

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

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AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2940

Introduced by Assembly Member De Leon
*(Principal coauthors: Assembly Members Carter, Coto, Hernandez,
Lieu, and Ma)*

February 22, 2008

An act to amend Section 21670 of, and to add Title 25 (commencing with Section 100000) to, the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2940, as amended, De Leon. Retirement: California Employee Savings Program.

Existing

(1) Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would create the California Employee Savings Program, to which would be operative only upon a specified appropriation in the annual Budget Act. The program would be administered by the Board of Administration of the Public Employees' Retirement System (PERS), with the intent of promoting greater retirement savings for California private employees in a convenient, low-cost, and portable manner. The bill would require ~~PERS~~ the board, under this program, to offer one or

more individual retirement accounts or individual retirement annuities, *as specified*, to eligible employees of ~~all participating~~ eligible employers, as defined, ~~who participate~~. The bill would specify that eligible employees of participating employers are not members of PERS. The bill would ~~require PERS~~ *permit the board* in initiating and administering the program to, among other things, employ staff and 3rd-party administrators, as necessary, collaborate with various entities in the private sector, recover expenses from contributions or investment returns, as specified, and create a process to ~~allow an~~ *require a participating* employer to forward employee contributions to the program through the Employment Development Department system currently used to collect payroll taxes. *The bill would require the Employment Development Department to cooperate in this regard.* The bill would authorize the Employment Development Department to seek reimbursement for any administrative costs associated with implementing the program. The bill would require ~~PERS~~ *the board* to make reports to employers on the progress and status of the program. ~~The~~

The bill would also require PERS the board to make specified reports to the Legislature, including a report at least 90 days prior to implementing the program, a report if it finds *that the program economically unfeasible is not self-sustaining*, and annual reports on the status of the program, as specified. ~~The bill would require PERS to allow employers without retirement plans to contribute and to match employee contributions.~~ The bill would require ~~PERS~~ *the board* to keep program funds and accounts separate from those of PERS and would prohibit the use of funds in ~~the PERS defined benefit plan~~, *as specified*, to implement or administer the program. In addition, the bill would require that all expenses and obligations created by the program be funded by its contributions, returns, and assets, except as the Legislature may appropriate funds for this purpose, *to be deposited in the California Employee Savings Program Administrative Fund, which this bill would establish as a continuously appropriated fund.* The bill would require PERS to obtain the necessary approvals from federal authorities for the program's implementation ~~in order not to jeopardize the status of existing retirement programs for public employees, and would provide that the program will not be made available until all approvals that PERS deems necessary are obtained.~~ *The bill would prohibit any claim, tax lien, or other right of set off from applying to funds or assets of the program, as specified.* The bill would indemnify from the General Fund

and hold harmless the present, former, and future board members, officers, employees of, and investment managers under contract with, PERS in connection with any decision or action related to the administration of the program. ~~The bill would make operation of these provisions contingent upon appropriation in the annual Budget Act of moneys sufficient to implement these provisions.~~ *The bill would provide that the program may only be implemented if the board determines that certain conditions are satisfied, and would permit the board to discontinue the program on its determination, as specified. The bill would permit the board to adopt regulations in regard to the program, and would provide that the adoption, amendment, or repeal of a regulation is exempted from the rulemaking provisions of the Administrative Procedure Act.* The bill would also make a statement of findings.

(2) Existing law authorizes the PERS Board of Administration to establish a deferred compensation program for California public employees. The board is required to make the program available to all employees of an employer, as defined, under procedures established by the board, except as specified.

This bill would extend the availability of this program to include state employees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Currently, 6 million Californians, 43 percent of the state's
- 3 workforce, work at a job that does not offer them a pension or
- 4 retirement savings plan to supplement social security.
- 5 (b) Social security payments alone, which average \$1,081 per
- 6 month in California, will not sustain Californians in their
- 7 retirement. Seniors without savings may be more likely to require
- 8 government assistance with housing, medical care, and other
- 9 necessities.
- 10 (c) Though investments in savings accounts have increased over
- 11 time, investments from low-income small businesses, or
- 12 short-tenured and transient employees, are strikingly low and have
- 13 not increased at the same rate.

