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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)
(Coauthor: Assembly Member Eng)
(Coauthor: Senator Cedillo)

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.

(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, which would be operative only upon a specified appropriation in the annual Budget Act *or if sufficient funds are made available through a nonprofit or private entity, as specified*. 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 the board, under this program, to offer one or more individual retirement accounts *or defined benefit plans*, as specified, to eligible employees of participating eligible employers, as defined. The bill would specify that eligible employees of participating employers are not members of PERS. The bill would 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 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 the board to make reports to employers on the progress and status of the program.

The bill would also require the board to make specified reports to the Legislature, including a report ~~at least 90 days prior to implementing the program~~, *upon determining that all specified conditions necessary to implement the program can be satisfied*, a report if it finds that the program is not self-sustaining, and annual reports on the status of the program, as specified. The bill would require the board to keep program funds and accounts separate from those of PERS and would prohibit the use of funds in PERS, 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. 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 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.
14 (d) Nationally, two out of three low-wage workers lack access
15 to an employer-sponsored retirement plan, while only one in four
16 high-wage workers do. Nearly 65 percent of low-income workers,
17 those earning less than \$40,000 per year, do not participate in
18 employer plans, according to the Congressional Budget Office.

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

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

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

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

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

24 (j) The California Employee Savings Program is hereby
25 established by this act to promote expanded retirement security
26 for working Californians' employers' sponsorship of retirement
27 plans for their employees.

28 SEC. 2. Section 21670 of the Government Code is amended
29 to read:

30 21670. The board may establish a deferred compensation
31 program for California public employees. The program shall be
32 made available to all state employees and to all employees of an
33 employer under procedures established by the board unless
34 participation is subject to the terms of any memorandums of
35 understanding between the employer and the employees.

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

1 TITLE 25. CALIFORNIA EMPLOYEE SAVINGS PROGRAM

2
3 100000. For purposes of this title:

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

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

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

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

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

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

27 (g) “Payroll deposit IRA arrangement” means an arrangement
28 by which an employer makes its payroll system available to
29 employees as a conduit for transferring salary reduction
30 contributions to IRAs.

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

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

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

36 100002. (a) There is hereby established a retirement savings
37 program known as the California Employee Savings Program to
38 be administered by the board with the intent of promoting greater
39 retirement savings for California private employees in a convenient,
40 low-cost, and portable manner. The California Employee Savings

1 Program is a voluntary, universal, portable retirement account for
 2 California private employees.

3 (b) The program shall include, as determined by the board, one
 4 or more of the following components:

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

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

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

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

11 *(1) One or more payroll deposit IRA arrangements.*

12 *(2) One or more traditional IRA arrangements.*

13 *(3) One or more SIMPLE IRA plans.*

14 *(4) Other IRAs.*

15 *(5) Defined benefit plans.*

16 (c) Pursuant to the authority granted under this title, the board
 17 may establish the following:

18 (1) Prototype or master and prototype plans or IRAs.

19 (2) Multiple employer plans.

20 (3) Group administrative service arrangements that allow eligible
 21 employers to achieve economies of scale with respect to their
 22 retirement savings arrangements relating to investment, accounting,
 23 payroll processing, employee communications, and investor
 24 education.

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

26 (5) Custodial or trustee arrangements for payroll deposit
 27 programs or for other plans or IRAs.

28 (d) Participating employers and their eligible employees do not
 29 become members of, or participants in, the Public Employees'
 30 Retirement System. The California Employee Savings Program
 31 does not create a new or separate public pension or retirement
 32 system.

33 100004. To initiate, implement, maintain, and administer the
 34 program, the board may:

35 (a) Employ staff.

36 (b) Retain and contract with private financial institutions, other
 37 financial and service providers, consultants, third-party
 38 administrators, and other professionals as necessary, without regard
 39 to provisions regarding competitive bidding.

1 (c) Collaborate and cooperate with private financial institutions,
2 service providers, business, financial, trade, membership, and other
3 organizations to the extent necessary or desirable for the effective
4 and efficient implementation of the program and to maximize
5 outreach to eligible employers and eligible employees.

6 (d) Cause expenses incurred to initiate, implement, maintain,
7 and administer the program, to be paid from contributions to, or
8 investment returns or assets of the program or plans or IRAs
9 established under the program, to the extent permitted under federal
10 law, except for expenditures that are provided for through
11 appropriations from the Legislature.

12 (e) Facilitate compliance by the plans and IRAs established
13 under the program with all applicable requirements for the plans
14 under the Internal Revenue Code of 1986, including tax
15 qualification requirements or any other applicable law and
16 accounting requirements, including providing or arranging for
17 assistance to plan sponsors and individuals in complying with
18 applicable law and tax qualification requirements in a cost-effective
19 manner.

