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**HOUSE BILL 2437**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Santos, Wylie, and Reeves

AN ACT Relating to incentivizing retirement savings options for Washington businesses and their employees; reenacting and amending RCW 43.79A.040, 43.79A.040, and 43.79A.040; adding a new chapter to Title 19 RCW; creating a new section; providing effective dates; and providing expiration dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state multiple employer retirement plan board established in section 2 of this act.

(2) "Eligible employee" means a person who is either employed by a participating employer or is self-employed, who has wages or other compensation that is allocable to the state, who is 18 years of age or older, and is eligible to participate in the plan.

(3) "Eligible employer" means a person or entity engaged in a specific business, industry, profession, trade, or other enterprise located in Washington, whether for profit or not for profit, including a self-employed individual, that has been in business at all times during the proceeding calendar year, but excluding a federal, state, or foreign governmental entity, agency, or instrumentality or any political subdivision thereof.

(4) "Employee retirement income security act" means the employee retirement income security act of 1974, as amended, Title 29 U.S.C. Sec. 1001 et seq.

(5) "Internal revenue code" means the internal revenue code of 1986, as amended, Title 26 U.S.C. Sec. 1 et seq.

(6) "Participant" means an eligible employee who has a balance credited to his or her account under the plan, and for investment and benefit payment purposes, includes the beneficiary of a deceased participant and an alternate payee pursuant to a domestic relations order under section 414(p) of the internal revenue code and section 206(d)(3) of the employee retirement income security act.

(7) "Participating employer" means an eligible employer that has elected to participate in the plan provided for by this chapter.

(8) "Plan" means the Washington state multiple employer retirement plan established under this chapter.

(9) "Trust" means the trust formed or issued under Washington law to hold the assets of the plan.

NEW SECTION. **Sec.**  (1) The Washington state multiple employer retirement plan board is established in the office of the state treasurer.

(2)(a) The board is comprised of the following voting members:

(i) The state treasurer;

(ii) The chief executive officer of the Washington state investment board or his or her designee; and

(iii) The following members appointed by the governor:

(A) Two members representing the interests of small, independent businesses in Washington;

(B) Two members representing minority and women-owned businesses;

(C) One member associated with the small business resiliency network under the department of commerce; and

(D) Two employee representatives, one of whom must be a current employee and one of whom must be retired.

(b) The board has the following nonvoting ex officio members:

(i) Two members of the senate, one from each of the two largest caucuses, appointed by the president of the senate; and

(ii) Two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives.

(3) The state treasurer shall chair the board.

(4) Voting members appointed by the governor serve three-year terms and may be appointed for a second three-year term at the discretion of the governor, but may not serve more than two terms over their lifetime. The governor may stagger the terms of the appointed members. Members appointed by the speaker of the house of representatives or the president of the senate serve at the pleasure of the appointing authority.

(5) The board shall meet at least four times annually and periodically as specified by the chair or a majority of the board. The inaugural meeting of the board must occur before January 1, 2025.

(6) Each voting board member has one vote. The powers of the board must be exercised by a majority of all voting members present at the meeting of the board, whether in person or remotely. Five voting members of the board constitute a quorum to convene a meeting and to act on any measures before the board.

(7) The board may conduct meetings remotely by teleconference or videoconference, including to obtain a quorum and to take votes on any measure.

NEW SECTION. **Sec.**  (1) The board is the plan sponsor, plan administrator, and fiduciary of the plan under the employee retirement income security act, and as such, shall have the following powers and duties to:

(a) Establish, implement, operate, and maintain the plan in accordance with the requirements set forth in section 4 of this act;

(b) Arrange for and facilitate compliance with all applicable requirements for the plan under the internal revenue code, the employee retirement income security act, and any other applicable federal or state law and accounting requirements, and to provide or arrange for assistance to eligible employers and eligible employees in complying with applicable law and tax-related requirements in a cost-effective manner;

(c) Apply for determination letters from the internal revenue service that the plan satisfies the qualification requirements under the internal revenue code 401(a);

(d) Ensure that the plan, trust, and accounts established under the plan are designed, established, and operated:

(i) In accordance with best practices for retirement savings vehicles;

(ii) To encourage participation, savings, sound investment practices, and appropriate selection of default investments;

(iii) To maximize simplicity and ease of administration for eligible employers;

(iv) To minimize costs, including by collective investment and economies of scale; and

(v) To promote portability of benefits;

(e) Hire, retain, and terminate a plan executive director and other such employees as the board determines necessary to administer the plan;

