

# SENATE BILL REPORT

## SB 5791

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As Reported by Senate Committee On:  
Financial Institutions, Housing & Insurance, February 25, 2009  
Ways & Means, March 2, 2009

**Title:** An act relating to creating the Washington voluntary retirement accounts program.

**Brief Description:** Creating the Washington voluntary retirement accounts program.

**Sponsors:** Senators Hobbs, Franklin, Keiser, Fraser, Jarrett, Kohl-Welles, Shin and McDermott.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 2/25/09 [DPS-WM, DNP].  
Ways & Means: 3/02/09 [DP2S, DNP].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5791 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin and McDermott.

**Minority Report:** Do not pass.

Signed by Senators Parlette and Schoesler.

**Staff:** Diane Smith (786-7410)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5791 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Parlette and Schoesler.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Erik Sund (786-7454)

**Background:** All regular employees of the state are members of one of the plans of the state retirement system plans. The plans include the Public Employees' Retirement System, the Law Enforcement Officers' and Fire Fighters' Retirement System, the Teachers' Retirement System, and others.

All plans of the state retirement systems are administered by the Department of Retirement Systems (DRS), which also administers the Washington State Investment Board (WSIB) and manages the investment of the funds of the state retirement systems, as well as other nonretirement funds.

Private employers take a wide variety of approaches to pension plans. Some provide their employees with pension benefits that share characteristics with the state retirement plans administered by DRS, and some provide no pension plan to their employees. Private employers may also provide employees the opportunity to participate in a wide variety of other retirement plans, such as 401(k) plans which are plans named after the section of the federal Internal Revenue Code that they implement.

Private employers offering pension plans to their employees must comply with an extensive body of federal law and regulation, the Employee Retirement Income Security Act, commonly referred to as "ERISA." Governmental plans, operated by a government for its own employees, are generally exempt from ERISA rules. For a private employer, however, in order to qualify for the significant tax benefits available for both employers and employees, employers must maintain adequate record-keeping, fairness, and funding in their pension plans as specified by ERISA.

Privately employed individuals participate in Social Security, and also have federally-regulated personal retirement investment opportunities such as the Individual Retirement Account (IRA), accounts funded with pre-tax dollars, and many others. Banks, investment firms, and financial planners advise and assist individuals in planning and investing for retirement.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Second Substitute):** The Washington Voluntary Account Program (Program) is created in DRS. The director of DRS (director) must design a plan to operate the program. The program has two tiers. On one tier, businesses employing fewer than 100 employees may choose to participate in an Internal Revenue Service-approved employer plan. On the other tier, the program is open to all workers on the basis of workplace-based individual retirement accounts. The contributions of an employee enrolled in an individual retirement account program offered through the Program are capped at \$25,000. The plans and accounts must include the option for enrollees to roll pretax contributions into an individual retirement account after ceasing participation in the program.

The program must include a range of investment options, one of which could be target-date funds and annuities.

The WSIB must invest the contributions of the participants; provide investment options; and establish an investment plan for participants who choose not to self-direct investments.

Enrollment in the program is not an entitlement. Expenditures exceeding the amount available in the program account may not be made. If it appears the amount available in the program account may be exceeded, the director may freeze new enrollments and establish a waiting list or reduce enrollments.

After the director designs the program, the director must obtain approval, if necessary, from the federal Internal Revenue Service to offer the plans and accounts to Washington employers and workers on a tax-qualified basis. The rules must be written to comply with federal standards. The director then must adopt rules necessary to implement and operate the program. The director must consult with the participants and any others the director determines relevant.

Two program accounts are created in the custody of the State Treasurer. Employee contributions are paid into the principal account. Federal and philanthropic funds are paid into the administrative account. The program may not be implemented until federal funds, philanthropic funds, or both, sufficient to support the program's operational costs for the first three years, have been deposited in the administrative account.

If the program is self-supporting after the first three years, or if not, federal and philanthropic funds are received into the administrative account sufficient to fund the program's operation, the program may continue for the next three years. If the program is not self-supporting after the first six years, it terminates.

Private employers may provide employees with the opportunity to enroll in the program, including providing payroll deductions for employees who enroll.

