

**ASSEMBLY BILL**

**No. 125**

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**Introduced by Assembly Member De Leon  
(Coauthors: Assembly Members Carter, Coto, Eng, Hernandez,  
Jones, Lieu, Ma, and Solorio)**

January 15, 2009

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An act to add Title 25 (commencing with Section 100000) to the Government Code, relating to retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 125, as introduced, De Leon. Retirement: California Employee Savings Program.

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 non profit 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 evaluate and establish the process by which eligible employees who want to contribute a portion of their paycheck to an account offered by the program are able to notify their employers and require the employer to forward the contribution and related information to the program. The bill would require the Employment Development Department to cooperate in this regard. The bill would authorize the Employment Development Department to charge a fee for any administrative costs it incurs by reason of implementing and administering 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 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 PERS, after specified acts have occurred, to request funding through a Budget Act appropriation or from a nonprofit or private entity for the purpose of implementing the program. 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 initiate, develop, 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 setoff 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. Subject to the availability of funds, as specified, the bill would require the board to report to Legislature regarding the feasibility of creating a defined benefit plan option to be available to employers. The bill would also make a statement of findings.

Vote: majority. Appropriation: yes. 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.  
19 (e) Only 26 percent of full-time, full-year private sector workers  
20 in businesses with fewer than 25 employees participated in a  
21 pension plan in 2004, compared with 69 percent of those employed  
22 by companies with 500 or more employees. Complexity and cost  
23 of administering retirement plans may prevent small companies,  
24 in comparison to larger corporations, from creating retirement  
25 plans for their employees.  
26 (f) Low investment participation rates in retirement plans can  
27 also be attributed to a worker losing coverage access after moving  
28 into a new job with a new business.

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

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

12 (i) Providing California workers with a guaranteed retirement  
13 income to supplement Social Security, traditionally funded by  
14 stable employer contributions via a defined-benefit employer-based  
15 pension plan, is optimal to ensure that workers accumulate the  
16 benefits they need for a secure retirement. California must continue  
17 to explore guaranteed replacement income programs, such as  
18 defined benefit plans, for working Californians. Establishing and  
19 offering a defined benefit plan would require additional study to  
20 research and address the complex policies and regulatory approvals  
21 necessary for creation and implementation, and would be an  
22 important step toward ensuring the retirement security for working  
23 Californians.

24 (j) Though guaranteed retirement income programs are valuable  
25 savings tools for workers, given the changing needs and work  
26 habits of California's workers, alone, they are insufficient to afford  
27 workers a comfortable and secure retirement. California workers  
28 need additional retirement savings options to ensure their retirement  
29 security.

30 (k) In creating an additional savings program for its workers,  
31 California would supplement existing savings options, assisting  
32 California's working men and women to save for retirement. This  
33 program would be funded by the program's participants and would  
34 be maintained and administered at no cost to taxpayers.

35 (l) The California Employee Savings Program is hereby  
36 established by this act to promote expanded retirement security  
37 for working Californians' employers' sponsorship of retirement  
38 plans for their employees.

39 SEC. 2. Title 25 (commencing with Section 100000) is added  
40 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 IRA or a payroll deposit IRA  
12 arrangement. An eligible employer does not include any employer  
13 to the extent that the employer replaces a preexisting retirement  
14 plan with a an arrangement provided for by this title.

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

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

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

22 (f) “Participating employer” means an eligible employer that  
23 maintains or participates in an IRA arrangement provided for by  
24 this title for eligible employees.

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

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

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

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

34 100002. (a) There is hereby established a retirement savings  
35 program known as the California Employee Savings Program to  
36 be administered by the board with the intent of promoting greater  
37 retirement savings for California private employees in a convenient,  
38 low-cost, and portable manner. The California Employee Savings  
39 Program is a voluntary, universal, portable retirement account for  
40 California private employees.

