

# Enrolled House Bill 2960

Sponsored by Representatives READ, WILLIAMSON, Senators BEYER, ROBLAN, ROSENBAUM, RILEY; Representatives BARNHART, BUCKLEY, DOHERTY, FAGAN, FREDERICK, GALLEGOS, GREENLICK, HELM, HOLVEY, HOYLE, KENY-GUYER, KOTEK, LININGER, LIVELY, MCLAIN, NATHANSON, NOSSE, PILUSO, RAYFIELD, REARDON, SMITH WARNER, TAYLOR, VEGA PEDERSON, WITT, Senators DEMBROW, EDWARDS, MONNES ANDERSON, STEINER HAYWARD

CHAPTER .....

## AN ACT

Relating to retirement investments; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Oregon Retirement Savings Board.** (1) **The Oregon Retirement Savings Board is established in the office of the State Treasurer. The board consists of seven members as follows:**

- (a) **The State Treasurer or the designee of the State Treasurer.**
- (b) **The following members appointed by the Governor:**
  - (A) **A representative of employers.**
  - (B) **A representative with experience in the field of investments.**
  - (C) **A representative of an association representing employees.**
  - (D) **A public member who is retired.**

(c) **A member of the Senate appointed by the President of the Senate to be a nonvoting advisory member of the board.**

(d) **A member of the House of Representatives appointed by the Speaker of the House of Representatives to be a nonvoting advisory member of the board.**

(2) **Members of the board appointed by the Governor must be confirmed by the Senate in the manner prescribed in ORS 171.562 and 171.565.**

(3) **The term of office of each member of the board appointed by the Governor is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.**

(4) **Each legislative member serves at the pleasure of the appointing authority and may serve as long as the member remains in the chamber of the Legislative Assembly from which the member was appointed.**

(5) **The State Treasurer or the designee appointed to the board under subsection (1) of this section shall serve as chairperson of the board.**

(6) **A majority of the voting members of the board constitutes a quorum for the transaction of business.**

(7) A member of the board appointed by the Governor is entitled to compensation and expenses as provided in ORS 292.495. A legislative member shall receive compensation and expenses as provided in ORS 171.072.

(8) The office of the State Treasurer shall provide staff support to the board.

**SECTION 2. Powers and duties of Oregon Retirement Savings Board.** (1) The Oregon Retirement Savings Board shall develop a defined contribution retirement plan for persons employed for compensation in this state and conduct a market and legal analysis of the plan.

(2) The board shall have the following powers:

(a) To establish, implement and maintain the plan developed under this section.

(b) To adopt rules for the general administration of the plan as provided in section 4 of this 2015 Act.

(c) To direct the investment of the funds contributed to accounts in the plan consistent with the investment restrictions established by the board. The investment restrictions must be consistent with the objectives of the plan, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(d) To collect application, account or administrative fees to defray the costs of administering the plan.

(e) To make and enter into contracts, agreements or arrangements, and to retain, employ and contract for any of the following considered necessary or desirable, for carrying out the purposes set forth in sections 1 to 10 of this 2015 Act:

(A) Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators and third-party plan administrators.

(B) Research, technical and other services.

(C) Services of other state agencies to assist the board in its duties.

(f) To evaluate the need for, and procure as needed, pooled private insurance of the plan.

(g) To develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general.

**SECTION 3. Requirements for Oregon Retirement Savings Plan.** (1) The plan developed and established by the Oregon Retirement Savings Board under section 2 of this 2015 Act must:

(a) Allow eligible individuals employed for compensation in this state to contribute to an account established under the plan through payroll deduction.

(b) Require an employer to offer its employees the opportunity to contribute to the plan through payroll deductions unless the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code.

(c) Provide for automatic enrollment of employees and allow employees to opt out of the plan.

(d) Have a default contribution rate set by the board by rule.

(e) Offer default escalation of contribution levels that can be increased or decreased within the limits allowed by the Internal Revenue Code.

(f) Provide for contributions to the plan to be deposited directly with the investment administrator for the plan.

(g) Whenever possible, use existing employer and public infrastructure to facilitate contributions to the plan, recordkeeping and outreach.

(h) Require no employer contributions to employee accounts.

