

JAN 26 2022

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# A BILL FOR AN ACT

RELATING TO HAWAII RETIREMENT SAVINGS.

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

1       SECTION 1. The purpose of this Act is to establish a  
2 state-facilitated payroll-deduction retirement savings plan for  
3 private sector employees in Hawaii who do not have access to  
4 employer-sponsored retirement plans.

5       SECTION 2. The Hawaii Revised Statutes is amended by  
6 adding a new chapter to be appropriately designated and to read  
7 as follows:

8                               "CHAPTER

9                               HAWAII RETIREMENT SAVINGS

10       § -1 Short title. This chapter shall be known and may  
11 be cited as the Hawaii Retirement Savings Act.

12       § -2 Definitions. As used in this chapter, unless the  
13 context otherwise requires:

14       "Board" means the Hawaii retirement savings board  
15 established under section -3.

16       "Covered employee" means an individual who:

17       (1) Is a resident of the State;



(2) Is eighteen years of age or older;  
 (3) Is in the employment of a covered employer; and  
 (4) Receives wages or other remunerations from a covered employer for services rendered that is subject to income tax as compensation paid in the State pursuant to section 235-34,

provided that "covered employee" does not include an individual covered under the federal Railway Labor Act (45 U.S.C. 151) or on whose behalf the employer makes contributions to a Taft-Hartley multiemployer pension trust fund.

"Covered employer" means any person who has been in business in the State for more than two years and has one or more individuals in employment; provided that "employer" does not include:

- (1) The United States;
- (2) The State or any of its political subdivisions; or
- (3) A person that has been maintaining for all employees during the preceding two years a retirement plan that is tax-qualified under or is described in and satisfies the requirements of subsection 401(a), 401(k), 403(a), 403(b), 408(k) - simplified employee



pension, or 408(p) - SIMPLE-IRA - of the Internal Revenue Code.

"Department" means the department of budget and finance.

"Director" means the director of finance.

"Individual Retirement Account" or "IRA" means a traditional or Roth individual retirement account or individual retirement annuity under section 408(a), 408(b), or 408A of the Internal Revenue Code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (Title 26 of the United States Code).

"Participant" means an individual who is contributing to an IRA under the program or has an IRA account balance under the program.

"Person" means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business, legal entity, or group of individuals.

"Program" means the Hawaii retirement savings program established pursuant to this chapter.



1 "Roth IRA" means a Roth individual retirement account or  
2 individual retirement annuity under section 408A of the Internal  
3 Revenue Code.

4 "Special fund" means the Hawaii retirement savings  
5 administrative fund established in section -8.

6 "Total fees and expenses" means all fees, costs, and  
7 expenses, including but not limited to administrative expenses,  
8 investment expenses, investment advice expenses, accounting  
9 costs, actuarial costs, legal costs, marketing expenses,  
10 education expenses, trading costs, insurance annuitization  
11 costs, and other miscellaneous costs.

12 "Traditional IRA" means a traditional individual retirement  
13 account or traditional individual retirement annuity under  
14 section 408(a) or (b) of the Internal Revenue Code.

15 "Wages" shall have the same meaning as defined in section  
16 388-1.

17 § -3 Hawaii retirement savings board; establishment;  
18 purpose. (a) There is established within the department for  
19 administration purposes only, a Hawaii retirement savings board  
20 to implement and administer a state-facilitated payroll-  
21 deduction retirement savings program for private-sector



1 employees who do not have access to employer-sponsored  
2 retirement plans.

3 (b) The board shall consist of nine members as follows:

4 (1) Two ex-officio, voting members who shall serve as the  
5 co-chairs of the board, consisting of:

6 (A) The director or the director's designee; and

7 (B) The director of labor and industrial relations or  
8 the director's designee;

9 (2) Two ex-officio, nonvoting members, consisting of:

10 (A) A member of the house of representatives  
11 appointed by the speaker of the house of  
12 representatives; and

13 (B) A member of the senate appointed by the president  
14 of the senate; and

15 (3) Five voting members who shall hold no other public  
16 office, to be appointed by the governor and serve on  
17 the board in accordance with section 26-34, consisting  
18 of:

19 (A) One member with professional knowledge and  
20 experience in establishing retirement saving  
21 plans and retirement investment products;



1 (B) One member representing the interests of small  
2 businesses in Hawaii;

3 (C) One member with professional knowledge and  
4 experience in representing the interests of  
5 employers in terms of retirement savings;

6 (D) One member with professional knowledge and  
7 experience in representing the interests of  
8 employees in terms of retirement savings; and

9 (E) One member who is a retiree who resides in  
10 Hawaii, representing retirees in Hawaii.

