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SECOND SUBSTITUTE SENATE BILL 5791

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State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Hobbs, Franklin, Keiser, Fraser, Jarrett, Kohl-Welles, Shin, and McDermott)

READ FIRST TIME 03/02/09.

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. Any deferred compensation  
6 401(k)-type program or other employer-sponsored program shall be open  
7 only to employers employing fewer than one hundred employees at the  
8 time of enrollment. An employee enrolled in an individual retirement  
9 account program shall not be permitted to contribute more than twenty-  
10 five thousand dollars to his or her individual retirement account. The  
11 director shall then seek approval if necessary from the federal  
12 internal revenue service to offer the plans and accounts to Washington  
13 employers and workers on a tax-qualified basis. The plans and accounts  
14 must include the option for enrollees to roll pretax contributions into  
15 an individual retirement account or another eligible retirement plan  
16 after ceasing participation in the program. A range of investment  
17 options must be provided to meet the needs of investors with various  
18 levels of risk tolerance and various ages. Funds offered should cover  
19 a range of investment options from low risk to high risk and include  
20 options for those that do not wish to actively manage their  
21 investments, such as target date funds and annuities. The state  
22 investment board shall provide investment options for participants to  
23 choose from, and shall establish an investment plan for participants  
24 who choose not to self-direct investments.

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

32 NEW SECTION. **Sec. 6.** Following the design and approval of the  
33 program under section 4 of this act, the director shall adopt all rules  
34 necessary for the implementation and operation of the program. Rules  
35 shall be written to comply with federal standards and may incorporate  
36 federal recommendations that are in the best interests of enrollees and

1 the operations of the plan. As part of the rule development process,  
2 the director shall consult with employers, workers, private sector  
3 retirement plan administrators and providers, and any other individuals  
4 or entities that the director determines relevant to the development of  
5 an effective and efficient method for operating the program.

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

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

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

1 (4) The state investment board has the full power to invest moneys  
2 in the Washington voluntary retirement accounts program principal  
3 account and the Washington voluntary retirement accounts program  
4 administrative account in accordance with RCW 43.84.150, 43.33A.140,  
5 and this subchapter, and cumulative investment directions received  
6 under this subchapter. All investment and operating costs of the state  
7 investment board associated with the investment of the program assets  
8 shall be paid under RCW 43.33A.160 and 43.84.160. With the exception  
9 of these expenses, one hundred percent of all earnings from these  
10 investments shall accrue directly to the Washington voluntary  
11 retirement accounts program principal account.

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

13 (a) No state board, commission, or agency, or any officer,  
14 employee, or member thereof is liable for any loss or deficiency  
15 resulting from participant investments selected under this subchapter;  
16 and

17 (b) The state investment board, or any officer, employee, or member  
18 thereof is not liable for any loss or deficiency resulting from  
19 reasonable efforts to implement investment directions under this  
20 subchapter.

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

1 (7)(a)(i) The director shall keep or cause to be kept full and  
2 adequate accounts and records of the assets of each individual  
3 participant, obligations, transactions, and affairs of the program.  
4 The department shall account for and report on the investment of  
5 program assets or may enter into an agreement with the state investment  
6 board for accounting and reporting.

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

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

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

17 (ii) The state investment board has sole responsibility for  
18 contracting with outside investment firms to provide investment  
19 management for program funds and shall manage the performance of  
20 investment managers under those contracts.

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

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

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

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

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

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

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

27 (4) Monthly, the state treasurer shall distribute the earnings  
28 credited to the treasury income account. The state treasurer shall  
29 credit the general fund with all the earnings credited to the treasury  
30 income account except:

31 The following accounts and funds shall receive their proportionate  
32 share of earnings based upon each account's and fund's average daily  
33 balance for the period: The aeronautics account, the aircraft search  
34 and rescue account, the budget stabilization account, the capitol  
35 building construction account, the Cedar River channel construction and  
36 operation account, the Central Washington University capital projects  
37 account, the charitable, educational, penal and reformatory  
38 institutions account, the cleanup settlement account, the Columbia

1 river basin water supply development account, the common school  
2 construction fund, the county arterial preservation account, the county  
3 criminal justice assistance account, the county sales and use tax  
4 equalization account, the data processing building construction  
5 account, the deferred compensation administrative account, the deferred  
6 compensation principal account, the department of licensing services  
7 account, the department of retirement systems expense account, the  
8 developmental disabilities community trust account, the drinking water  
9 assistance account, the drinking water assistance administrative  
10 account, the drinking water assistance repayment account, the Eastern  
11 Washington University capital projects account, the education  
12 construction fund, the education legacy trust account, the election  
13 account, the energy freedom account, the essential rail assistance  
14 account, The Evergreen State College capital projects account, the  
15 federal forest revolving account, the ferry bond retirement fund, the  
16 freight congestion relief account, the freight mobility investment  
17 account, the freight mobility multimodal account, the grade crossing  
18 protective fund, the health services account, the public health  
19 services account, the health system capacity account, the personal  
20 health services account, the high capacity transportation account, the  
21 state higher education construction account, the higher education  
22 construction account, the highway bond retirement fund, the highway  
23 infrastructure account, the highway safety account, the high occupancy  
24 toll lanes operations account, the industrial insurance premium refund  
25 account, the judges' retirement account, the judicial retirement  
26 administrative account, the judicial retirement principal account, the  
27 local leasehold excise tax account, the local real estate excise tax  
28 account, the local sales and use tax account, the medical aid account,  
29 the mobile home park relocation fund, the motor vehicle fund, the  
30 motorcycle safety education account, the multimodal transportation  
31 account, the municipal criminal justice assistance account, the  
32 municipal sales and use tax equalization account, the natural resources  
33 deposit account, the oyster reserve land account, the pension funding  
34 stabilization account, the perpetual surveillance and maintenance  
35 account, the public employees' retirement system plan 1 account, the  
36 public employees' retirement system combined plan 2 and plan 3 account,  
37 the public facilities construction loan revolving account beginning  
38 July 1, 2004, the public health supplemental account, the public



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

1 University capital projects account. Earnings derived from investing  
2 balances of the agricultural permanent fund, the normal school  
3 permanent fund, the permanent common school fund, the scientific  
4 permanent fund, and the state university permanent fund shall be  
5 allocated to their respective beneficiary accounts. All earnings to be  
6 distributed under this subsection (4)(a) shall first be reduced by the  
7 allocation to the state treasurer's service fund pursuant to RCW  
8 43.08.190.

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

12 NEW SECTION. **Sec. 10.** Eligible private employers may provide  
13 employees with the opportunity to enroll in the program, including  
14 providing for payroll deductions for those employees that enroll in the  
15 program. Employers with employees enrolled in the program are  
16 authorized to contract with the enrolled employees to defer or  
17 contribute a portion of the enrolled employees' compensation, in  
18 accordance with the program rules.

19 NEW SECTION. **Sec. 11.** The director shall report biennially to the  
20 relevant committees of the legislature on the effectiveness and  
21 efficiency of the program, including the levels of enrollment, the  
22 financial status of the program, and the retirement savings levels of  
23 participating enrollees.

24 NEW SECTION. **Sec. 12.** If any part of this act is found to be in  
25 conflict with federal requirements, the conflicting part of this act is  
26 inoperative solely to the extent of the conflict and with respect to  
27 the agencies directly affected, and this finding does not affect the  
28 operation of the remainder of this act in its application to the  
29 agencies concerned.

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

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