(i) Require the maintenance of separate records and accounting for each plan account.

(j) Provide for reports on the status of plan accounts to be provided to plan participants at least annually.

(k) Allow for account owners to maintain an account regardless of place of employment and to roll over funds into other retirement accounts.

(l) Pool accounts established under the plan for investment.

(m) Be professionally managed.

(n) Provide that the State of Oregon and employers that participate in the plan have no proprietary interest in the contributions to or earnings on amounts contributed to accounts established under the plan.

(o) Provide that the investment administrator for the plan is the trustee of all contributions and earnings on amounts contributed to accounts established under the plan.

(p) Not impose any duties under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) on employers.

(q) Keep administration fees in the plan low.

(r) Allow the use of private sector partnerships to administer and invest the contributions to the plan under the supervision and guidance of the board.

(s) Allow employers to establish an alternative retirement plan for some or all employees.

(2) The plan, the board, each board member and the State of Oregon may not guarantee any rate of return or any interest rate on any contribution. The plan, the board, each board member and the State of Oregon may not be liable for any loss incurred by any person as a result of participating in the plan.

**SECTION 4. Rules for Oregon Retirement Savings Plan.** The Oregon Retirement Savings Board shall adopt rules that:

(1) Establish the process for voluntary enrollment in the plan developed under section 2 of this 2015 Act, including procedures for automatic enrollment of employees and for employees to opt out of the plan.

(2) Establish the process for participants to make the default contributions to plan accounts and to adjust the contribution levels.

(3) Establish the process for employers to withhold employee contributions to plan accounts from employees' wages and send the contributions to the investment administrator for the plan.

(4) Establish the process for allowing employees to opt out of enrollment in the plan.

(5) Establish the process for participants to make nonpayroll contributions to plan accounts.

(6) Set minimum, maximum and default contribution levels in accordance with limits established by the Internal Revenue Code.

(7) Establish the process for withdrawals from plan accounts.

(8) Establish the process and requirements for an employer to obtain an exemption from offering the plan if the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code.

(9) Mandate the contents and frequency of required disclosures to employees, employers and other plan participants. These disclosures must include, but need not be limited to:

(a) The benefits and risks associated with making contributions to the plan;

(b) Instructions for making contributions to the plan;

(c) How to opt out of the plan;

(d) How to participate in the plan with a level of contributions other than the default rate;

(e) The process for withdrawal of retirement savings;

(f) How to obtain additional information about the plan;

(g) That employees seeking financial advice should contact financial advisers, that participating employers are not in a position to provide financial advice and that participating employers are not liable for decisions employees make pursuant to sections 1 to 10 of this 2015 Act;

- (h) That the plan is not an employer-sponsored retirement plan; and
- (i) That the plan accounts and rate of return are not guaranteed by the state.

**SECTION 5. Confidentiality of account information.** Individual account information for accounts under the plan developed under section 2 of this 2015 Act, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, is confidential and must be maintained as confidential:

(1) Except to the extent necessary to administer the plan developed under section 2 of this 2015 Act in a manner consistent with sections 1 to 10 of this 2015 Act, the tax laws of this state and the Internal Revenue Code; or

(2) Unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.

**SECTION 6. Oregon Retirement Savings Plan Administrative Fund.** (1) The Oregon Retirement Savings Plan Administrative Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Retirement Savings Plan Administrative Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Retirement Savings Board.

(2) The Oregon Retirement Savings Plan Administrative Fund consists of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Moneys transferred to the fund from the federal government, other state agencies or local governments;

(c) Moneys from the payment of fees and the payment of other moneys due the board;

(d) Any gifts or donations made to the State of Oregon for deposit in the fund; and

(e) Earnings on moneys in the fund.

(3) The board may use the moneys in the fund to pay the administrative costs and expenses of the board and the plan developed under section 2 of this 2015 Act and for any other purpose described in sections 1 to 10 of this 2015 Act.

**SECTION 7. Prerequisites to establishment of Oregon Retirement Savings Plan.** (1) Before establishing a plan developed under section 2 of this 2015 Act, the Oregon Retirement Savings Board shall:

(a) Conduct a market analysis to determine:

(A) The feasibility of the plan.

