
SENATE BILL 6541

State of Washington

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By Senators Oemig, Fairley, Keiser, Ranker, Kohl-Welles, Pridemore, McDermott, Fraser, Kline, Hobbs, Murray, and Shin

Read first time 01/18/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to creating the Washington voluntary retirement
2 accounts program; amending RCW 43.33A.070; reenacting and amending RCW
3 43.84.092; and adding new sections to chapter 41.50 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that small and medium
6 sized businesses find it difficult to offer retirement plans because of
7 the complexity and costs. Businesses offering retirement plans have a
8 better ability to recruit and retain employees. The Washington
9 voluntary retirement accounts program provides a simple and cost-
10 effective way for employers to offer an important employee benefit.
11 The legislature also finds that many workers do not have access to an
12 employment-based retirement plan. Workers who are unable to build up
13 pensions and savings risk living on low incomes in their old age and
14 are more likely to become dependent on state services. The Washington
15 voluntary retirement accounts program provides a simple and inexpensive
16 way for workers to save for retirement.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply

1 throughout this subchapter unless the context clearly requires
2 otherwise.

3 (1) "Director" means the director of retirement systems.

4 (2) "Enrollee" means any worker in this state that is enrolled in
5 the program.

6 (3) "Participating employer" means any private employer, with a
7 place of business in this state, and with employees that have enrolled
8 in the program.

9 (4) "Program" means the Washington voluntary retirement accounts
10 program created under section 3 of this act.

11 (5) "Qualified employee" means those workers that are defined by
12 the federal internal revenue service to be eligible to participate in
13 a specific retirement plan.

14 NEW SECTION. **Sec. 3.** The Washington voluntary retirement accounts
15 program is created. The director is responsible for the implementation
16 and operation of the program, directly or by contract. Sections 4
17 through 6 of this act may not be implemented until appropriate federal
18 and/or philanthropic funds for start-up have been secured for deposit
19 into the Washington voluntary retirement accounts program
20 administrative account. Once start-up funding has been expended,
21 program implementation and operation is paid through fees on enrollee's
22 accounts. Funds from the department of retirement systems expense
23 account may not be used to administer the program or to obtain program
24 funding.

25 NEW SECTION. **Sec. 4.** Prior to the enrollment of any private
26 sector worker or employer in the program, the director shall design a
27 plan for the operation of the program. The program consists of a two-
28 tier system with one or more of the following: SIMPLE IRA-type program
29 or other internal revenue service approved employer plan, open to any
30 employer employing one hundred or fewer qualified employees who choose
31 to participate for their employees, and workplace-based individual
32 retirement accounts open to all workers. The director shall then seek
33 approval if necessary from the federal internal revenue service to
34 offer the plans and accounts to Washington employers and workers on a
35 tax-qualified basis. The plans and accounts must include the option
36 for enrollees to roll pretax contributions into an individual

1 retirement account or another eligible retirement plan after ceasing
2 participation in the program. A range of investment options must be
3 provided to meet the needs of investors with various levels of risk
4 tolerance and various ages. Funds offered should cover a range of
5 investment options from low risk to high risk and include options for
6 those who do not wish to actively manage their investments. The state
7 investment board shall provide investment options for participants to
8 choose from, and shall establish an investment plan for participants
9 who choose not to self-direct investments.

10 NEW SECTION. **Sec. 5.** Enrollment in the program is not an
11 entitlement and must not result in expenditures that exceed the amount
12 available in the Washington voluntary retirement accounts program
13 administrative account. If it appears that continued enrollment will
14 result in expenditures exceeding the amount available for a particular
15 fiscal year, the director may freeze new enrollments in the program and
16 establish a waiting list of eligible workers, or reduce enrollments.

17 NEW SECTION. **Sec. 6.** Following the design and approval of the
18 program under section 4 of this act, the director shall adopt all rules
19 necessary for the implementation and operation of the program. Rules
20 shall be written to comply with federal standards and may incorporate
21 federal recommendations that are in the best interests of enrollees and
22 the operations of the plan. As part of the rule development process,
23 the director shall consult with employers, workers, private sector
24 retirement plan administrators and providers, and any other individuals
25 or entities the director determines relevant to the development of an
26 effective and efficient method for operating the program.

27 NEW SECTION. **Sec. 7.** (1) The Washington voluntary retirement
28 accounts program principal account is created in the state treasury and
29 must be administered in compliance with applicable federal law and as
30 set forth in this section. The department may make arrangements with
31 financial institutions to serve as trustees or custodians of Washington
32 voluntary retirement accounts as may be required or advisable to comply
33 with applicable federal law and to provide for the efficient
34 implementation and administration of the program.