20 (f) Cause the IRA plans or arrangements established under the
21 program to be designed, established, and operated:

22 (1) In accordance with best practices for retirement savings
23 vehicles.

24 (2) To maximize participation, saving, and sound investment
25 practices, and to encourage the use of automatic features, including,
26 but not limited to, automatic enrollment and appropriate selection
27 of default investments.

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

30 (g) Seek to minimize costs by assisting or facilitating the pooling
31 of small employers and individuals in purchasing retirement
32 savings plans, arrangements, and investments, and through
33 economies of scale, standardization, designation of investment
34 types, and other measures.

35 (h) Arrange for collective, common, and pooled investment of
36 assets of the IRA plans or arrangements, including investment in
37 conjunction with other funds with which those assets are permitted
38 to be collectively invested, with a view to saving costs through
39 efficiencies and economies of scale, but only to the extent that
40 these collective investment arrangements would not jeopardize or

1 alter the current exemptions from ERISA and federal securities
 2 laws of the plans maintained by the system and administered by
 3 the board for state and local government employers and employees.
 4 Nothing in this subdivision shall adversely affect or otherwise
 5 compromise the system’s ability to comply with applicable federal
 6 and state law and conditions for favorable tax *treatment*.

7 (i) Disseminate educational information concerning saving and
 8 planning for retirement to eligible employers and employees.

9 (j) Disseminate information concerning the tax credits available
 10 to small business owners for establishing new retirement plans
 11 and the federal saver’s tax credit available to moderate- and lower
 12 income households for saving in plans and IRAs to eligible
 13 employers and eligible employees.

14 (k) Submit progress and status reports to participating employers
 15 and eligible employees.

16 (l) If necessary, determine the eligibility of an employer,
 17 employee, or other individual to participate in the program.

18 (m) Create for eligible employees of participating employers
 19 who want to contribute a portion of their paycheck to a plan or
 20 account offered by the program a process by which they are able
 21 to notify their employers, either at the time of hiring or thereafter,
 22 and require the participating employer to forward the employee
 23 contribution to the program through the Employment Development
 24 Department system currently used to collect payroll taxes. In this
 25 case, the Employment Development Department shall cooperate
 26 by forwarding the employee contribution to the IRA plan or
 27 arrangement under the program.

28 (n) Subject to the conditions specified in Section 100014, allow
 29 participating employers to use the program to contribute to the
 30 account on their employees’ behalf or match their employees’
 31 contribution.

32 100005. In the event the Employment Development Department
 33 participates in the implementation and administration of the
 34 program, it may seek reimbursement for any administrative costs
 35 associated with implementing the program.

36 100005.5. (a) The board shall keep separate and distinct any
 37 and all IRA plans or arrangements established under the program,
 38 including any and all funds or accounts of those IRA plans or
 39 arrangements, from all programs, funds, or assets maintained by
 40 the system and administered by the board for state and local

1 government employers and employees. No funds in the system's
2 defined benefit plans, health and welfare plans, or its supplemental
3 income plans for state and local government employers and
4 employees shall be used to ~~implement~~ *initiate, develop, implement,*
5 or administer the program.

6 (b) All expenses and obligations created by, or pursuant to, the
7 program shall be funded solely from contributions to, or investment
8 returns or assets of, the programs, accounts, ~~or~~ IRA plans or
9 arrangements, *or defined benefit plan arrangements* established
10 under the program, except as the Legislature may provide for
11 funding through appropriation which shall be deposited in the
12 California Employee Savings Program Administrative Fund
13 established pursuant to Section 100016.

14 100006. The board shall obtain the necessary approvals, rulings,
15 opinions, determinations, or confirmations from federal authorities
16 or agencies, including the Internal Revenue Service, Department
17 of Labor, or Securities and Exchange Commission. It is intended
18 that the IRA plans or arrangements established under the program
19 shall adhere to all applicable standards and requirements under
20 federal law regulating the operation of, and the offering, sale, or
21 distribution of securities under, those plans or arrangements.

22 100008. No claim, tax lien, or other right of setoff of the state
23 or any of its agencies or instrumentalities shall apply against any
24 funds or assets held for the benefit of individuals in a plan or IRA
25 under the program or coming into the possession of a state official
26 under the program.

27 100010. No claim, tax lien, or other right of setoff of the state
28 or any of its agencies or instrumentalities shall apply against any
29 funds or assets administered by the board for the purpose of
30 providing pension, long-term care, or health benefits for employees
31 of the state or contracting agencies, by reason of any decision or
32 action related to the initiation, implementation, maintenance, or
33 administration of the program.