(B) Whether and to what extent plans with the characteristics described in section 3 of this 2015 Act currently exist in the private market.

(b) Obtain legal advice regarding the applicability of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and the Internal Revenue Code to the plan.

(c) Investigate whether employers that are not required to participate in the plan can make the plan available to their employees.

(d) Investigate how to allow individuals who are not automatically enrolled in the plan to opt in to the plan and make contributions to an account, either through payroll contributions or another method of contribution.

(2) The board shall coordinate with the efforts of other states as those states pursue legal guidance for similar retirement savings programs.

**SECTION 8. Annual reports.** The Oregon Retirement Savings Board shall report in each calendar year to the Governor and to an appropriate committee or interim committee of the Legislative Assembly detailing the board's activities.

**SECTION 9. Preemption.** A local government, as defined in ORS 174.116, may not establish or offer any retirement plan for persons not employed by a public body as defined in ORS 174.109.

**SECTION 10. State agencies to assist with outreach, technical assistance and compliance services.** The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and

any other agency that enters into an intergovernmental agreement with the Oregon Retirement Savings Board to provide outreach, technical assistance or compliance services shall collaborate to provide the outreach, technical assistance or compliance services to the board.

**SECTION 11.** (1) The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the Oregon Retirement Savings Board to provide outreach, technical assistance or compliance services shall develop a plan for providing the outreach, technical assistance or compliance services to the board as required by section 10 of this 2015 Act.

(2) On or before January 1, 2016, the Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the board to provide outreach, technical assistance or compliance services shall report to the board on the plan developed under subsection (1) of this section and the timeline for implementing the plan.

**SECTION 12.** In addition to and not in lieu of any other appropriation, there is appropriated to the State Treasurer, for the biennium beginning July 1, 2015, out of the General Fund, the following amounts, for the following purposes:

(1) \$250,000, which may be expended only for reimbursing other state agencies for providing outreach or technical assistance services for the Oregon Retirement Savings Board.

(2) \$743,541, which may be expended only for operating expenses of the Oregon Retirement Savings Board.

**SECTION 13.** Notwithstanding the provisions of section 6 of this 2015 Act, as soon as is practicable, the State Treasurer shall transfer an amount equal to the total amount of appropriations made under section 12 of this 2015 Act from the Oregon Retirement Savings Plan Administrative Fund to the General Fund.

**SECTION 14.** The Oregon Retirement Savings Board shall report to a committee or interim committee of the Legislative Assembly related to retirement investments on or before December 31, 2016. The report must include:

(1) The results of the market analysis sought by the board under section 7 of this 2015 Act.

(2) The findings from legal advice obtained by the board under section 7 of this 2015 Act.

(3) An analysis of potential costs to employers, including administrative costs, associated with providing automatic payroll deductions for participation in the plan, and recommendations on how to eliminate or reduce those costs through incentives, tax credits or other means.

(4) A draft of the request for proposals to solicit bids from plan administrators.

(5) A timeline for implementation of the plan developed under section 2 of this 2015 Act.

(6) An overview of any contracts entered into by the board in the performance of its duties.

(7) Recommendations to the Legislative Assembly regarding ways to increase financial literacy in this state.

**SECTION 15.** (1) Except as provided in subsection (2) of this section, the Oregon Retirement Savings Board shall establish the retirement plan developed under section 2 of this 2015 Act so that individuals may begin making contributions to the plan no later than July 1, 2017.

(2) If the board determines that the plan developed by the board under section 2 of this 2015 Act would qualify as an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), the board may not establish the plan.

**SECTION 16.** (1) The Governor, the President of the Senate and the Speaker of the House of Representatives shall first make appointments to the Oregon Retirement Savings Board for terms of office beginning on September 1, 2015.

(2) Notwithstanding the term of office specified by section 1 of this 2015 Act, of the members first appointed to the Oregon Retirement Savings Board by the Governor:

(a) One shall serve for a term ending August 31, 2017.

(b) One shall serve for a term ending August 31, 2018.

(c) Two shall serve for a term ending August 31, 2019.

**SECTION 17.** The section captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

**SECTION 18.** This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

**Passed by House June 10, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 16, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2015

**Approved:**

.....M,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State