

IN THE SENATE

SENATE BILL NO. 1068

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUST; PROVIDING
2 LEGISLATIVE FINDINGS; AMENDING SECTION 67-5333, IDAHO CODE, TO PROVIDE
3 FOR A VEBA TRUST SICK LEAVE ACCOUNT; AMENDING SECTION 67-5761C, IDAHO
4 CODE, TO PROVIDE FOR A VEBA TRUST SICK LEAVE ACCOUNT; AMENDING CHAPTER
5 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5761D,
6 IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF A VEBA TRUST; AND
7 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. LEGISLATIVE FINDINGS. (1) The Legislature finds that a re-
11 tired employee's sick leave funds are currently less accessible to retirees
12 when compared to a voluntary employees' beneficiary association (VEBA)
13 trust.

14 (2) The Legislature finds that it is a benefit to broaden the number and
15 variety of tax-exempt expense items to which employees' sick leave funds can
16 be applied.

17 (3) The Legislature finds that, since it was codified in federal tax law
18 in 1928, voluntary employees' beneficiary associations have had a benefi-
19 cial impact due to the tax-exempt status afforded to VEBA trust members under
20 26 U.S.C. 501(c) (9).

21 (4) The Legislature finds that public employees in the states of Mon-
22 tana and Washington are among those who have long enjoyed federal tax exemp-
23 tions on earnings derived from accrued funds following the creation of inde-
24 pendent VEBA trusts for public employees pursuant to 26 U.S.C. 501(c) (9).

25 (5) The Legislature finds that it is in the best interest of the sick
26 leave beneficiaries under section 67-5333, Idaho Code, to merge sick leave
27 funds held under section 67-5333, Idaho Code, with those of an established
28 VEBA trust that has previously qualified under 26 U.S.C. 501(c) (9).

29 (6) The Legislature finds that it is in the best interest of Idaho's
30 state employees to convert the sick leave fund under section 67-5333, Idaho
31 Code, to a VEBA trust in accordance with 26 U.S.C. 501(c) (9) and to authorize
32 the establishment of such a VEBA trust.

33 SECTION 2. That Section 67-5333, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 67-5333. SICK LEAVE. (1) Sick leave shall be computed as follows:

36 (a) The rate per hour at which sick leave shall accrue to eligible clas-
37 sified and nonclassified officers and employees earning credited state
38 service shall be at the rate represented by the proportion 96/2080.
39 Sick leave shall accrue without limit and shall be transferable from
40 department to department.

1 (b) Sick leave shall not accrue to any officer or employee on any kind
2 of leave of absence without pay, suspension without pay or layoff. Sick
3 leave shall accrue while an officer or employee is on approved leave
4 with pay, on approved vacation leave, on approved military leave with
5 pay, and on approved sick leave, but not when compensatory time is
6 taken.

7 (c) All accrued sick leave shall be forfeited at the time of separa-
8 tion from state service and no officer or employee shall be reimbursed
9 for accrued sick leave at the time of separation, except as provided in
10 subsection (2) of this section. If such officer or employee returns
11 to credited state service within three (3) years of such separation,
12 all sick leave credits accrued at the time of separation shall be rein-
13 stated, except to the extent that unused sick leave was utilized for the
14 purposes specified in subsection (2) of this section or transferred to a
15 school district or charter district pursuant to section 33-1217, Idaho
16 Code.

17 (d) Sick leave shall be taken on a workday basis. Regularly scheduled
18 days off and officially designated holidays falling within a period of
19 sick leave shall not be counted against sick leave. Sick leave shall not
20 be taken in advance of being earned and shall only be taken in pay peri-
21 ods subsequent to being earned.

22 (e) In cases where absences for sick leave exceed three (3) consecu-
23 tive working days, the appointing authority may require verification by
24 a physician or other authorized practitioner.

25 (f) If an absence for illness or injury extends beyond the sick leave
26 accrued to the credit of the officer or employee, the officer or em-
27 ployee may be granted leave without pay.

28 (g) The administrator shall prescribe additional requirements for
29 sick leave for classified and nonclassified officers and employees on
30 a part-time or irregular schedule, for maintaining sick leave records,
31 for funeral leave and such other applicable purposes as necessary.