- 1 (b) The program shall include, as determined by the board, one  
2 or more of the following components:
- 3 (1) One or more payroll deposit IRA arrangements.
  - 4 (2) One or more traditional IRA arrangements.
  - 5 (3) One or more SIMPLE IRA plans.
  - 6 (4) Other IRAs.
- 7 (c) Pursuant to the authority granted under this title, the board  
8 may establish the following:
- 9 (1) Prototype or master and prototype plans or IRAs.
  - 10 (2) Multiple employer plans.
  - 11 (3) Group administrative service arrangements that allow eligible  
12 employers to achieve economies of scale with respect to their  
13 retirement savings arrangements relating to investment, accounting,  
14 payroll processing, employee communications, and investor  
15 education.
  - 16 (4) Group investment vehicles for the plans or IRAs.
  - 17 (5) Custodial or trustee arrangements for payroll deposit  
18 programs or for other plans or IRAs.
- 19 (d) Participating employers and their eligible employees do not  
20 become members of, or participants in, the Public Employees'  
21 Retirement System. The California Employee Savings Program  
22 does not create a new or separate public pension or retirement  
23 system.
- 24 100004. To initiate, implement, maintain, and administer the  
25 program, the board may:
- 26 (a) Employ staff.
  - 27 (b) Retain and contract with private financial institutions, other  
28 financial and service providers, consultants, third-party  
29 administrators, and other professionals as necessary, without regard  
30 to provisions regarding competitive bidding.
  - 31 (c) Collaborate and cooperate with private financial institutions,  
32 service providers, business, financial, trade, membership, and other  
33 organizations to the extent necessary or desirable for the effective  
34 and efficient design, implementation, and administration of the  
35 program and to maximize outreach to eligible employers and  
36 eligible employees.
  - 37 (d) Cause expenses incurred to initiate, implement, maintain,  
38 and administer the program to be paid from contributions to, or  
39 investment returns or assets of, the program or IRAs established  
40 under the program, to the extent permitted under federal law, except

1 for expenditures that are provided for through appropriations from  
2 the Legislature.

3 (e) Facilitate compliance by the IRAs established under the  
4 program with all applicable requirements for the plans under the  
5 Internal Revenue Code of 1986, including tax qualification  
6 requirements or any other applicable law and accounting  
7 requirements, including providing or arranging for assistance to  
8 plan sponsors and individuals in complying with applicable law  
9 and tax qualification requirements in a cost-effective manner.

10 (f) Cause the IRA arrangements established under the program  
11 to be designed, established, and operated:

12 (1) In accordance with best practices for retirement savings  
13 vehicles.

14 (2) To maximize participation, saving, and sound investment  
15 practices, and to encourage the use of automatic features, including,  
16 but not limited to, automatic enrollment and appropriate selection  
17 of default investments.

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

20 (g) Seek to minimize costs by assisting or facilitating the pooling  
21 of small employers and individuals in purchasing IRAs,  
22 arrangements, and investments, and through economies of scale,  
23 standardization, designation of investment types, and other  
24 measures.

25 (h) Arrange for collective, common, and pooled investment of  
26 assets of the IRA arrangements, including investment in  
27 conjunction with other funds with which those assets are permitted  
28 to be collectively invested, with a view to saving costs through  
29 efficiencies and economies of scale, but only to the extent that  
30 these collective investment arrangements would not jeopardize or  
31 alter the current exemptions from ERISA and federal securities  
32 laws of the plans maintained by the system and administered by  
33 the board for state and local government employers and employees.  
34 Nothing in this subdivision shall adversely affect or otherwise  
35 compromise the system's ability to comply with applicable federal  
36 and state law and conditions for favorable tax treatment.

37 (i) Disseminate educational information concerning saving and  
38 planning for retirement.

39 (j) Disseminate information concerning the tax credits available  
40 to small business owners for establishing new retirement plans

1 and the federal saver’s tax credit available to moderate- and lower  
2 income households for saving in plans and IRAs.

3 (k) Submit progress and status reports to participating employers  
4 and eligible employees.

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

7 (m) Evaluate and establish the process by which eligible  
8 employees of participating employers who want to contribute a  
9 portion of their paycheck to an account offered by the program  
10 are able to notify their employers, either at the time of hiring or  
11 thereafter, and require the participating employer to forward the  
12 employee contribution and related information to the program or  
13 its agents. This may include, but is not limited to, the ability to  
14 use the current tax processing and accounting system of the  
15 Employment Development Department, financial services  
16 companies, and third-party administrators with the capability to  
17 receive and process employee information and contributions for  
18 payroll deduction IRA arrangements or other retirement savings  
19 arrangements authorized by this title. The Employment  
20 Development Department shall assist the board in its efforts to  
21 study and implement these tasks, and, if selected by the board,  
22 shall cooperate by forwarding the employee contribution to the  
23 IRA arrangement or other retirement savings arrangements under  
24 the program.