34 100012. Present, future, and former board members of the
35 Public Employees' Retirement System, jointly and individually,
36 state officers and employees, and investment managers under
37 contract with the Public Employees' Retirement System shall be
38 indemnified from the General Fund and held harmless by the State
39 of California from all claims, demands, suits, actions, damages,
40 judgments, costs, charges, and expenses, including court costs and

1 attorney’s fees, and against all liability, losses, and damages of
 2 any nature whatsoever that they shall or may at any time sustain
 3 by reason of any decision or action related to the initiation,
 4 implementation, maintenance, or administration of the program.

5 100014. (a) The program may only be implemented if the
 6 board determines the following conditions are satisfied:

7 (1) There is an adequate appropriation or loan under appropriate
 8 terms and conditions to the California Employee Savings Program
 9 Administrative Fund sufficient to fund program development,
 10 implementation, and administrative costs.

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

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

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

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

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

26 (b) *If the board determines that all of the conditions in*
 27 *subdivision (a) can be satisfied, it shall file a report with the*
 28 *Legislature pursuant to paragraph (1) of subdivision (a) of Section*
 29 *100017.*

30 ~~(b)~~

31 (c) If the board determines that any of the conditions in
 32 subdivision (a) cannot be satisfied, the program shall not be
 33 implemented. If, at any time after initial implementation, any of
 34 the conditions set forth in subdivision (a) are not satisfied, the
 35 board may discontinue the program. In either instance, the board
 36 shall file a report with the Legislature pursuant to paragraph (2)
 37 of subdivision (a) of Section 100017.

38 (d) *If, subsequent to the program’s implementation, any*
 39 *traditional or payroll deposit IRA arrangement offered pursuant*
 40 *to the program becomes subject to ERISA, or the board determines*

1 *in its discretion that it may be feasible to offer another plan or*
2 *arrangement authorized by subdivision (b) of Section 100002, the*
3 *board shall have the sole discretion to determine whether it shall*
4 *establish or maintain the plan or arrangement that is subject to*
5 *ERISA, and in no event shall the board be required to establish*
6 *or maintain that plan or arrangement.*

7 100016. (a) The California Employee Savings Program
8 Administrative Fund is hereby established to serve as the repository
9 of funds received by the program for administrative expenses
10 pursuant to this title.

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

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

19 100017. The board shall submit reports to the Legislature, as
20 follows:

21 (a) (1) ~~The board shall submit a report to the Legislature at~~
22 ~~least 90 days prior to implementing the program. This report shall~~
23 *Upon determining that all the conditions necessary to implement*
24 *the program under subdivision (a) of Section 100014 can be*
25 *satisfied, the board shall submit a report to the Legislature that*
26 *shall include, but not be limited to, information regarding the*
27 *expectations of the program, an outline of the program, and details*
28 *regarding ~~administration of the program~~ the administration and*
29 *projected cost of the program. The board shall not implement the*
30 *program until after the report is presented to the Legislature, and*
31 *moneys in an amount sufficient to fund the projected cost of the*
32 *program are either appropriated by the Legislature in an annual*
33 *Budget Act or made available through a nonprofit or private entity.*

34 (2) If the board concludes that the program will not be
35 self-sustaining, or if the necessary conditions specified in
36 subdivision (a) of Section 100014 are not satisfied, the board shall
37 submit a report to the Legislature regarding the details of its
38 conclusion, including, but not limited to, legal, financial,
39 regulatory, and administrative considerations and obstacles, and
40 actions taken to address those concerns. This report shall also

1 include any changes that the board believes that the Legislature
2 could make in order to implement the program.

3 (b) The board shall submit annual reports to the Legislature on
4 the status of the program, including, but not limited to, outreach,
5 investments, and solvency efforts.

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

11 100018. The board may adopt regulations that implement this
12 title. The adoption, amendment, or repeal of a regulation authorized
13 by this section is hereby exempted from the rulemaking provisions
14 of the Administrative Procedure Act (Chapter 3.5 (commencing
15 with Section 11340) of Part 1 of Division 3 of Title 2. However,
16 the board shall transmit those regulations to the Office of
17 Administrative Law for filing with the Secretary of State and
18 publication in the California Code of Regulations. Those
19 regulations shall become effective immediately upon filing with
20 the Secretary of State.

21 100019. This title shall become operative only if an annual
22 Budget Act appropriates moneys ~~in amounts sufficient to~~
23 ~~implement this title~~ *or funds are made available through a*
24 *nonprofit or private entity, in amounts sufficient to allow the board*
25 *to initiate, study, develop, and obtain the approvals necessary to*
26 *implement the program pursuant to the conditions in subdivision*
27 *(a) of Section 100014. Existing assets, resources, and personnel*
28 *administered by the board may shall not be used to develop,*
29 *initiate, implement, or administer the program without that*
30 *appropriation or outside funding.*