32 (2) Unused sick leave may be used as follows:

33 (a) Upon separation from state employment by retirement in accordance
34 with chapter 13, title 59, or chapter 1, title 33, Idaho Code, an em-
35 ployee's unused sick leave shall be determined based on accumulated
36 sick leave earned subsequent to July 1, 1976, and shall be reported by
37 the employer to the public employee retirement system. Upon separa-
38 tion from state employment by retirement in accordance with chapter
39 20, title 1, Idaho Code, an employee's unused sick leave shall be de-
40 termined based on accumulated sick leave earned subsequent to July 1,
41 2000, and shall be reported by the employer to the public employee re-
42 tirement system. A sum equal to one-half (1/2), or the maximum amount
43 allowed by paragraph (b) of this subsection, whichever is the lesser,
44 of the monetary value of such unused sick leave, calculated at the rate
45 of pay for such employee at the time of retirement, as determined by
46 the retirement board, shall be transferred from the sick leave account
47 provided by paragraph (c) of this subsection and shall be credited to
48 such employee's retirement account. Such sums shall be used by the
49 Idaho public employee retirement board to pay premiums, as permitted by
50 and subject to applicable federal tax laws and limits, for such health,

1 dental, vision, long-term care, prescription drug and life insurance
 2 programs as may be maintained by the state, to the extent of the funds
 3 credited to the employee's account pursuant to this section. Upon an
 4 employee's death, any unexpended sums remaining in the account shall
 5 revert to the sick leave account.

6 (b) For the purposes of determining the monetary value of unused sick
 7 leave, the maximum unused sick leave which may be considered shall be:

8 (i) During the first ten thousand four hundred (10,400) hours of
 9 credited state service, the maximum unused sick leave which may be
 10 considered shall be four hundred twenty (420) hours;

11 (ii) During the second ten thousand four hundred (10,400) hours of
 12 credited state service, the maximum unused sick leave which may be
 13 considered shall be four hundred eighty (480) hours;

14 (iii) During the third ten thousand four hundred (10,400) hours of
 15 credited state service, the maximum unused sick leave which may be
 16 considered shall be five hundred forty (540) hours;

17 (iv) Thereafter, the maximum unused sick leave which may be con-
 18 sidered shall be six hundred (600) hours; and

19 (v) For any employees of a state educational agency with unused
 20 sick leave that includes sick leave credited pursuant to section
 21 33-1217, Idaho Code, the credited state service requirements of
 22 subsection (2) (b) (i) through (iv) of this section shall not apply,
 23 but the maximum unused sick leave which may be considered shall be
 24 six hundred (600) hours.

25 (c) ~~Each employer in state government shall contribute to a sick leave~~
 26 ~~account maintained by the public employee retirement system in trust~~
 27 ~~exclusively for the purpose of the provisions of this section. The~~
 28 ~~retirement board shall serve as trustee of the trust and shall be indem-~~
 29 ~~nified to the same extent as provided in section 59-1305, Idaho Code.~~
 30 ~~Assets in the trust shall not be assignable or subject to execution,~~
 31 ~~garnishment or attachment or to the operation of any bankruptcy or in-~~
 32 ~~solvency law. The rate of such contribution each pay period shall con-~~
 33 ~~sist of a percentage of employees' salaries as determined by the board~~
 34 ~~and such rate shall remain in effect until next determined by the board.~~
 35 ~~Any excess balance in the sick leave account shall be invested, a sick~~
 36 ~~leave account that is a voluntary employees' beneficiary association~~
 37 ~~(VEBA) trust sick leave account. Pursuant to section 67-5761D, Idaho~~
 38 ~~Code, any excess balance in the VEBA trust sick leave account shall~~
 39 ~~be invested by the VEBA trust board, and the earnings therefrom shall~~
 40 ~~accrue to the VEBA trust sick leave account except the amount required~~
 41 ~~by the board to defray administrative expenses. Assets of the trust~~
 42 ~~may be commingled for investment purposes with other assets managed by~~
 43 ~~the retirement board. All moneys payable to the VEBA trust sick leave~~
 44 ~~account are hereby perpetually appropriated to the retirement board and~~
 45 ~~shall not be included in its departmental budget. The state insurance~~
 46 ~~fund and public health districts shall be considered employers in state~~
 47 ~~government for purposes of participation under this section.~~

