
**Consumer Protection & Business
Committee**

HB 2437

Brief Description: Incentivizing retirement savings options for Washington businesses and their employees.

Sponsors: Representatives Santos, Wylie and Reeves.

Brief Summary of Bill

- Establishes the Washington Multiple Employer Retirement Plan (plan) as a tax-deferred contribution plan administered by the state that employers may elect to participate in.
- Establishes the Washington Multiple Employer Retirement Board to design, implement, administer, operate, and manage the plan.
- Requires the Washington State Investment Board to be the plan investment manager.
- Sets forth plan requirements, disclosures, confidentiality requirements, and establishes limits on liability.

Hearing Date: 1/23/24

Staff: Megan Mulvihill (786-7304).

Background:

Employee Retirement Income Security Act of 1974.

The federal Employee Retirement Income Security Act of 1974 (ERISA) sets minimum standards for most voluntarily established retirement and health plans in private industry to

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provide protection for individuals in these plans. Governmental plans operated by a government for its own employees are generally exempt from ERISA rules. For a private employer, however, in order to qualify for the significant tax benefits available for both employers and employees, the employer must maintain adequate recordkeeping, fairness, and funding in their retirement plans as specified by the ERISA. The income tax related portions of the ERISA are regulated by the federal Internal Revenue Service, and other portions by the United States Department of Labor.

Washington State Small Business Retirement Marketplace.

The Small Business Retirement Marketplace (marketplace) was created by the Legislature in 2015. The marketplace is operated by the Department of Commerce. Statute requires the marketplace to provide a range of investment options to meet the needs of a diverse population. Options include a simple Individual Retirement Account (IRA) plan for employer contributions to participating enrollee accounts, and payroll deduction IRAs or workplace-based IRAs open to all workers in which the employer does not contribute to the employee's account. Employers are not required to participate in the marketplace.

Summary of Bill:

Washington State Multiple Employer Retirement Plan.

The Washington State Multiple Employer Retirement Plan (plan) is established. The plan must be designed, established, and operated by the Washington State Multiple Employer Retirement Board (Board) and must:

- be a tax-qualified, defined contribution plan under section 401(a) of the Internal Revenue Code (IRC), which includes a cash or deferred arrangement under section 401(k) of the IRC;
- be governed by ERISA;
- be either a multiple employer plan under ERISA and the IRC or a series of single-employer plans with combined administrative and investment structures;
- be available on a voluntary, opt-in basis to eligible employers and employees;
- provide participants the option to terminate their participation at any time;
- allow voluntary pretax or designated Roth 401(k) contributions;
- allow voluntary employer matching and nonmatching contributions;
- enroll participants at the default contribution rate;
- offer default escalation of contribution levels within the limits allowed by the IRC;
- allow participating employers to adopt rules and conditions in the plan documents regarding employee eligibility;
- pool plan accounts for investment;
- provide for the rules and procedures governing the payment of benefits, benefit portability, roll overs, and transfers;
- be professionally managed; and
- provide for the plan's administration in an efficient and cost-effective manner.

Employers who are eligible to participate in the plan must be engaged in a specific business,

industry, profession, trade, or other enterprise located in Washington, including a self-employed individual, that has been in business at all times during the preceding calendar year, but does not include federal, state, or foreign governmental entities.

Board Membership and Structure. The Board is established in the Office of the State Treasurer, and is comprised of:

- Nine voting members:
 - the State Treasurer;
 - the Chief Executive Officer of the Washington State Investment Board (WSIB); and
 - the following members appointed by the Governor:
 - two members representing the interests of small, independent businesses in Washington;
 - two members representing minority and women-owned businesses;
 - one member associated with the small business resiliency network under the Department of Commerce; and
 - two employee representatives, one of whom must be a current employee and one of whom must be retired; and
- Four nonvoting, ex officio members:
 - two members of the Senate, one from each of the two largest caucuses, appointed by the President of the Senate; and
 - two members of the House of Representatives, one from each of the two largest caucuses, appointed by the Speaker of the House of Representatives.

The State Treasurer is the chair of the Board, and voting members appointed by the Governor serve three-year terms with a lifetime maximum of two terms. Legislative members serve at the pleasure of the appointing authority. The Board must meet at least four times annually, with the inaugural meeting occurring before January 1, 2025. Five voting members constitute a quorum, and meetings may be held remotely.

