
SUBSTITUTE SENATE BILL 5791

State of Washington

61st Legislature

2009 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Franklin, Keiser, Fraser, Jarrett, Kohl-Welles, Shin, and McDermott)

READ FIRST TIME 02/25/09.

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 NEW SECTION. **Sec. 3.** The Washington voluntary retirement accounts
12 program is created. The director is responsible for the implementation
13 and operation of the program, directly or by contract. Sections 4
14 through 6 of this act may not be implemented until appropriate federal
15 and/or philanthropic funds sufficient to support the program for the
16 first three years of the program's operation have been deposited in the
17 Washington voluntary retirement accounts program administrative
18 account. If, at the end of the third year after the program first
19 began accepting participating employees, one of the following has not
20 happened, either appropriate federal and/or philanthropic funds
21 sufficient to support the program for the next three years are
22 deposited in the Washington voluntary retirement accounts program
23 administrative account or the program has reached the size necessary to
24 be self-supporting with an appropriate level of administrative fees,
25 then the program terminates. If at the end of the sixth year after the
26 program first began accepting participating employees, the program has
27 not reached the size necessary to be self-supporting with an
28 appropriate level of administrative fees, the program terminates. In
29 the event that the program is terminated, the director shall, to the
30 extent permitted by federal law, enable members to transfer accumulated
31 funds into other tax-qualified retirement accounts. At no time shall
32 funds from the department of retirement systems expense account be used
33 to administer the program or to obtain program funding.

34 NEW SECTION. **Sec. 4.** Prior to the enrollment of any worker or
35 employer in the program, the director shall design a plan for the
36 operation of the program. The program shall consist of a two-tier

1 system with one or more of the following: A deferred compensation
2 401(k)-type program; SIMPLE IRA-type program; or other internal revenue
3 service approved employer plan, open to all employers who choose to
4 participate for their employees, and workplace-based individual
5 retirement accounts open to all workers. The director shall then seek
6 approval if necessary from the federal internal revenue service to
7 offer the plans and accounts to Washington employers and workers on a
8 tax-qualified basis. The plans and accounts must include the option
9 for enrollees to roll pretax contributions into an individual
10 retirement account or another eligible retirement plan after ceasing
11 participation in the program. A range of investment options must be
12 provided to meet the needs of investors with various levels of risk
13 tolerance and various ages. Funds offered should cover a range of
14 investment options from low risk to high risk and include options for
15 those that do not wish to actively manage their investments, such as
16 target date funds and annuities. The state investment board shall
17 provide investment options for participants to choose from, and shall
18 establish an investment plan for participants who choose not to self-
19 direct investments.

20 NEW SECTION. **Sec. 5.** Enrollment in the program is not an
21 entitlement and must not result in expenditures that exceed the amount
22 available in the Washington voluntary retirement accounts program
23 administrative account. If it appears that continued enrollment will
24 result in expenditures exceeding the amount available for a particular
25 fiscal year, the director may freeze new enrollments in the program and
26 establish a waiting list of eligible workers, or reduce enrollments.

27 NEW SECTION. **Sec. 6.** Following the design and approval of the
28 program under section 4 of this act, the director shall adopt all rules
29 necessary for the implementation and operation of the program. Rules
30 shall be written to comply with federal standards and may incorporate
31 federal recommendations that are in the best interests of enrollees and
32 the operations of the plan. As part of the rule development process,
33 the director shall consult with employers, workers, private sector
34 retirement plan administrators and providers, and any other individuals
35 or entities that the director determines relevant to the development of
36 an effective and efficient method for operating the program.

1 NEW SECTION. **Sec. 7.** (1) The Washington voluntary retirement
2 accounts program principal account is created in the state treasury and
3 shall be administered in compliance with applicable federal law and as
4 set forth in this section. The department shall make arrangements with
5 financial institutions to serve as trustees or custodians of Washington
6 voluntary accounts as may be required or advisable to comply with
7 applicable federal law and to provide for the efficient implementation
8 and administration of the program.

9 (2) The contributions elected by participating employees in
10 accordance with section 4 of this act shall be paid into the Washington
11 voluntary retirement accounts program principal account and shall be
12 sufficient to cover costs of administration and staffing in addition to
13 such other amounts as may be determined by the director. The account
14 shall be used to carry out the purposes of this subchapter.