The director must make biennial reports to the Legislature.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):** The contributions of an employee enrolled in an individual retirement account program offered through the Washington Voluntary Account Program are capped at \$25,000. Only companies that employ fewer than 100 employees may participate in the employer-sponsored component of the program.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended First Substitute as Passed Committee):** It is clarified that the employer's participation in the program is optional.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee (Financial Institutions, Housing & Insurance):** PRO: With this economic downturn, people need hope and some certainty. They no longer can rely on social security. This gives working people the chance for pension retirement security. As an option for the bill, people could reach a certain level of savings and then be required to move out into the private investment sector for their retirement planning. This is a voluntary program. Only about 50 percent of employers offer plans. The private sector does not want this business because it is not profitable for them. The bill benefits workers more than using private sector services because there are high management fees relative to the funds invested, accounts require minimum contributions. This is an AARP priority. People over-rely on social security. Most people consider social security as 80 percent of their retirement and that is not sustainable. The program has minimal costs, increases employer-based retirement opportunities and decreases the state's potential liability for the retired-poor. By 2030 the number of people aged 65 or more will double.

CON: There are all kinds of plans out there. There is no need for another program. State resources should not be spent to develop this. The bill has great uncertainty. As an example, what does "offer" mean. How often and what documentation will be required to prove the offer was made. How do the payroll deductions work? We suggest this bill not move forward. Despite good intentions, this bill establishes a state-run competitor to the private sector of investment and retirement-planning professionals. There is a diverse array of retirement options offered to all investors now, even to the most unsophisticated. This would be the first state-run private market 401-K in the nation. It would compete with private industry and do so at a competitive advantage. The liability protections enjoyed by the administrators of the state plan are not available to private investment advisors. There is no suitability requirement as there is for private sales meaning, like annuities, the product offered must be appropriate for the individual. This plan will reach a wide range of workers, not just the poor. People also need the help that investment advisors can give them in keeping cash on hand or a rainy day fund balanced with invested funds.

**Persons Testifying (Financial Institutions, Housing & Insurance):** PRO: Senator Hobbs, prime sponsor; Gary Burris, Economic Opportunity Institute; Ingrid McDonald, AARP.

CON: Mel Sorensen, American Council of Life Insurers; Gary Smith, Independent Business Association; Bill Stauffacher, Securities Industry and Financial Markets Association.

**Staff Summary of Public Testimony on First Substitute Bill (Ways & Means):** PRO: Too many retirement-age individuals don't have adequate savings available for retirement. While Social Security is a great program, it isn't intended to provide the bulk of an individual's retirement income. This bill is designed to develop a voluntary program to help employers that are not currently offering a retirement plan and employees that are not currently saving for retirement. Only about half of all employers offer some form of retirement plan, and less than 25 percent of firms employing 25 or fewer persons offer such a program. In spite of federal efforts to encourage individuals to save, small businesses and most individuals aren't being offered appropriate financial products because it isn't sufficiently profitable for the financial industry to do so. The barriers to saving for individual workers are significant, including minimum investment requirements, up-front charges, and high management fees. All of these barriers are especially problematic to small-scale

investors. This bill won't have a fiscal impact on the state because the program is designed to be self-sufficient and start-up funds must come from federal or philanthropic sources.

CON: This bill would establish a state-run financial services company that would compete directly with private sector firms, which is unfair and inappropriate. No other state has established a program of this sort. Additionally, if this program were successful, the state would lose Business and Occupation Tax revenues from the financial services sector. These revenue impacts are not reflected in the fiscal note. High-quality, professional financial services are already available to individuals of modest means. This program would do more harm than good by exposing the state and employers to significant administrative expenses and legal liabilities. Small businesses are not prepared to deal with the complexities of ERISA regulations. A recent report from the DRS recommended the state avoid establishing a public 401(k) program and instead focus on ways to encourage use of individual retirement accounts. It would be better for employers to participate in the federal SIMPLE IRA program, which are exempt from ERISA regulations and are ideally suited to the retirement savings needs of most employees and employers. The average annual retiree contribution to a retirement plan falls well below the maximum allowable contributions for any type of individual retirement plan.

**Persons Testifying (Ways & Means):** PRO: Gary Burris, Economic Opportunity Institute; Eden Greer, American Association of Retired Persons.

CON: Yannis P. Koumantaros, Spectrum Pension Consultants; Mel Sorensen, National Association of Insurance & Financial Advisors, American Council of Life Insurers; Bill Stauffacher, Securities Industry, Financial Markets Association.