25 (n) Subject to the conditions specified in Section 100014, allow  
26 participating employers to use the program to contribute to the  
27 account on their employees’ behalf or match their employees’  
28 contributions.

29 100005. If the Employment Development Department  
30 participates in the implementation and administration of the  
31 program, it may charge a fee for any administrative costs it incurs  
32 by reason of implementing and administering the program.

33 100005.5. (a) The board shall keep separate and distinct any  
34 and all IRA plans or arrangements established under the program,  
35 including any and all funds or accounts of those IRA plans or  
36 arrangements, from all programs, funds, or assets maintained by  
37 the system and administered by the board for state and local  
38 government employers and employees. No funds in the system’s  
39 defined benefit plans, health and welfare plans, or its supplemental  
40 income plans for state and local government employers and

1 employees shall be used to initiate, develop, implement, or  
2 administer the program.

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

11 100006. The board shall obtain the necessary approvals, rulings,  
12 opinions, determinations, or confirmations from federal authorities  
13 or agencies, including the Internal Revenue Service, the  
14 Department of Labor, or the Securities and Exchange Commission.  
15 It is intended that the IRA arrangements established under the  
16 program shall adhere to all applicable standards and requirements  
17 under federal law regulating the operation of, and the offering,  
18 sale, or distribution of securities under, those plans or  
19 arrangements.

20 100008. No claim, tax lien, or other right of setoff of the state  
21 or any of its agencies or instrumentalities shall apply against any  
22 funds or assets held for the benefit of individuals in a plan or IRA  
23 under the program or coming into the possession of a state official  
24 under the program.

25 100010. No claim, tax lien, or other right of setoff of the state  
26 or any of its agencies or instrumentalities shall apply against any  
27 funds or assets administered by the board for the purpose of  
28 providing pension, long-term care, or health benefits for employees  
29 of the state or contracting agencies, by reason of any decision or  
30 action related to the initiation, implementation, maintenance, or  
31 administration of the program.

32 100012. Present, future, and former board members of the  
33 Public Employees' Retirement System, jointly and individually,  
34 state officers and employees, and investment managers under  
35 contract with the Public Employees' Retirement System shall be  
36 indemnified from the General Fund and held harmless by the State  
37 of California from all claims, demands, suits, actions, damages,  
38 judgments, costs, charges, and expenses, including court costs and  
39 attorney's fees, and against all liability, losses, and damages of  
40 any nature whatsoever that they shall or may at any time sustain

1 by reason of any decision or action related to the initiation,  
2 implementation, maintenance, or administration of the program.  
3 100013. The board shall follow the process described in this  
4 section in developing and implementing the program:

5 (a) Initially, the board shall conduct an economic feasibility  
6 study to determine whether the necessary conditions for  
7 implementation can be met, including, but not limited to, likely  
8 participation rates, participants' comfort with various investment  
9 vehicles and degree of risk, contribution levels, and the rate of  
10 account closures and rollovers. The board shall present these  
11 findings to the Legislature for review. The board shall conduct  
12 this study only if sufficient funds therefor are made available  
13 through a nonprofit or private entity or an annual Budget Act  
14 appropriation. The board shall not use assets, resources, or  
15 personnel administered by the board that are not associated with  
16 this study.

17 (b) Upon completing the study described in subdivision (a) and  
18 reaching the conclusion that the program is feasible, the board  
19 shall request funding through a Budget Act appropriation or from  
20 a nonprofit or private entity to be used for the purpose of obtaining  
21 the necessary approvals described in Section 100006 and  
22 subdivision (a) of Section 100014 and for the purpose of designing  
23 the program. After obtaining the necessary approvals to implement  
24 the program and completing the design of the program, the board  
25 shall report to the Legislature as described in subdivision (a) of  
26 Section 100017. The board shall not use assets, resources, and  
27 personnel administered by the board that are not associated with  
28 these purposes.

29 (c) After completing the actions described in subdivision (b),  
30 the board shall request funding through a Budget Act appropriation  
31 or from a nonprofit or private entity for the purpose of  
32 implementing the program.