48 SECTION 3. That Section 67-5761C, Idaho Code, be, and the same is hereby
 49 amended to read as follows:

1 67-5761C. HEALTH REIMBURSEMENT ARRANGEMENTS FOR STATE EMPLOYEES. (1)
 2 ~~The department of administration Pursuant to the provisions of this chap-~~
 3 ~~ter, the state of Idaho~~ may offer a health reimbursement arrangement as an
 4 approved benefit for all state employees or officers whose employer chooses
 5 to offer such a benefit to its employees or officers. All state employees or
 6 officers shall, for themselves and their eligible dependents, participate
 7 in a health reimbursement arrangement if the employer of such employees and
 8 officers chooses to offer the health reimbursement arrangement.

9 (2) For purposes of this ~~section~~ chapter:

10 (a) "Health reimbursement arrangement" means an arrangement whereby
 11 employees may reimburse themselves for health care costs approved by
 12 the internal revenue service from a tax-exempt employee benefit trust
 13 known as a voluntary employees' beneficiary association.

14 (b) "Voluntary employees' beneficiary association" ~~(VEBA)~~ or "VEBA"
 15 means a tax-exempt employee benefit trust governed under section
 16 501(c)(9) of the Internal Revenue Code. A VEBA trust is managed by
 17 trustees elected by the employee members of the trust.

18 ~~(3) The department of administration may promulgate rules to implement~~
 19 ~~the provisions of this section.~~

20 SECTION 4. That Chapter 57, Title 67, Idaho Code, be, and the same is
 21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 22 ignated as Section 67-5761D, Idaho Code, and to read as follows:

23 67-5761D. VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUST. (1)
 24 The governor shall select an existing tax-exempt VEBA trust in possession of
 25 a favorable internal revenue service determination letter under 26 U.S.C.
 26 501(c)(9) dated no later than July 1, 2023, and whose members' employers
 27 are funded, at least in part, by Idaho taxing districts and share an employ-
 28 ment-related common bond under 26 U.S.C. 501(c)(9) with Idaho employees or
 29 retirees who have previously contributed to Idaho's sick leave program under
 30 section 67-5333, Idaho Code. The tax-exempt VEBA trust selected by the gov-
 31 ernor shall provide all members with an individual health care expense trust
 32 account consistent with their respective employer plans in order to pay the
 33 qualified health care expenses of members, their dependents, and their bene-
 34 ficiaries consistent with 26 U.S.C. 501(c)(9).

35 (2) Notwithstanding any other provision of this section, the board of
 36 directors for the VEBA trust shall incorporate additional board members
 37 according to its bylaws who are also members of the Idaho sick leave system
 38 under section 67-5333, Idaho Code. The newly configured trust board shall
 39 act as the independent administrator of the trust pursuant to 26 U.S.C.
 40 501(c)(9). Initial terms of VEBA trust board members, as well as future
 41 elections of VEBA trust board members, shall conform with the trust's bylaws
 42 and 26 U.S.C. 501(c)(9).

43 (3) The VEBA trust board, including new board member participants of
 44 the Idaho sick leave system under section 67-5333, Idaho Code, and the public
 45 employee retirement system of Idaho, shall merge the existing VEBA trust's
 46 funds, previously selected by the governor, with the Idaho sick leave funds
 47 under section 67-5333, Idaho Code, and the VEBA trust board shall determine
 48 the investment options to be offered to plan members.

1 (4) At any time after a member's account has been established, a member
2 may access account funds in a manner and amount prescribed by the VEBA trust
3 board. Pursuant to 26 U.S.C. 501(c)(9), account funds may be accessed only
4 for the payment of qualified health care expenses.

5 (5) Any unspent funds accrued to a retiree that become permanently
6 ineligible for future disbursements or payments shall revert to the VEBA
7 trust for investment, notwithstanding qualifying excess funds under section
8 67-5333(2)(c), Idaho Code.

9 (6) The VEBA trust board shall determine and pay administrative ex-
10 penses for VEBA trust expenses, including the implementation and management
11 of qualified retiree reimbursements, legal expenses, audit expenses, con-
12 sulting expenses, and any other expenses as determined by the VEBA trust
13 board consistent with 26 U.S.C. 501(c)(9).

14 SECTION 5. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after
16 July 1, 2023.