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

32 (4) The state investment board has the full power to invest moneys
33 in the Washington voluntary retirement accounts program principal
34 account and the Washington voluntary retirement accounts program
35 administrative account in accordance with RCW 43.84.150, 43.33A.140,
36 and this subchapter, and cumulative investment directions received
37 under this subchapter. All investment and operating costs of the state
38 investment board associated with the investment of the program assets

1 shall be paid under RCW 43.33A.160 and 43.84.160. With the exception
2 of these expenses, one hundred percent of all earnings from these
3 investments shall accrue directly to the Washington voluntary
4 retirement accounts program principal account.

5 (5) To the extent allowed under federal law:

6 (a) No state board, commission, or agency, or any officer,
7 employee, or member thereof is liable for any loss or deficiency
8 resulting from participant investments selected under this subchapter;
9 and

10 (b) The state investment board, or any officer, employee, or member
11 thereof is not liable for any loss or deficiency resulting from
12 reasonable efforts to implement investment directions under this
13 subchapter.

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

31 (7)(a)(i) The director shall keep or cause to be kept full and
32 adequate accounts and records of the assets of each individual
33 participant, obligations, transactions, and affairs of the program.
34 The department shall account for and report on the investment of
35 program assets or may enter into an agreement with the state investment
36 board for accounting and reporting.

37 (ii) The director's duties related to individual participant

1 accounts include conducting the activities of trade instruction,
2 settlement activities, and direction of cash movement and related wire
3 transfers with the custodian bank and outside investment firms.

4 (iii) The director has sole responsibility for contracting with any
5 recordkeepers for individual participant accounts and shall manage the
6 performance of recordkeepers under those contracts.

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

10 (ii) The state investment board has sole responsibility for
11 contracting with outside investment firms to provide investment
12 management for program funds and shall manage the performance of
13 investment managers under those contracts.

14 (c) The state treasurer shall designate and define the terms of
15 engagement for the custodial banks.

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

18 No member of the state investment board is liable for the
19 negligence, default, or failure of any other person or other member of
20 the board to perform the duties of the member's office and no member of
21 the board shall be considered or held to be an insurer of the funds or
22 assets of any of the trust and retirement funds, including funds or
23 assets of the Washington voluntary retirement accounts program, nor is
24 any nonvoting member liable for actions performed with the exercise of
25 reasonable diligence within the scope of the member's authorized
26 activities as a member of the board.

27 **Sec. 9.** RCW 43.84.092 and 2008 c 128 s 19 and 2008 c 106 s 4 are
28 each reenacted and amended to read as follows:

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

32 (2) The treasury income account shall be utilized to pay or receive
33 funds associated with federal programs as required by the federal cash
34 management improvement act of 1990. The treasury income account is
35 subject in all respects to chapter 43.88 RCW, but no appropriation is
36 required for refunds or allocations of interest earnings required by

1 the cash management improvement act. Refunds of interest to the
2 federal treasury required under the cash management improvement act
3 fall under RCW 43.88.180 and shall not require appropriation. The
4 office of financial management shall determine the amounts due to or
5 from the federal government pursuant to the cash management improvement
6 act. The office of financial management may direct transfers of funds
7 between accounts as deemed necessary to implement the provisions of the
8 cash management improvement act, and this subsection. Refunds or
9 allocations shall occur prior to the distributions of earnings set
10 forth in subsection (4) of this section.

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

19 (4) Monthly, the state treasurer shall distribute the earnings
20 credited to the treasury income account. The state treasurer shall
21 credit the general fund with all the earnings credited to the treasury
22 income account except:

23 The following accounts and funds shall receive their proportionate
24 share of earnings based upon each account's and fund's average daily
25 balance for the period: The aeronautics account, the aircraft search
26 and rescue account, the budget stabilization account, the capitol
27 building construction account, the Cedar River channel construction and
28 operation account, the Central Washington University capital projects
29 account, the charitable, educational, penal and reformatory
30 institutions account, the cleanup settlement account, the Columbia
31 river basin water supply development account, the common school
32 construction fund, the county arterial preservation account, the county
33 criminal justice assistance account, the county sales and use tax
34 equalization account, the data processing building construction
35 account, the deferred compensation administrative account, the deferred
36 compensation principal account, the department of licensing services
37 account, the department of retirement systems expense account, the
38 developmental disabilities community trust account, the drinking water