11 (c) The terms of board members shall be four years;  
12 provided that the initial appointments shall be for staggered  
13 terms, as determined by the governor; provided further that ex-  
14 officio board members shall serve at the pleasure of the  
15 appointing authority.

16 (d) A simple majority of voting members of the board shall  
17 constitute quorum to do business. Any action taken by the board  
18 shall be approved by a simple majority of the voting members  
19 present. Any vacancy on the board shall not impair the  
20 authority of the remaining members to exercise all the powers of  
21 the board. All decisions of the board shall be reduced into



1 writing and shall state separately its findings of fact and  
2 conclusions.

3 (e) The members of the board shall serve without pay but  
4 shall be reimbursed for their actual and necessary expenses,  
5 including travel expenses, incurred in carrying out their  
6 duties.

7 (f) The board, or its chairperson with the approval of the  
8 board, may employ an executive director exempt from chapters 76  
9 and 89, and other staff necessary to perform its duties.

10 § -4 Hawaii retirement savings board; powers; duties.

11 (a) The board shall have powers and duties in accordance with  
12 law to:

13 (1) Establish, implement, and maintain the program;

14 (2) Cause the program and arrangements and accounts  
15 established under the program to be designed,  
16 established, and operated:

17 (A) In accordance with best practices for retirement  
18 saving vehicles;

19 (B) To encourage participation, saving, sound  
20 investment practices, and appropriate selection  
21 of default investments;



- 1 (C) To maximize simplicity and ease of administration  
2 for employers;
- 3 (D) To minimize costs, including by collective  
4 investment and other measures to achieve  
5 economies of scale and other efficiencies in  
6 program design and administration;
- 7 (E) To promote portability of benefits; and
- 8 (F) To avoid preemption of the program by federal  
9 law;
- 10 (3) Arrange for collective, common, and pooled investment  
11 of assets of the program;
- 12 (4) Develop and disseminate information designed to  
13 educate participants and the public about the benefits  
14 of planning and saving for retirement and help them  
15 decide the level of participation and savings  
16 strategies that may be appropriate;
- 17 (5) Determine the eligibility of an employer, employee, or  
18 other individual to participate in the program;
- 19 (6) Ensure the program's compliance with all applicable  
20 laws and regulations;



- (7) Establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation;
- (8) Develop and implement an investment policy that defines the program's investment objectives that is consistent with the objectives of the program, and other policies and procedures consistent with those investment objectives;
- (9) Cause expenses incurred to initiate, implement, maintain, and administer the program to be paid from the program and other available sources;
- (10) Collect application, account, or administrative fees;
- (11) Accept grants, gifts, donations, legislative appropriations, loans, and other moneys from the State, any unit of federal, state, or local government, or any other person to defray the costs of administering and operating the program;
- (12) Enter into contracts pursuant to chapter 103D for services that the board deems necessary to carry out the purposes of this chapter, including:



1 (A) Services of private and public financial  
2 institutions, depositories, consultants,  
3 actuaries, counsel, auditors, investment  
4 advisers, investment administrators, investment  
5 management firms, other investment firms, third-  
6 party administrators, other professionals and  
7 service providers, and the State's employees'  
8 retirement system;

9 (B) Research, technical, financial, administrative,  
10 and other services; and

11 (C) Services of other state agencies to assist the  
12 board in the exercise of its powers and duties;

13 (13) Develop and implement an outreach plan to gain input  
14 and disseminate information regarding the program and  
15 retirement savings in general;

16 (14) Cause moneys to be held and invested and reinvested  
17 under the program;