1 (d) Nationally, two out of three low-wage workers lack access
2 to an employer-sponsored retirement plan, while only one in four
3 high-wage workers do. Nearly 65 percent of low-income workers,
4 those earning less than \$40,000 per year, do not participate in
5 employer plans, according to the Congressional Budget Office.

6 (e) Only 26 percent of full-time, full-year private sector workers
7 in businesses with fewer than 25 employees participated in a
8 pension plan in 2004, compared with 69 percent of those employed
9 by companies with 500 or more employees. Complexity and cost
10 of administering retirement systems may prevent small companies,
11 in comparison to larger corporations, from creating retirement
12 plans for their employees.

13 (f) Low investment participation rates in retirement plans can
14 also be attributed to a worker losing coverage access after moving
15 into a new job with a new business.

16 (g) Workers today are spending more than they are saving,
17 relying more on credit, and thus accruing debt and putting their
18 future financial security at risk. Nationally, the personal savings
19 rate for individuals has fallen to 0.5 percent of income for 2007.
20 At this rate, even with social security benefits, Californians will
21 not be able to afford retirement.

22 (h) California workers without access to an employer-sponsored
23 retirement plan need a seamless, lifelong savings system, providing
24 them with the opportunity to build their assets and helping them
25 to attain their financial stability and future through a secure,
26 portable savings account.

27 (i) In creating this system, California would supplement existing
28 savings options, at no cost to taxpayers.

29 (j) The California Employee Savings Program is hereby
30 established by this act to promote expanded retirement security
31 for working Californians' employers' sponsorship of retirement
32 plans for their employees.

33 *SEC. 2. Section 21670 of the Government Code is amended to*
34 *read:*

35 21670. The board may establish a deferred compensation
36 program for California public employees. The program shall be
37 made available *to all state employees and* to all employees of an
38 employer under procedures established by the board unless
39 participation is subject to the terms of any memorandums of
40 understanding between the employer and the employees.

1 ~~SEC. 2.~~

2 SEC. 3. Title 25 (commencing with Section 100000) is added
3 to the Government Code, to read:

4

5 TITLE 25. CALIFORNIA EMPLOYEE SAVINGS PROGRAM

6

7 100000. For purposes of this title:

8 (a) “Board” means the Board of Administration of the Public
9 Employees’ Retirement System.

10 (b) “Eligible employer” means a person or entity engaged in a
11 business, industry, profession, trade, or other enterprise in the state,
12 whether for profit or not for profit, but excluding the state, any
13 county, any municipal corporation, or any of its units or
14 instrumentalities, and that satisfies the requirements to establish
15 or participate in a SIMPLE plan or a payroll deposit IRA
16 arrangement. An eligible employer shall only provide services
17 under the program to eligible employees. An eligible employer
18 does not include any employer to the extent that the employer
19 replaces a preexisting retirement plan with a plan provided for by
20 this title.

21 (c) “Eligible employee” means a person who is an employee of
22 an eligible employer.

23 (d) “ERISA” means the Employee Retirement Income Security
24 Act of 1974, as amended.

25 (e) “IRA” means an individual retirement account or individual
26 retirement annuity under Section 408 or 408A of the Internal
27 Revenue Code of 1986.

28 (f) “Participating employer” means an eligible employer that
29 maintains or participates in a plan or payroll deposit IRA
30 arrangement provided for by this title for eligible employees.

31 (g) “Payroll deposit IRA arrangement” means an arrangement
32 by which an employer makes its payroll system available to
33 employees as a conduit for transferring salary reduction
34 contributions to IRAs.

35 (h) “Program” means the California Employee Savings Program
36 established by this title.

37 (i) “SIMPLE plan” means a SIMPLE IRA program under
38 Section 408(p) of the Internal Revenue Code of 1986.

39 (j) “System” means the Public Employees’ Retirement System.