(f) Make and enter into competitively procured contracts and agreements to the extent necessary for the effective and efficient design, implementation, and administration of the plan, including for consultants, actuaries, investment advisors, investment administrators, investment management firms, and third-party administrators;

(g) Cause moneys to be held and invested and reinvested under the plan;

(h) Arrange for collective, common, and pooled investment of assets of the plan;

(i) Develop and implement an investment policy that defines the plan's investment objectives, consistent with the objectives of the plan, and that provides for policies and procedures consistent with those investment objectives;

(j) Designate appropriate default investments that include a mix of asset classes, such as target date and balanced funds;

(k) Establish the processes for enrollments, contributions, and distributions under the plan;

(l) Establish a process deemed reasonably necessary to verify whether a person or entity is an eligible employer;

(m) Collect fees to defray the cost of administering the plan, while seeking to minimize participant fees and expenses of investment and administration;

(n) Establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation and, if necessary, determine the eligibility of an employer, employee, or other individual to participate in the plan;

(o) Develop and implement an outreach plan to gain input and disseminate information regarding the plan and to educate participants and citizens about the benefits of planning and saving for retirement;

(p) Provide an opportunity for participating employers and participants to provide feedback on the plan with an annual meeting;

(q) Adopt rules and procedures necessary to implement, administer, and operate the plan consistent with the internal revenue code and regulations thereunder, including to ensure that the plan satisfies all criteria for favorable federal tax-qualified treatment, and complies, to the extent necessary, with the employee retirement income security act and any other applicable federal and state law; and

(r) Discharge the board's duties and see that the members of the board discharge their duties with respect to the plan solely in the interests of the participants as follows:

(i) For the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the plan; and

(ii) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(2) The board shall submit an annual report to the appropriate committees of the legislature, in accordance with RCW 43.01.036, and to participating employers and plan participants that provides information about the plan, including:

(a) Participating employer and participant statistics;

(b) Plan performance;

(c) Board decisions; and

(d) Recommendations to the legislature regarding the plan.

NEW SECTION. **Sec.**  The Washington state multiple employer retirement plan shall be designed, established, and operated by the board and must:

(1) Be a tax-qualified defined contribution plan under section 401(a) of the internal revenue code, which includes a cash or deferred arrangement under section 401(k) of the internal revenue code;

(2) Be governed by the employee retirement income security act;

(3) Be either a multiple employer plan under the employee retirement income security act and the internal revenue code section 413(c) or a series of single-employer plans with combined administrative and investment structures;

(4) Be available on a voluntary, opt-in basis to eligible employers and eligible employees;

(5) Provide participants the option to terminate their participation at any time;

(6) Allow voluntary pretax or designated Roth 401(k) contributions;

(7) Allow voluntary employer matching and nonmatching contributions, provided that all participant and participating employer contributions are always fully vested;

(8) Provide that, upon enrollment, participants are enrolled at the default, contribution rate established by the board;

(9) Offer default escalation of contribution levels that can be increased or decreased with the limits allowed by the internal revenue code;

(10) Allow participating employers to adopt rules and conditions in the plan documents regarding employee eligibility, including compensation for contribution purposes and the rate of matching and nonmatching contributions applicable to its participants, provided that all rules and conditions comply with the internal revenue code and the employee retirement income security act;

(11) Pool accounts established under the plan for investment;

(12) Provide for the rules and procedures governing the payment of benefits;

(13) Provide for the rules and procedures promoting portability of benefits, including the ability to make rollovers or transfers to and from the plan that are exempt from federal income tax, provided that a rollover is initiated by a participant;

(14) Be professionally managed; and

(15) Provide for the plan's administration in an efficient and cost-effective manner.

NEW SECTION. **Sec.**  (1) The Washington state investment board shall be the investment manager of the plan. The investment manager shall, in consultation with the board, have the full power to invest, reinvest, manage, contract, sell, or exchange funds associated with the plan.

(2) All investment and operating costs of the investment manager must be paid by participants and recovered under procedures agreed to by the board and the investment manager.

(3) The investment manager shall invest and manage the assets entrusted to it:

(a) With reasonable care, skill, prudence, and diligence under circumstances then prevailing which a prudent person acting in a like capacity and familiar with such matters would use to conduct an activity of like character and purpose; and

(b) In accordance with the investment policy established by the board.

(4) The investment manager must routinely consult and communicate with the board on the investment policy, performance, and related needs of the plan.

NEW SECTION. **Sec.**  (1) Prior to opening the plan for enrollment, the board shall design and disseminate to employers:

(a) An employer information packet educating employers about the plan that must include background information on the plan; and

(b) An employee information packet for the plan that must include background information on the plan and appropriate disclosures to employees.