18 (15) Ensure that all contributions to IRAs under the  
19 program may be used only to:

20 (A) Pay benefits to participants under the program;

21 (B) Pay the cost of administering the program; and



1 (C) Make investments for the benefit of the program,  
2 and that no assets of the program are transferred  
3 to the general fund of the State or to any other  
4 fund of the State or are otherwise encumbered or  
5 used for any purpose other than those specified  
6 in this paragraph;

7 (16) Make provision for the payment of costs of  
8 administration and operation of the program;

9 (17) Evaluate the need for and procure if the board deems  
10 necessary:

11 (A) Insurance against any and all loss in connection  
12 with the property, assets, or activities of the  
13 program; and

14 (B) Pooled private insurance;

15 (18) Indemnify, including procurement of insurance if and  
16 as needed for this purpose, each board member from  
17 personal loss or liability resulting from the member's  
18 action or inaction as a board member;

19 (19) Collaborate with and evaluate the role of financial  
20 advisors or other financial professionals, including



1 in assisting and providing guidance for covered  
2 employees; and

3 (20) Take any other action the board deems reasonably  
4 necessary to carry out the purpose of this chapter.

5 (b) Board members, the executive director, and other staff  
6 of the board shall not:

7 (1) Have any interest, directly or indirectly, in the  
8 making of any investment under the program or in gains  
9 or profits accruing from any such investment;

10 (2) Borrow any program-related funds or deposits, or use  
11 any such funds or deposits in any manner, for  
12 themselves or as an agent or partner of others; or

13 (3) Become an endorser, surety, or obligor on investments  
14 made under the program.

15 § -5 Hawaii retirement savings program; establishment;  
16 payroll deduction; automatic enrollment with opt out options.

17 (a) There is established within the department for  
18 administrative purposes only, a Hawaii retirement savings  
19 program. The program shall be administered by the board, in  
20 consultation with the department and the department of labor and  
21 industrial relations.



1 (b) Any covered employee may elect to contribute a portion  
2 of the employee's salary or wages to an individual retirement  
3 account provided by the program through payroll deduction.

4 (c) Beginning July 1, 2024, a covered employer shall:

5 (1) Automatically enroll a covered employee into the  
6 program and provide the covered employee with a  
7 written notice of the employee's right to opt out; and

8 (2) Provided that the covered employee has not opted out  
9 of the program:

10 (A) Withhold the covered employee's contribution  
11 amount from the employee's salary or wages; and

12 (B) Transmit the covered employee's payroll deduction  
13 contribution to the program on the earliest date  
14 the amount withheld can reasonably be segregated  
15 from the covered employer's assets, but no later  
16 than the fifteenth day of the calendar month  
17 following the month in which the covered  
18 employee's contribution amounts are withheld.

19 (d) The program shall establish for each enrolled employee  
20 a Roth IRA, into which the contributions deducted from an  
21 employee's payroll shall be deposited. The board may add an



1 option for all participants to affirmatively elect to contribute  
2 to a traditional IRA in addition to a Roth IRA.

3 (e) The contributions to and earnings on the amounts  
4 contributed to an employee's IRA under the program is owned by  
5 the employee. The State and employers shall have no proprietary  
6 interest in the contributions or earnings in an employee's IRA.

7 (f) Covered employers shall not make contributions,  
8 whether matching or not, to the program.

9 § -6 Hawaii retirement savings program; contribution  
10 amount; rates. (a) The default contribution amount deducted  
11 from the payroll of a covered employee who has not opted out of  
12 the program shall be equal to five per cent of the covered  
13 employee's salary or wages; provided that an employee may elect  
14 to contribute a higher or lower percentage of compensation as  
15 long as the amount does not exceed the applicable contribution  
16 dollar limits under the Internal Revenue Code.

17 (b) The board may elect to increase the program's  
18 contribution rates on an annual basis; provided that the  
19 increase shall not exceed one per cent each year and the  
20 resulting contribution rate shall not exceed eight per cent.  
21 The board shall determine whether the increase applies to all



1 participants by default or only upon affirmative election by  
2 participants; provided that in either case, the contribution  
3 amount for a participant shall not exceed the applicable  
4 contribution dollar limits under the Internal Revenue Code.