1 assistance account, the drinking water assistance administrative
2 account, the drinking water assistance repayment account, the Eastern
3 Washington University capital projects account, the education
4 construction fund, the education legacy trust account, the election
5 account, the energy freedom account, the essential rail assistance
6 account, The Evergreen State College capital projects account, the
7 federal forest revolving account, the ferry bond retirement fund, the
8 freight congestion relief account, the freight mobility investment
9 account, the freight mobility multimodal account, the grade crossing
10 protective fund, the health services account, the public health
11 services account, the health system capacity account, the personal
12 health services account, the high capacity transportation account, the
13 state higher education construction account, the higher education
14 construction account, the highway bond retirement fund, the highway
15 infrastructure account, the highway safety account, the high occupancy
16 toll lanes operations account, the industrial insurance premium refund
17 account, the judges' retirement account, the judicial retirement
18 administrative account, the judicial retirement principal account, the
19 local leasehold excise tax account, the local real estate excise tax
20 account, the local sales and use tax account, the medical aid account,
21 the mobile home park relocation fund, the motor vehicle fund, the
22 motorcycle safety education account, the multimodal transportation
23 account, the municipal criminal justice assistance account, the
24 municipal sales and use tax equalization account, the natural resources
25 deposit account, the oyster reserve land account, the pension funding
26 stabilization account, the perpetual surveillance and maintenance
27 account, the public employees' retirement system plan 1 account, the
28 public employees' retirement system combined plan 2 and plan 3 account,
29 the public facilities construction loan revolving account beginning
30 July 1, 2004, the public health supplemental account, the public
31 transportation systems account, the public works assistance account,
32 the Puget Sound capital construction account, the Puget Sound ferry
33 operations account, the Puyallup tribal settlement account, the real
34 estate appraiser commission account, the recreational vehicle account,
35 the regional mobility grant program account, the resource management
36 cost account, the rural arterial trust account, the rural Washington
37 loan fund, the safety and education account, the site closure account,
38 the small city pavement and sidewalk account, the special category C

1 account, the special wildlife account, the state employees' insurance
2 account, the state employees' insurance reserve account, the state
3 investment board expense account, the state investment board commingled
4 trust fund accounts, the state patrol highway account, the supplemental
5 pension account, the Tacoma Narrows toll bridge account, the teachers'
6 retirement system plan 1 account, the teachers' retirement system
7 combined plan 2 and plan 3 account, the tobacco prevention and control
8 account, the tobacco settlement account, the transportation 2003
9 account (nickel account), the transportation equipment fund, the
10 transportation fund, the transportation improvement account, the
11 transportation improvement board bond retirement account, the
12 transportation infrastructure account, the transportation partnership
13 account, the traumatic brain injury account, the tuition recovery trust
14 fund, the University of Washington bond retirement fund, the University
15 of Washington building account, the urban arterial trust account, the
16 volunteer firefighters' and reserve officers' relief and pension
17 principal fund, the volunteer firefighters' and reserve officers'
18 administrative fund, the Washington fruit express account, the
19 Washington judicial retirement system account, the Washington law
20 enforcement officers' and firefighters' system plan 1 retirement
21 account, the Washington law enforcement officers' and firefighters'
22 system plan 2 retirement account, the Washington public safety
23 employees' plan 2 retirement account, the Washington school employees'
24 retirement system combined plan 2 and 3 account, the Washington state
25 health insurance pool account, the Washington state patrol retirement
26 account, the Washington State University building account, the
27 Washington State University bond retirement fund, the Washington
28 voluntary retirement accounts program administrative account, the
29 Washington voluntary retirement accounts program principal account, the
30 water pollution control revolving fund, and the Western Washington
31 University capital projects account. Earnings derived from investing
32 balances of the agricultural permanent fund, the normal school
33 permanent fund, the permanent common school fund, the scientific
34 permanent fund, and the state university permanent fund shall be
35 allocated to their respective beneficiary accounts. All earnings to be
36 distributed under this subsection (4)(a) shall first be reduced by the
37 allocation to the state treasurer's service fund pursuant to RCW
38 43.08.190.

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

4 NEW SECTION. **Sec. 10.** Private employers may provide employees
5 with the opportunity to enroll in the program, including providing for
6 payroll deductions for those employees that enroll in the program.
7 Employers with employees enrolled in the program are authorized to
8 contract with the enrolled employees to defer or contribute a portion
9 of the enrolled employees' compensation, in accordance with the program
10 rules.

11 NEW SECTION. **Sec. 11.** The director shall report biennially to the
12 relevant committees of the legislature on the effectiveness and
13 efficiency of the program, including the levels of enrollment, the
14 financial status of the program, and the retirement savings levels of
15 participating enrollees.

16 NEW SECTION. **Sec. 12.** If any part of this act is found to be in
17 conflict with federal requirements, the conflicting part of this act is
18 inoperative solely to the extent of the conflict and with respect to
19 the agencies directly affected, and this finding does not affect the
20 operation of the remainder of this act in its application to the
21 agencies concerned.

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

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