1 (2) The contributions elected by participating employees in
2 accordance with section 4 of this act must be paid into the Washington
3 voluntary retirement accounts program principal account and must be
4 sufficient to cover costs of administration and staffing in addition to
5 such other amounts as may be determined by the director. The account
6 may only be used to carry out the purposes of this subchapter.

7 (3) All moneys in the Washington voluntary retirement accounts
8 program principal account and the Washington voluntary retirement
9 accounts program administrative account, all property and rights
10 purchased therewith, and all income attributable thereto, is held in
11 trust by the state investment board, as set forth under RCW 43.33A.030,
12 for the exclusive benefit of the Washington voluntary retirement
13 accounts program participants and their beneficiaries, and,
14 notwithstanding any other provision of this or related acts, must be
15 held separate from other types of funds to the extent required by
16 federal law. Neither the participating employee, nor the participant's
17 beneficiary or beneficiaries, nor any other designee, has any right to
18 commute, sell, assign, transfer, or otherwise convey the right to
19 receive any payments under the program. These payments and rights are
20 nonassignable and nontransferable. Account balances are not subject to
21 attachment, garnishment, or execution and are not transferable by
22 operation of law in event of bankruptcy or insolvency, except to the
23 extent otherwise required by law.

24 (4) The state investment board has the full power to invest moneys
25 in the Washington voluntary retirement accounts program principal
26 account and the Washington voluntary retirement accounts program
27 administrative account in accordance with RCW 43.84.150, 43.33A.140,
28 and this subchapter, and cumulative investment directions received
29 under this subchapter. All investment and operating costs of the state
30 investment board associated with the investment of the program assets
31 must be paid under RCW 43.33A.160 and 43.84.160. With the exception of
32 these expenses, one hundred percent of all earnings from these
33 investments shall accrue directly to the Washington voluntary
34 retirement accounts program principal account.

35 (5)(a) No state board, commission, or agency, or any officer,
36 employee, or member thereof is liable for any loss or deficiency
37 resulting from participant investments selected under this subchapter.

1 (b) The state investment board, or any officer, employee, or member
2 thereof is not liable for any loss or deficiency resulting from
3 reasonable efforts to implement investment directions under this
4 subchapter.

5 (6) The Washington voluntary retirement accounts program
6 administrative account is created in the state treasury. Federal
7 appropriations or philanthropic grants received specifically for this
8 program must be deposited into the Washington voluntary retirement
9 accounts program administrative account. Expenses of the department
10 pertaining to the Washington voluntary retirement accounts program
11 including staffing and administrative expenses shall be paid out of the
12 Washington voluntary retirement accounts program administrative
13 account. Any excess balances credited to this account over
14 administrative expenses disbursed from this account shall be
15 transferred to the Washington voluntary retirement accounts program
16 principal account at such time and in such amounts as may be determined
17 by the director with the approval of the director of financial
18 management. Any deficiency into the Washington voluntary retirement
19 accounts program administrative account caused by an excess of
20 administrative expenses disbursed from this account shall be
21 transferred to this account from the Washington voluntary retirement
22 accounts program principal account.

23 (7)(a)(i) The director shall keep or cause to be kept full and
24 adequate accounts and records of the assets of each individual
25 participant, obligations, transactions, and affairs of the program.
26 The department shall account for and report on the investment of
27 program assets or may enter into an agreement with the state investment
28 board for accounting and reporting.

29 (ii) The director's duties related to individual participant
30 accounts include conducting the activities of trade instruction,
31 settlement activities, and direction of cash movement and related wire
32 transfers with the custodian bank and outside investment firms.

33 (iii) The director has sole responsibility for contracting with any
34 recordkeepers for individual participant accounts and shall manage the
35 performance of recordkeepers under those contracts. In establishing
36 contracts, the director shall give consideration to contracts that
37 assign primary liability for all tort and contract actions to the
38 contractor. In establishing the contracts, the department shall assume

1 secondary liability and joint and several liability must be preserved.
2 When considering a contract that assigns primary liability to the
3 contractor, the director shall determine the potential liability and
4 the costs and benefits of adding the liability considerations in this
5 subsection (7)(a)(iii) to contract language.

6 (b) The director may contract with private-sector financial
7 services firms to enroll eligible private-sector individuals and
8 workers in the Washington voluntary retirement accounts program. The
9 director may establish contracts with financial services firms for this
10 function.

11 (c)(i) The director's duties under (a)(ii) of this subsection do
12 not limit the authority of the state investment board to conduct its
13 responsibilities for asset management and balancing of program funds.