1 100002. (a) There is hereby established ~~in the system~~ a
2 retirement savings program known as the California Employee
3 Savings Program *to be administered by the board* with the intent
4 of promoting greater retirement savings for California private
5 employees in a convenient, low-cost, and portable manner. The
6 California Employee Savings Program is a voluntary, universal,
7 portable retirement account for California private employees.

8 (b) The program shall include, as determined by the ~~system~~
9 *board*, one or more of the following components:

10 ~~(1) One or more SIMPLE IRA plans for the employees of~~
11 ~~participating employers.~~

12 ~~(2) One or more payroll deposit IRA arrangements for the~~
13 ~~employees of participating employers.~~

14 ~~(3) Other IRAs for employees of participating employers.~~

15 ~~(e) The elements of the program established pursuant to~~
16 ~~subdivision (b) shall include, as the system may determine:~~

17 ~~(1) One or more payroll deposit IRA arrangements for the~~
18 ~~employees of participating employers.~~

19 ~~(2) One or more traditional IRA arrangements.~~

20 ~~(3) One or more SIMPLE IRA plans for the employees of~~
21 ~~participating employers.~~

22 ~~(4) Other IRAs for employees of participating employers.~~

23 ~~(c) Pursuant to the authority granted under this title, the board~~
24 ~~may establish the following:~~

25 ~~(1) Prototype or master and prototype plans or IRAs.~~

26 ~~(2) Multiple employer plans.~~

27 ~~(3) Group administrative service arrangements that allow eligible~~
28 ~~employers to achieve economies of scale with respect to their~~
29 ~~retirement savings arrangements relating to investment, accounting,~~
30 ~~payroll processing, employee communications, and investor~~
31 ~~education.~~

32 ~~(4) Group investment vehicles for the plans or IRAs.~~

33 ~~(5) Custodial or trustee arrangements for payroll deposit~~
34 ~~programs or for other plans or IRAs.~~

35 (d) Participating employers and their eligible employees do not
36 become members of, or participants in, the Public Employees'
37 Retirement System. The California Employee Savings Program
38 does not create a new or separate public pension or retirement
39 system.

1 100004. ~~The system shall~~ To initiate, implement, maintain,
2 and administer the program ~~and, in these capacities, shall, the~~
3 *board may*:

4 (a) ~~Employ staff and retain staff.~~
5 (b) *Retain* and contract with private financial institutions, other
6 financial and service providers, consultants, third-party
7 administrators, and other professionals as necessary, *without regard*
8 *to provisions regarding competitive bidding.*

9 ~~(b)~~
10 (c) Collaborate and cooperate with private financial institutions,
11 service providers, business, financial, trade, membership, and other
12 organizations to the extent necessary or desirable for the effective
13 and efficient implementation of the program and to maximize
14 outreach ~~to employers and individuals~~ *eligible employers and*
15 *eligible employees.*

16 ~~(e)~~
17 (d) Cause expenses incurred to initiate, implement, maintain,
18 and administer the program, to be paid from contributions to, or
19 investment returns or assets of the program or plans or IRAs
20 established under the program, to the extent permitted under federal
21 law, except for expenditures that are provided for through
22 appropriations from the Legislature.

23 ~~(d)~~
24 (e) Facilitate compliance by the plans and IRAs established
25 under the program with all applicable requirements for the plans
26 under the Internal Revenue Code of 1986, including tax
27 qualification requirements, ~~or, where applicable, ERISA,~~ or any
28 other applicable law and accounting requirements, including
29 providing or arranging for assistance to plan sponsors and
30 individuals in complying with applicable law and tax qualification
31 requirements in a cost-effective manner.

32 ~~(e) Cause the plans and IRAs~~
33 (f) *Cause the IRA plans or arrangements* established under the
34 program to be designed, established, and operated:

35 (1) In accordance with best practices for retirement savings
36 vehicles.