(2) The disclosures under subsection (1) of this section must include, but are not limited to:

(a) The benefits and risks associated with participating in the plan;

(b) The mechanics of how the employee may join the plan if his or her employer participates;

(c) The process for applying for payment of retirement benefits;

(d) How to obtain additional information about the plan; and

(e) Other information deemed relevant and necessary by the board.

(3) In addition, the disclosure form must clearly articulate the following:

(a) That participating employers are not liable for decisions employees make pursuant to this chapter; and

(b) The plan fund is not guaranteed by the state.

NEW SECTION. **Sec.**  (1) Individual account information relating to accounts under the plan and relating to individual participants including, but not limited to, names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions, and earnings is confidential and must be maintained as confidential, provided that such information may be disclosed:

(a) To the extent necessary to administer the plan in a manner consistent with this chapter, the employee retirement income security act, the internal revenue code, or any other federal or Washington law; or

(b) If the individual who provides the information or who is the subject of the information expressly agrees in writing to the disclosure of the information.

(2) Information required to be confidential under subsection (1) of this section is exempt from disclosure under the public records act, chapter 42.56 RCW.

NEW SECTION. **Sec.**  (1) A participating employer may not be a fiduciary, or considered to be a fiduciary, with regard to the operation of the plan, except with respect to contribution amounts not remitted in a timely fashion. A participating employer may not be liable for or bear responsibility for:

(a) An employee's decision to participate in or opt out of the plan;

(b) An employee's decision as to which investments to choose;

(c) Participants' or the board's investment decisions;

(d) The administration, investment, investment returns, or investment performance of the plan including, but not limited to, any interest rate or other rate of return on any contribution or account balance, provided that the participating employer is not involved in the administration or investment of the plan;

(e) The plan design or the benefits paid to participants; or

(f) Any loss, failure to realize any gain, or any other adverse consequences including, but not limited to, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the plan.

(2) The state; the board and each of its members; any other state official, board, commission, or agency; any member, officer, and employee thereof; and the plan:

(a) May not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

(b) Is not liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences including, but not limited to, any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the plan.

(3) The debts, contracts, and obligations of the plan or the board are not the debts, contracts, and obligations of the state, and neither the faith and credit nor the taxing power of the state is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the plan or the board.

(4) Nothing in this chapter may be construed to guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance.

NEW SECTION. **Sec.**  The Washington state multiple employer retirement plan administrative account is created in the state treasury. All receipts from the plan must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for plan administration and operating expenditures.

NEW SECTION. **Sec.**  (1) The Washington state multiple employer retirement plan trust account is created in the custody of the state treasurer, and must be operated as a trust. The board established in section 2 of this act shall serve as its trustee.

(2)(a) The account must be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040. The board shall deposit in the account all moneys received for the plan from participating employers and participants.

(b) The board shall determine how the account operates, provided that the account is operated so that it meets the requirements of the internal revenue code, as of the effective date of this section.

(3) Disbursements from the account are exempt from appropriation and the allotment procedures of chapter 43.88 RCW. An appropriation is not required for expenditures.

(4) With regard to assets, the board acts in a fiduciary, not ownership capacity. The assets of the plan are not considered state money, common cash, or revenue to the state.

NEW SECTION. **Sec.**  The Washington state multiple employer retirement plan must be implemented and operational by January 1, 2027.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 19 RCW.

**Sec.**  RCW 43.79A.040 and 2023 c 389 s 8, 2023 c 387 s 2, 2023 c 380 s 6, 2023 c 170 s 19, and 2023 c 12 s 2 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the Billy Frank Jr. national statuary hall collection fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation account, the medication for people living with HIV rebate revenue account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the pollution liability insurance program trust account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the Washington state multiple employer retirement plan trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

**Sec.**  RCW 43.79A.040 and 2023 c 389 s 8, 2023 c 387 s 2, 2023 c 380 s 6, 2023 c 213 s 9, 2023 c 170 s 19, and 2023 c 12 s 2 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

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(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the Billy Frank Jr. national statuary hall collection fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation account, the medication for people living with HIV rebate revenue account, the homeowner recovery account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the pollution liability insurance program trust account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the Washington state multiple employer retirement plan trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

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(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

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(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

NEW SECTION. **Sec.**  (1) Section 14 of this act expires July 1, 2024.

(2) Section 15 of this act expires July 1, 2030.

NEW SECTION. **Sec.**  (1) Section 15 of this act takes effect July 1, 2024.

(2) Section 16 of this act takes effect July 1, 2030.

**--- END ---**