14 (ii) The state investment board has sole responsibility for
15 contracting with outside investment firms to provide investment
16 management for program funds and shall manage the performance of
17 investment managers under those contracts. In establishing contracts,
18 the state investment board shall give consideration to contracts that
19 assign primary liability for all tort and contract actions to the
20 contractor. In establishing the contracts, the state investment board
21 shall assume secondary liability and joint and several liability must
22 be preserved. When considering a contract that assigns primary
23 liability to the contractor, the state investment board shall determine
24 the potential liability and the costs and benefits of adding the
25 liability considerations in this subsection (7)(c)(ii) to contract
26 language.

27 (d) The state treasurer shall designate and define the terms of
28 engagement for the custodial banks.

29 **Sec. 8.** RCW 43.33A.070 and 1981 c 3 s 7 are each amended to read
30 as follows:

31 No member of the state investment board is liable for the
32 negligence, default, or failure of any other person or other member of
33 the board to perform the duties of the member's office and no member of
34 the board shall be considered or held to be an insurer of the funds or
35 assets of any of the trust and retirement funds, including funds or
36 assets of the voluntary retirement accounts program, nor is any

1 nonvoting member liable for actions performed with the exercise of
2 reasonable diligence within the scope of the member's authorized
3 activities as a member of the board.

4 **Sec. 9.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and
5 2009 c 451 s 8 are each reenacted and amended to read as follows:

6 (1) All earnings of investments of surplus balances in the state
7 treasury shall be deposited to the treasury income account, which
8 account is hereby established in the state treasury.

9 (2) The treasury income account shall be utilized to pay or receive
10 funds associated with federal programs as required by the federal cash
11 management improvement act of 1990. The treasury income account is
12 subject in all respects to chapter 43.88 RCW, but no appropriation is
13 required for refunds or allocations of interest earnings required by
14 the cash management improvement act. Refunds of interest to the
15 federal treasury required under the cash management improvement act
16 fall under RCW 43.88.180 and shall not require appropriation. The
17 office of financial management shall determine the amounts due to or
18 from the federal government pursuant to the cash management improvement
19 act. The office of financial management may direct transfers of funds
20 between accounts as deemed necessary to implement the provisions of the
21 cash management improvement act, and this subsection. Refunds or
22 allocations shall occur prior to the distributions of earnings set
23 forth in subsection (4) of this section.

24 (3) Except for the provisions of RCW 43.84.160, the treasury income
25 account may be utilized for the payment of purchased banking services
26 on behalf of treasury funds including, but not limited to, depository,
27 safekeeping, and disbursement functions for the state treasury and
28 affected state agencies. The treasury income account is subject in all
29 respects to chapter 43.88 RCW, but no appropriation is required for
30 payments to financial institutions. Payments shall occur prior to
31 distribution of earnings set forth in subsection (4) of this section.

32 (4) Monthly, the state treasurer shall distribute the earnings
33 credited to the treasury income account. The state treasurer shall
34 credit the general fund with all the earnings credited to the treasury
35 income account except:

36 The following accounts and funds shall receive their proportionate
37 share of earnings based upon each account's and fund's average daily

1 balance for the period: The aeronautics account, the aircraft search
2 and rescue account, the budget stabilization account, the capitol
3 building construction account, the Cedar River channel construction and
4 operation account, the Central Washington University capital projects
5 account, the charitable, educational, penal and reformatory
6 institutions account, the cleanup settlement account, the Columbia
7 river basin water supply development account, the common school
8 construction fund, the county arterial preservation account, the county
9 criminal justice assistance account, the county sales and use tax
10 equalization account, the data processing building construction
11 account, the deferred compensation administrative account, the deferred
12 compensation principal account, the department of licensing services
13 account, the department of retirement systems expense account, the
14 developmental disabilities community trust account, the drinking water
15 assistance account, the drinking water assistance administrative
16 account, the drinking water assistance repayment account, the Eastern
17 Washington University capital projects account, the education
18 construction fund, the education legacy trust account, the election
19 account, the energy freedom account, the energy recovery act account,
20 the essential rail assistance account, The Evergreen State College
21 capital projects account, the federal forest revolving account, the
22 ferry bond retirement fund, the freight congestion relief account, the
23 freight mobility investment account, the freight mobility multimodal
24 account, the grade crossing protective fund, the public health services
25 account, the health system capacity account, the personal health
26 services account, the high capacity transportation account, the state
27 higher education construction account, the higher education
28 construction account, the highway bond retirement fund, the highway
29 infrastructure account, the highway safety account, the high occupancy
30 toll lanes operations account, the industrial insurance premium refund
31 account, the judges' retirement account, the judicial retirement
32 administrative account, the judicial retirement principal account, the
33 local leasehold excise tax account, the local real estate excise tax
34 account, the local sales and use tax account, the medical aid account,
35 the mobile home park relocation fund, the motor vehicle fund, the
36 motorcycle safety education account, the multimodal transportation
37 account, the municipal criminal justice assistance account, the
38 municipal sales and use tax equalization account, the natural resources