37 (2) To maximize participation, saving, and sound investment
38 ~~practices, including the encouragement of automatic features,~~
39 ~~including, but not limited to, automatic enrollment and investment.~~
40 *practices, and to encourage the use of automatic features,*

1 *including, but not limited to, automatic enrollment and appropriate*
2 *selection of default investments.*

3 (3) *With simplicity, ease of administration for participating*
4 *employers, and portability of benefits.*

5 (f)

6 (g) *Seek to minimize costs by assisting or facilitating the pooling*
7 *of small employers and individuals in purchasing retirement*
8 *savings plans, arrangements, and investments, and through*
9 *economies of scale, standardization, designation of investment*
10 *types, and other measures.*

11 (g)

12 (h) ~~Arrange for collective, common, and pooled investment of~~
13 ~~assets of the retirement savings plans and IRAs~~ *IRA plans or*
14 *arrangements, including investment in conjunction with other*
15 *funds with which those assets are permitted to be collectively*
16 *invested, with a view to saving costs through efficiencies and*
17 *economies of scale, but only to the extent that these collective*
18 *investment arrangements would not jeopardize the exemption from*
19 ~~ERISA of the plans maintained for state and local government~~
20 ~~employees and would otherwise comply with applicable law and~~
21 ~~conditions for favorable tax treatment.~~

22 (h) ~~Disseminate to the citizens of California educational~~
23 ~~information concerning saving, investment, planning for retirement,~~
24 ~~and financial planning. jeopardize or alter the current exemptions~~
25 ~~from ERISA and federal securities laws of the plans maintained~~
26 ~~by the system and administered by the board for state and local~~
27 ~~government employers and employees. Nothing in this subdivision~~
28 ~~shall adversely affect or otherwise compromise the system's ability~~
29 ~~to comply with applicable federal and state law and conditions~~
30 ~~for favorable tax.~~

31 (i) *Disseminate educational information concerning saving and*
32 *planning for retirement to eligible employers and employees.*

33 (i)

34 (j) *Disseminate information concerning the tax credits available*
35 *to small business owners for establishing new retirement plans*
36 *and the federal saver's tax credit available to moderate- and lower*
37 *income households for saving in plans and IRAs to eligible*
38 *employers and eligible employees.*

39 (j)

- 1 (k) Submit progress and status reports to participating employers
2 and individuals *eligible employees*.
- 3 ~~(k) Submit reports to the Legislature, as follows:~~
- 4 ~~(1) (A) The system shall submit a report to the Legislature at~~
5 ~~least 90 days prior to implementing the program. This report shall~~
6 ~~include, but not be limited to, information regarding the~~
7 ~~expectations of the program, an outline of the program, and details~~
8 ~~regarding administration of the program.~~
- 9 ~~(B) If the system concludes that the program will not be~~
10 ~~self-sustaining and finds it economically unfeasible to implement~~
11 ~~the program, the system shall submit a report to the Legislature~~
12 ~~regarding the details of its conclusion, including, but not limited~~
13 ~~to, legal, financial, regulatory, and administrative considerations~~
14 ~~and obstacles, and actions taken to address those concerns. This~~
15 ~~report should also include any conditional changes that could be~~
16 ~~made by the Legislature in order to implement the program.~~
- 17 ~~(2) The system shall submit annual reports to the Legislature~~
18 ~~on the status of the program, including, but not limited to, outreach,~~
19 ~~investments, and solvency efforts.~~
- 20 ~~(3) If the system finds it necessary to suspend the program, the~~
21 ~~system shall submit a report to the Legislature at least 90 days~~
22 ~~prior to that suspension. This report shall include, but is not limited~~
23 ~~to, any conditional changes that need to be made by the Legislature~~
24 ~~in order to continue the program.~~
- 25 (l) If necessary, determine the eligibility of an employer,
26 employee, or other individual to participate in the program.
- 27 (m) Create for ~~employees~~ *eligible employees of participating*
28 *employers* who want to contribute a portion of their paycheck to
29 a plan or account offered by the program a process by which they
30 are able to notify their employers, either at the time of hiring or
31 thereafter, and ~~allow the~~ *require the participating* employer to
32 forward the employee contribution to the program through the
33 Employment Development Department system currently used to
34 collect payroll taxes. *In this case, the Employment Development*
35 *Department shall cooperate by forwarding the employee*
36 *contribution to the IRA plan or arrangement under the program.*
- 37 (n) ~~Allow~~ *Subject to the conditions specified in Section 100014,*
38 *allow participating* employers to use the program to contribute to
39 the account on their employees' behalf or match their employees'
40 contribution.