Board Duties. The Board is the plan sponsor, administrator, and fiduciary of the plan. The Board must establish, implement, operate, and maintain the plan, along with arranging for and facilitating compliance with all applicable requirements under the IRC, ERISA, and other federal and state laws and accounting requirements. The Board must also assist eligible employers and employees with compliance. The board is responsible for applying for determination letters from the IRC that verify the plan satisfies qualification requirements. The Board has a variety of duties to the plan, including:

- hiring, retaining, and terminating a plan executive director and other staff necessary to administer the plan;
- making and entering into competitively procured contracts and agreements for the design, implementation, and administration of the plan, including for consultants, actuaries, investment advisors, investment administrators, investment management firms, and third-party administrators;
- causing moneys to be held, invested, and reinvested;
- arranging for collective, common, and pooled investment of plan assets;

- developing and implementing an investment policy;
- designating appropriate default investments that include a mix of asset classes;
- establishing the processes for plan enrollments, contributions, and distributions;
- establishing a process to verify whether a person or entity is an eligible employer;
- collecting fees to defray the plan's administrative costs while minimizing participant fees and expenses;
- establishing procedures for the timely and fair resolution of participant disputes;
- developing and implementing an outreach plan to gain input and disseminate information regarding the plan and to educate participants and citizens about the benefits of planning and saving for retirement;
- providing an opportunity for participating employers and participant feedback with an annual meeting;
- adopting necessary rules and procedures to implement, administer, and operate the plan; and
- discharging the Board's duties solely in the interest of participants.

The plan must be implemented and operational by January 1, 2027. The Board must submit an annual report to the Legislature and to participating employers and participants that provides information about the plan.

Investment Manager. The WSIB must be the plan's investment manager, and in consultation with the Board, has the full power to invest, reinvest, manage, contract, sell, or exchange plan funds. All investment and operating costs must be paid by participants and recovered under procedures agreed to by the Board and the WSIB. The plan assets must be invested and managed with reasonable care, skill, prudence, and diligence and in accordance with the investment policy established by the Board. The WSIB must routinely consult and communicate with the Board on the investment policy, performance, and plan needs.

Employer Information and Education. Prior to opening the plan for enrollment, the Board must design and disseminate to employers an information packet and an employee information packet, which include background information on the plan and required disclosures. Disclosures must include benefits and risks associated with plan participation, the mechanics of how an employee may join the plan, the process for applying for payment of retirement benefits, how to obtain additional plan information, and other information deemed relevant and necessary by the Board. In addition, disclosures must clearly articulate that participating employers are not liable for decisions employees make, and the plan fund is not guaranteed by the state.

Confidentiality. Individual account information is confidential and must be maintained as confidential, and is exempt from disclosure under the Public Records Act. Information may be disclosed to the extent necessary to administer the plan or if the individual who is the subject of the information expressly agrees in writing to disclose.

Limits on Liability. A participating employer is not a fiduciary with regards to plan operation, but must remit contribution amounts in a timely fashion. A participating employer is not

liable or bear responsibility for:

- an employee's decision to participate in or opt-out of the plan, or an employee's decision as to which investments to choose;
- participants' or the Board's investment decisions;
- the plan administration, investment, investment returns, or investment performance, including any interest rate or rate of return, providing a participating employer is not involved in the administration or investment of the plan;
- the plan design or the benefits paid to participants; or
- any loss, failure to realize gain, or any other adverse consequences incurred by a person as a result of participating in the plan.

The state, the Board, Board members, and any other state official, board, commission, or agency, or member or employee thereof, and the plan:

- may not guarantee any interest rate, rate of return, or investment performance; and
- is not liable or responsible for any loss, deficiency, failure to realize gain, or any other adverse consequences.

The debts, obligations, and contracts of the plan or the Board are not the debts, contracts, or obligations of the state, and neither the faith and credit nor the taxing power of the state is pledged directly or indirectly to the payment of debts, contracts, or obligations of the plan or the Board.

Accounts. The Washington State Multiple Employer Retirement Plan Administrative Account is created in the State Treasury as an appropriated and allotted account for plan administration and operating expenditures. The Washington State Multiple Employer Retirement Plan Trust Account (Trust Account) is also created in the custody of the State Treasury, must be operated as a trust with the Board serving as trustee for all moneys received from participating employers and participants, and is a nonappropriated and nonallotted account. Assets in the Trust Account are permitted to retain interest and are not considered state money, common cash, or revenue to the state.

Appropriation: None.

Fiscal Note: Requested on January 18, 2024.

Effective Date: There are multiple effective dates. Please see the bill.