1 deposit account, the oyster reserve land account, the pension funding
2 stabilization account, the perpetual surveillance and maintenance
3 account, the public employees' retirement system plan 1 account, the
4 public employees' retirement system combined plan 2 and plan 3 account,
5 the public facilities construction loan revolving account beginning
6 July 1, 2004, the public health supplemental account, the public
7 transportation systems account, the public works assistance account,
8 the Puget Sound capital construction account, the Puget Sound ferry
9 operations account, the Puyallup tribal settlement account, the real
10 estate appraiser commission account, the recreational vehicle account,
11 the regional mobility grant program account, the resource management
12 cost account, the rural arterial trust account, the rural Washington
13 loan fund, the site closure account, the small city pavement and
14 sidewalk account, the special category C account, the special wildlife
15 account, the state employees' insurance account, the state employees'
16 insurance reserve account, the state investment board expense account,
17 the state investment board commingled trust fund accounts, the state
18 patrol highway account, the state route number 520 corridor account,
19 the supplemental pension account, the Tacoma Narrows toll bridge
20 account, the teachers' retirement system plan 1 account, the teachers'
21 retirement system combined plan 2 and plan 3 account, the tobacco
22 prevention and control account, the tobacco settlement account, the
23 transportation 2003 account (nickel account), the transportation
24 equipment fund, the transportation fund, the transportation improvement
25 account, the transportation improvement board bond retirement account,
26 the transportation infrastructure account, the transportation
27 partnership account, the traumatic brain injury account, the tuition
28 recovery trust fund, the University of Washington bond retirement fund,
29 the University of Washington building account, the urban arterial trust
30 account, the volunteer firefighters' and reserve officers' relief and
31 pension principal fund, the volunteer firefighters' and reserve
32 officers' administrative fund, the Washington fruit express account,
33 the Washington judicial retirement system account, the Washington law
34 enforcement officers' and firefighters' system plan 1 retirement
35 account, the Washington law enforcement officers' and firefighters'
36 system plan 2 retirement account, the Washington public safety
37 employees' plan 2 retirement account, the Washington school employees'
38 retirement system combined plan 2 and 3 account, the Washington state

1 health insurance pool account, the Washington state patrol retirement
2 account, the Washington State University building account, the
3 Washington State University bond retirement fund, the Washington
4 voluntary retirement accounts program administrative account, the
5 Washington voluntary retirement accounts program principal account, the
6 water pollution control revolving fund, and the Western Washington
7 University capital projects account. Earnings derived from investing
8 balances of the agricultural permanent fund, the normal school
9 permanent fund, the permanent common school fund, the scientific
10 permanent fund, and the state university permanent fund shall be
11 allocated to their respective beneficiary accounts. All earnings to be
12 distributed under this subsection (4) shall first be reduced by the
13 allocation to the state treasurer's service fund pursuant to RCW
14 43.08.190.

15 (5) In conformance with Article II, section 37 of the state
16 Constitution, no treasury accounts or funds shall be allocated earnings
17 without the specific affirmative directive of this section.

18 NEW SECTION. **Sec. 10.** Private employers shall provide employees
19 with the opportunity to enroll in the program, including providing for
20 payroll deductions for those employees that enroll in the program.
21 Employers with employees enrolled in the program are authorized to
22 contract with the enrolled employees to defer or contribute a portion
23 of the enrolled employees' compensation, in accordance with the program
24 rules.

25 NEW SECTION. **Sec. 11.** The director shall report biennially to the
26 relevant committees of the legislature on the effectiveness and
27 efficiency of the program, including the levels of enrollment, the
28 financial status of the program, and the retirement savings levels of
29 participating enrollees.

30 NEW SECTION. **Sec. 12.** If any part of this act is found to be in
31 conflict with federal requirements that are a prescribed condition to
32 the allocation of federal funds to the state, the conflicting part of
33 this act is inoperative solely to the extent of the conflict and with
34 respect to the agencies directly affected, and this finding does not
35 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state.

4 NEW SECTION. **Sec. 13.** Sections 1 through 7 and 10 through 12 of
5 this act are each added to chapter 41.50 RCW under the new subchapter
6 heading "Washington voluntary retirement accounts program."

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