33 100014. (a) The program may only be implemented if the  
34 board determines the following conditions are satisfied:

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

39 (2) Approval satisfactory to the board is received from agencies  
40 or departments of the United States government, including, but

1 not limited to, the Internal Revenue Service, the United States  
2 Department of Labor, and the Securities and Exchange Commission  
3 that both of the following are true:

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

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

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

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

14 (b) If the board determines that all of the conditions in  
15 subdivision (a) can be satisfied, it shall file a report with the  
16 Legislature pursuant to paragraph (1) of subdivision (a) of Section  
17 100017.

18 (c) If the board determines that any of the conditions in  
19 subdivision (a) cannot be satisfied, the program shall not be  
20 implemented. If, at any time after initial implementation, any of  
21 the conditions set forth in subdivision (a) are not satisfied, the  
22 board may discontinue the program. In either instance, the board  
23 shall file a report with the Legislature pursuant to paragraph (2)  
24 of subdivision (a) of Section 100017. The board shall include in  
25 its report suggested funding options and alternative ways of  
26 operating the program, including, but not limited to, identifying  
27 another entity to study, design, or implement the program.

28 (d) If, subsequent to the program's implementation, any  
29 traditional or payroll deposit IRA arrangement offered pursuant  
30 to the program becomes subject to ERISA, or the board determines  
31 in its discretion that it may be feasible to offer another plan or  
32 arrangement authorized by subdivision (b) of Section 100002, the  
33 board shall have the sole discretion to determine whether it shall  
34 establish or maintain the plan or arrangement that is subject to  
35 ERISA, and in no event shall the board be required to establish or  
36 maintain that plan or arrangement.

37 100016. (a) The California Employee Savings Program  
38 Administrative Fund is hereby established to serve as the repository  
39 of funds received by the program for administrative expenses  
40 pursuant to this title.

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

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

9 100017. The board shall submit reports to the Legislature, as  
10 follows:

11 (a) (1) Upon determining that all the conditions necessary to  
12 implement the program under subdivision (a) of Section 100014  
13 can be satisfied, the board shall submit a report to the Legislature  
14 that shall include, but not be limited to, information regarding the  
15 expectations of the program, an outline of the program, and details  
16 regarding the administration and projected cost of the program.  
17 The board shall not implement the program until after the report  
18 is presented to the Legislature, and moneys in an amount sufficient  
19 to fund the projected cost of the program are appropriated by the  
20 Legislature in an annual Budget Act.

21 (2) If the board concludes that the program will not be  
22 self-sustaining, or if the necessary conditions specified in  
23 subdivision (a) of Section 100014 are not satisfied, the board shall  
24 submit a report to the Legislature regarding the details of its  
25 conclusion, including, but not limited to, legal, financial,  
26 regulatory, and administrative considerations and obstacles, and  
27 actions taken to address those concerns. This report shall also  
28 include any changes that the board believes would make it feasible  
29 to implement the programs, including suggested changes that the  
30 Legislature could make in order to implement the program.

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

34 (c) If the board finds it necessary to suspend or discontinue the  
35 program, it shall submit a report to the Legislature at least 90 days  
36 prior to that suspension or discontinuation. This report shall  
37 include, but is not limited to, any conditional changes that need to  
38 be made by the Legislature in order to continue or improve the  
39 program, and address any concerns that the board has regarding  
40 the program.

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

11 100019. The board shall submit to the Legislature a report  
12 evaluating the feasibility of creating a defined benefit plan option  
13 available to employers, including any related considerations and  
14 issues. This report shall be required only if an annual Budget Act  
15 appropriates moneys, or funds are made available through a  
16 nonprofit or private entity, in amounts sufficient to allow the board  
17 to study, develop, and obtain the approvals necessary to implement  
18 the program pursuant to the conditions in subdivision (a) of Section  
19 100014. Existing assets, resources, and personnel administered by  
20 the board shall not be used to develop, initiate, implement, or  
21 administer the program without that appropriation or outside  
22 funding.

23 100022. This title shall become operative only if an annual  
24 Budget Act appropriates moneys or funds are made available  
25 through a nonprofit or private entity, in amounts sufficient to allow  
26 the board to study, develop, and obtain the approvals necessary to  
27 implement the program pursuant to the conditions in subdivision  
28 (a) of Section 100014. Existing assets, resources, and personnel  
29 administered by the board shall not be used to develop, initiate,  
30 implement, or administer the program without that appropriation  
31 or outside funding.