5       §   -7   Hawaii retirement savings program; program manager.

6   (a)   The program shall be managed by a program manager that  
7 shall be a financial institution with professional knowledge and  
8 experience in managing automatic enrollment payroll deduction  
9 IRAs, contracted by the board in compliance with chapter 103D.

10       (b)   The program manager shall keep total fees and expenses  
11 as low as practicable; provided that the total fees and expenses  
12 of the program each year shall not exceed seventy-five basis  
13 points of the total assets of the program; provided that this  
14 limit shall not apply during the initial three-year period  
15 following the establishment of the program.

16       (c)   The program manager shall prepare and make available  
17 to all participants, a report on the status of each  
18 participant's account at least once every calendar year.

19       §   -8   Hawaii retirement savings special fund.   (a)   There  
20 is established within the state treasury, a Hawaii retirement  
21 savings special fund, into which shall be deposited:



(1) Moneys appropriated to the fund by the legislature;

(2) Moneys transferred to the fund from the federal government, other states, and their political subdivisions;

(3) Fees collected by the board in relation to the administration and operation of the program;

(4) Grants, gifts, and donations, made to the board for deposit into the funds;

(5) Moneys collected for the fund from contributions to, or investment returns or assets of, the program or other moneys collected by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law;

(6) Interests earned or accrued on moneys deposited in the fund; and

(7) Penalties collected pursuant to section 14.

(b) All moneys in the special fund are appropriated for the purposes of and shall be expended by the department to pay the administrative costs and expenses of the program, program manager, and the administrative costs and expenses that the



1 board incurs in the performance of its duties under this  
2 chapter.

3       §   -9   Protection from liability; employers.   (a)   A  
4 covered employer or other employer is not and shall not be  
5 liable for or bear responsibility for:

6       (1)   An employee's decision to participate in or opt out of  
7             the program;

8       (2)   Investment decisions made by the participants and the  
9             board;

10      (3)   The administration, investment, investment returns, or  
11             investment performance of the program, including  
12             without limitation, any interest rate or other rate of  
13             return on any contribution or account balance,  
14             provided they played no role;

15      (4)   The program design or the benefits paid to  
16             participants;

17      (5)   Individuals' awareness of or compliance with the  
18             conditions and other provisions of the tax laws that  
19             determine which individuals are eligible to make tax-  
20             favored contributions to IRAs, in what amount, and in  
21             what time frame and manner;



(6) Any loss, failure to realize any gain, or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of program participation; or

(7) Any loss, deficiency, or damages caused by or related to the action or inaction of the program manager.

(b) No covered employer or other employer shall be, or shall be considered to be, a fiduciary in relation to the program or any other arrangement under the program.

§ -10 Protection from liability; State. (a) The State, department, Hawaii retirement savings board, Hawaii retirement savings program, and other departments, agencies, boards, commissions, and programs of the State and any officers or employees thereof:

(1) Shall not be responsible for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are eligible to make tax-favored contributions to



1 IRAs, in what amount, and in what time frame and  
2 manner;

3 (2) Shall have no duty, responsibility, or liability to  
4 any party for the payment of any benefits under the  
5 program, regardless of whether sufficient funds are  
6 available under the program to pay such benefits;

7 (3) Shall not guarantee any interest rate or other rate of  
8 return on or investment performance of any  
9 contribution or account balance; and

10 (4) Shall not be liable or responsible for any loss,  
11 deficiency, failure to realize any gain, or any other  
12 adverse consequences, including without limitation any  
13 adverse tax consequences or loss of favorable tax  
14 treatment, public assistance, or other benefits,  
15 incurred by any person as a result of participating in  
16 the program.

17 (b) The debts, contracts, and obligations of the program  
18 or the board are not the debts, contracts, and obligations of  
19 the State, and neither the faith and credit nor the taxing power  
20 of the State is pledged directly or indirectly to the payment of



1 the debts, contracts, and obligations of the program or the  
2 board.