1 100005. ~~The Employment Development Department~~ *In the*
2 *event the Employment Development Department participates in*
3 *the implementation and administration of the program, it may*
4 seek reimbursement for any administrative costs associated with
5 implementing the program.

6 ~~100005.5. (a) The system shall keep separate and distinct any~~
7 ~~and all programs, accounts, plans, or IRAs established pursuant~~
8 ~~to the program, and any and all funds of those programs, accounts,~~
9 ~~plans, or IRAs, from all accounts and funds in the system. No~~
10 ~~funds in the system's defined benefit plan shall be used to~~
11 ~~implement or administer the program.~~

12 *100005.5. (a) The board shall keep separate and distinct any*
13 *and all IRA plans or arrangements established under the program,*
14 *including any and all funds or accounts of those IRA plans or*
15 *arrangements, from all programs, funds, or assets maintained by*
16 *the system and administered by the board for state and local*
17 *government employers and employees. No funds in the system's*
18 *defined benefit plans, health and welfare plans, or its supplemental*
19 *income plans for state and local government employers and*
20 *employees shall be used to implement or administer the program.*

21 (b) All expenses and obligations created by, or pursuant to, the
22 program shall be funded solely from contributions to, or investment
23 returns or assets of, the programs, accounts, ~~plans, or IRAs~~
24 ~~established under the program, except as the Legislature may~~
25 ~~provide for funding through appropriation.~~ *or IRA plans or*
26 *arrangements established under the program, except as the*
27 *Legislature may provide for funding through appropriation which*
28 *shall be deposited in the California Employee Savings Program*
29 *Administrative Fund established pursuant to Section 100016.*

30 100006. ~~The system~~ *board* shall obtain the necessary approvals,
31 rulings, opinions, determinations, or confirmations from federal
32 authorities or agencies, including the Internal Revenue Service,
33 Department of Labor, or Securities and Exchange Commission. It
34 is intended that the ~~plans and IRAs~~ *IRA plans or arrangements*
35 established under the program shall adhere to all applicable
36 standards and requirements under federal law regulating the
37 operation of retirement plans and the offering, sale, or distribution
38 of securities under those plans, without regard to any exemption
39 under federal law available to a pension plan maintained by a
40 governmental employer, and the availability of this program shall

1 ~~be contingent on the requirements of this section. of, and the~~
2 ~~offering, sale, or distribution of securities under, those plans or~~
3 ~~arrangements.~~

4 100008. No claim, tax lien, or other right of setoff of the state
5 or any of its agencies or instrumentalities shall apply against any
6 funds or assets held for the benefit of individuals in a plan or IRA
7 under the program or coming into the possession of a state official
8 under the program.

9 100010. *No claim, tax lien, or other right of set-off of the state*
10 *or any of its agencies or instrumentalities shall apply against any*
11 *funds or assets administered by the board for the purpose of*
12 *providing pension, long-term care, or health benefits for employees*
13 *of the state or contracting agencies, by reason of any decision or*
14 *action related to the initiation, implementation, maintenance, or*
15 *administration of the program.*

16 ~~100010.~~

17 100012. Present, future, and former board members of the
18 Public Employees' Retirement System, jointly and individually,
19 state officers and employees, and investment managers under
20 contract with the Public Employees' Retirement System shall be
21 indemnified from the General Fund and held harmless by the State
22 of California from all claims, demands, suits, actions, damages,
23 judgments, costs, charges, and expenses, including court costs and
24 attorney's fees, and against all liability, losses, and damages of
25 any nature whatsoever that they shall or may at any time sustain
26 by reason of any decision or action related to the initiation,
27 implementation, maintenance, or administration of the program.

