) Procedures to pool accounts as necessary under the program for opti-
38 mum investment opportunity and return on investment outcomes; and

39 (k) Policies and procedures to ensure that the state of Idaho and pri-
40 vate sector covered employers that participate in the program have no
41 proprietary interest in the contributions to or earnings from amounts
42 contributed to accounts established under the program.

43 (2) The board shall not implement the program if and to the extent that
44 it determines that the program is preempted by the employee retirement in-
45 come security act of 1974 (ERISA). The board shall implement the program,
46 governing policy, and all components thereof in as severable a fashion as
47 practicable. To the extent that the board determines some but not all of the
48 payroll deduction arrangements or other arrangements under the program are
49 or would be employee benefit plans under ERISA, the board shall proceed to

1 implement the program with respect to the other arrangements under the pro-
2 gram to the extent practicable.

3 67-9710. CONFIDENTIALITY OF COVERED EMPLOYEE ACCOUNT INFORMA-
4 TION. Individual account information for accounts under the program
5 developed pursuant to this chapter, including but not limited to names, ad-
6 dresses, telephone numbers, personal identification information, amounts
7 contributed, and earnings on amounts contributed, is confidential and shall
8 be maintained as confidential, except:

9 (1) To the extent necessary to administer the program developed under
10 this chapter, the tax laws of this state, and the Internal Revenue Code; or

11 (2) Unless the person who provides the information or is the subject of
12 the information expressly agrees in writing that the information may be dis-
13 closed.

14 67-9711. ANNUAL REPORTS. The Idaho work and save for retirement pro-
15 gram board shall report in each calendar year to the governor and to appro-
16 priate committees of the legislature detailing the board's activities.

17 67-9712. EFFECTIVE DATE AND PROGRAM TIMELINE. (1) This chapter shall
18 be effective on July 1, 2021, and by January 1, 2022, the board shall:

19 (a) Retain qualified staff and commence the administration functions
20 required pursuant to this chapter; and

21 (b) Adopt and deliver to the legislature a report that includes:

22 (i) A plan and timeline for the organization, formulation, admin-
23 istration, and implementation of this chapter; and

24 (ii) A description and request for any ongoing budgetary needs.

25 (2) The program established in this chapter shall be operational by
26 June 30, 2022.