3       §   -11 Confidentiality of participant and account  
4 information. Individual account information relating to  
5 accounts under the program and relating to individual  
6 participants, including but not limited to names, addresses,  
7 telephone numbers, email addresses, personal identification  
8 information, investments, contributions, and earnings, is  
9 confidential and shall be maintained as confidential:

10       (1) Except to the extent necessary to administer the  
11 program in a manner consistent with this chapter, the  
12 tax laws of the State, and the Internal Revenue Code;  
13 or

14       (2) Unless the individual who provides the information or  
15 is the subject of the information expressly agrees in  
16 writing to the disclosure of the information.

17       §   -12 Intergovernmental collaboration and cooperation.

18 (a) The board may enter into an intergovernmental agreement or  
19 memorandum of understanding with the State and any agency of the  
20 State to receive outreach, technical assistance, enforcement and  
21 compliance services, or collection or dissemination of



1 information pertinent to the program, subject to a  
2 confidentiality agreement deemed appropriate by the board and  
3 other agencies of the State.

4 (b) The State and any department, board, commission, or  
5 agency that enter into the agreements or memoranda of  
6 understanding shall collaborate to provide the outreach,  
7 assistance, information, and compliance or other services or  
8 assistance to the board. The memoranda of understanding may  
9 cover the sharing of costs incurred in gathering and  
10 disseminating information and the reimbursement of costs for any  
11 enforcement activities or assistance.

12 § -13 Civil actions. The director and any employee  
13 denied automatic enrollment into the program in violation of  
14 subsection § -5(c)(1) may file a civil action against the  
15 covered employer to require the covered employer to enroll the  
16 covered employee into the program and recover costs, including  
17 reasonable attorney's fees, incurred in the civil action.

18 § -14 Penalties. (a) Any covered employer who fails to  
19 enroll a covered employee into the program in accordance with  
20 section -5(c)(1) without equitable justification shall be  
21 liable:



(1) To the covered employee, in an amount equal to the contribution amount that would have been made by the employee into the program and interest at a rate of six per cent per year on the contribution amount, beginning from the date the contribution would have been made into the account; provided that the sum of the contribution amount and interest thereto shall be transmitted by the covered employer to the program to be paid into the covered employee's IRA;

(2) A penalty of:

(A) \$25 for each month the covered employee was not enrolled in the program; and

(B) \$50 for each month the covered employee continues to be unenrolled in the program after the date on which a penalty has been assessed with respect to the covered employee; provided that the employee has not opted out of participation in the program.

(b) Any covered employer who fails to timely transmit a covered employee's payroll deduction contribution to the program pursuant to section -5(c)(2) shall be subject to the same



1 sanctions imposed on an employer for misappropriation of  
2 employee wage withholdings and the penalties pursuant to chapter  
3 388.

4 (c) No penalty under subsections (a)(2) and (b) shall be  
5 imposed on a covered employer if the covered employer can  
6 establish by a preponderance of the evidence that the covered  
7 employer:

8 (1) Exercised reasonable diligence to meet the  
9 requirements of subsection -5(b);

10 (2) Did not know or reasonably should not have known that  
11 the failure existed; and

12 (3) Cures the failure within ninety days of the day the  
13 covered employer was given actual notice of the  
14 failure or should have known that the failure existed,  
15 whichever is earlier.

16 (d) Any covered employer who otherwise violates or fails  
17 to comply with any provision of this chapter or rules adopted  
18 pursuant to this chapter shall be liable for a penalty of not  
19 less than \$500 for each violation or failure.

20 (e) All or part of the penalty imposed under subsection  
21 (a)(2) and (b) may be waived to the extent that the payment of



1 the penalty would be excessive or otherwise inequitable relative  
2 to the violation or failure involved, if the covered employer  
3 can establish by a preponderance of the evidence, the existence  
4 of equitable justification for its violation or failure.

5 (f) The penalties under this section shall be deposited  
6 into the Hawaii retirement savings special fund.

7 § -15 Rulemaking. (a) The department, in consultation  
8 with the department of labor and industrial relations, shall  
9 adopt rules pursuant to chapter 91 to govern the actions of the  
10 board.