28 ~~100012. This program shall be made available only upon receipt~~
29 ~~of all approvals that the system deems necessary for its~~
30 ~~implementation.~~

31 ~~100014. This title shall become operative only if an annual~~
32 ~~Budget Act appropriates moneys in amounts sufficient to~~
33 ~~implement this title.~~

34 100014. (a) *The program may only be implemented if the*
35 *board determines the following conditions are satisfied:*

36 (1) *There is an adequate appropriation or loan under*
37 *appropriate terms and conditions to the California Employee*
38 *Savings Program Administrative Fund sufficient to fund program*
39 *development, implementation, and administrative costs.*

1 (2) Approval satisfactory to the board is received from agencies
2 or departments of the United States government, including, but
3 not limited to, the Internal Revenue Service, the United States
4 Department of Labor, and the Securities and Exchange
5 Commission that both of the following are true:

6 (A) The IRA plans or arrangements offered under the program
7 do not jeopardize or alter the current status of the system with
8 respect to its operations under relevant federal laws.

9 (B) Any payroll deposit IRA arrangement offered under the
10 program is not subject to ERISA.

11 (3) The board obtains offers from well-qualified and experienced
12 financial service providers to administer the recordkeeping,
13 investment, and compliance functions of any IRA plan or
14 arrangement offered under the program.

15 (4) The program will be self-sustaining.

16 (b) If the board determines that any of the conditions in
17 subdivision (a) cannot be satisfied, the program shall not be
18 implemented. If, at any time after initial implementation, any of
19 the conditions set forth in subdivision (a) are not satisfied, the
20 board may discontinue the program. In either instance, the board
21 shall file a report with the Legislature pursuant to paragraph (2)
22 of subdivision (a) of Section 100017.

23 100016. (a) The California Employee Savings Program
24 Administrative Fund is hereby established to serve as the repository
25 of funds received by the program for administrative expenses
26 pursuant to this title.

27 (b) Notwithstanding Section 13340 of the Government Code,
28 all moneys in the California Employee Savings Fund shall be
29 continuously appropriated without regard to fiscal years to carry
30 out the purposes of this title.

31 (c) The board may establish multiple accounts within the
32 California Employee Savings Program Administrative Fund to
33 assist in the allocation of funds for various program needs and
34 functions, including administration, operation, and reserve.

35 100017. The board shall submit reports to the Legislature, as
36 follows:

37 (a) (1) The board shall submit a report to the Legislature at
38 least 90 days prior to implementing the program. This report shall
39 include, but not be limited to, information regarding the

1 *expectations of the program, an outline of the program, and details*
2 *regarding administration of the program.*

3 *(2) If the board concludes that the program will not be*
4 *self-sustaining, or if the necessary conditions specified in*
5 *subdivision (a) of Section 100014 are not satisfied, the board shall*
6 *submit a report to the Legislature regarding the details of its*
7 *conclusion, including, but not limited to, legal, financial,*
8 *regulatory, and administrative considerations and obstacles, and*
9 *actions taken to address those concerns. This report shall also*
10 *include any changes that the board believes that the Legislature*
11 *could make in order to implement the program.*

12 *(b) The board shall submit annual reports to the Legislature on*
13 *the status of the program, including, but not limited to, outreach,*
14 *investments, and solvency efforts.*

15 *(c) If the board finds it necessary to suspend or discontinue the*
16 *program, it shall submit a report to the Legislature at least 90*
17 *days prior to that suspension or discontinuation. This report shall*
18 *include, but is not limited to, any conditional changes that need*
19 *to be made by the Legislature in order to continue the program.*

20 *100018. The board may adopt regulations that implement this*
21 *title. The adoption, amendment, or repeal of a regulation*
22 *authorized by this section is hereby exempted from the rulemaking*
23 *provisions of the Administrative Procedure Act (Chapter 3.5*
24 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
25 *2. However, the board shall transmit those regulations to the Office*
26 *of Administrative Law for filing with the Secretary of State and*
27 *publication in the California Code of Regulations. Those*
28 *regulations shall become effective immediately upon filing with*
29 *the Secretary of State.*

30 *100019. This title shall become operative only if an annual*
31 *Budget Act appropriates moneys in amounts sufficient to implement*
32 *this title. Existing assets, resources, and personnel administered*
33 *by the board may not be used to develop, initiate, implement, or*
34 *administer the program without that appropriation.*