11 (b) The board, in consultation with the department and  
12 department of labor and industrial relations, shall adopt rules  
13 pursuant to chapter 91 to carry out the purposes of this  
14 chapter. The rules adopted by the board shall include but not  
15 be limited to rules and procedures governing:

- 16 (1) Enrollment and contributions to IRAs under the  
17 program, including withholding by covered employers of  
18 employee payroll rights of covered employees and  
19 obligations of covered employers;



(2) Withdrawals, rollovers, and direct transfers from IRAs under the program in the interest of facilitating portability and maximization of benefits;

(3) Phasing in the enrollment of eligible covered employees by the size or type of covered employer, beginning with the initial applicability date specified in this Act;

(4) Outreach to individuals, employers, other stakeholders, and the public regarding the program;

(5) Actions of the program manager;

(6) Distribution of funds from the program;

(7) Portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept such rollovers; and

(8) Prescribed forms to be used by covered employers and covered employees.

§ -16 **Audits and annual reports.** (a) The board shall cause an accurate account of all activities, operations, receipts, and expenditures to be maintained in relation to the program and the board. Each year, a full audit of the books and



1 accounts of the board pertaining to the activities, operations,  
2 receipts and expenditures, personnel, services, or facilities,  
3 shall be conducted by a certified public accountant. The audit  
4 shall include but not be limited to the review of direct and  
5 indirect costs attributable to the use of outside consultants,  
6 independent contractors, and any other persons who are not state  
7 employees for the administration of the program. For the  
8 purposes of the audit, the auditors shall have access to the  
9 properties and records of the program and board and may  
10 prescribe methods of accounting and the rendering of periodic  
11 reports in relation to projects undertaken by the program.

12 (b) No later than twenty days before the convening of each  
13 regular session, the board shall prepare and submit to the  
14 governor and the legislature, and make available to the public,  
15 an annual report that shall include but not be limited to:

16 (1) The audited financial report prepared in accordance  
17 with generally accepted accounting principles,  
18 detailing the activities, operations, receipts, and  
19 expenditures of the program and board during the  
20 preceding calendar year; and



1           (2) The progress and accomplishments made by the board  
2                   during the preceding year and projected activities of  
3                   the program for the current calendar year;  
4 provided that the annual report for fiscal year 2025-2026 shall  
5 include the board's findings and recommendations, including any  
6 proposed legislation, relating to the feasibility of expanding  
7 the program's eligibility to Hawaii's independent workforce,  
8 including self-employed workers."

9           SECTION 3. The governor, president of the senate, and  
10 speaker of the house of representatives shall appoint members to  
11 the Hawaii retirement savings board no later than sixty days  
12 after enactment of this Act, for terms of office beginning in  
13 October 2022.

14           SECTION 4. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$813,600 or so much  
16 thereof as may be necessary for fiscal year 2022-2023 for the  
17 implementation and operation of the Hawaii retirements savings  
18 program.

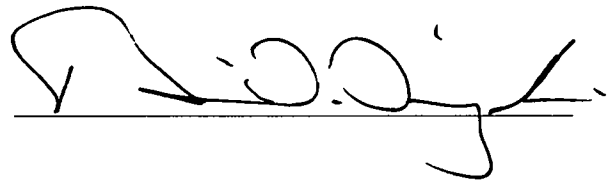
19           The sum appropriated shall be expended by the department of  
20 budget and finance for the purposes of this Act.



1       SECTION 5. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7       SECTION 6. This Act shall take effect on July 1, 2022.

8  
INTRODUCED BY:



# S.B. NO. 3289

**Report Title:**

Hawaii Retirement Savings Program; State-Facilitated Payroll-Deduction Automatic Enrollment Individual Retirement Account; Department of Budget and Finance; Department of Labor and Industrial Relations; Appropriation

**Description:**

Establishes the Hawaii Retirement Savings Program, administered by the Hawaii Retirement Savings Board, in consultation with the Department of Budget and Finance and Department of Labor and Industrial Relations, to provide a state-facilitated payroll-deduction automatic enrollment individual retirement plan to private sector employees who do not have access to employer-sponsored retirement savings plans beginning 7/1/2024. Appropriates funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

