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By:  Menéndez S.B. No. 1537

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state-administered retirement plan; authorizing administrative penalties.

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

SECTION 1.  Subtitle D, Title 2, Labor Code, is amended by adding Chapter 83 to read as follows:

CHAPTER 83. SECURE RETIREMENT SAVINGS PROGRAM OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 83.001.  DEFINITIONS. In this chapter:

(1)  "Annuity" means a fixed sum of money paid on a monthly basis to a participant on retirement.

(2)  "Board" means the board of trustees established under Section 83.002.

(3)  "Compensation," unless the context otherwise requires, means compensation within the meaning of Section 219(f)(1), Internal Revenue Code, that is received by an eligible employee from an eligible employer.

(4)  "Contribution rate" means the percentage of an eligible employee's compensation that is withheld from their compensation and paid to the employee's individual retirement account under the program.

(5)  "Eligible employee" means any individual who is 18 years of age or older, who is employed by an eligible employer, and whose compensation is subject to federal income taxes.

(6)  "Eligible employer" means an employer that:

(A)  has not been a participating or contributing employer in a retirement plan under Section 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p), Internal Revenue Code, at any time during the preceding two calendar years; or

(B)  elects to be a participating employer as permitted in accordance with rules and procedures established by the board.

(7)  "Employer":

(A)  means a person that:

(i)  is engaged in a business, profession, trade, or other enterprise in this state, whether for profit or not for profit, that employs two or more individuals living in this state; or

(ii)  for the purpose of this chapter only, issues an Internal Revenue Service Form 1099-Miscellaneous Income to five or more individuals living in this state; and

(B)  does not include a federal or state entity, agency, instrumentality, or political subdivision.

(8)  "Individual retirement account" means an individual retirement account or individual retirement annuity as defined by Section 408, Internal Revenue Code, or a Roth IRA as defined by Section 408A, Internal Revenue Code.

(9)  "Internal Revenue Code" means the Internal Revenue Code of 1986.

(10)  "IRA plan" means a plan described by Section 83.059(b)(1).

(11)  "IRA trust account" means the IRA plan's account within the trust fund established under Section 83.059.

(12)  "Multiple-employer plan" means a plan described by Section 83.059(b)(2).

(13)  "Multiple-employer plan account" means a participant's account that accepts contributions from the participant, the participant's employer, or both and that is established under Sections 401(a) and 414(f), Internal Revenue Code.

(14)  "Multiple-employer trust account" means the multiple-employer plan account within the trust fund established under Section 83.059.

(15)  "Participant" means an individual who contributes or has contributed through payroll deductions or through voluntary contributions to the program and includes:

(A)  an individual who moves out of state and elects to continue participating in the program by making direct contributions; and

(B)  the beneficiary of a deceased individual who contributed to the program and an alternate payee under state law for purposes of the withdrawal, transfer, rollover, or other distribution of savings.

(16)  "Participating employer" means an eligible employer that provides a payroll deposit retirement savings arrangement under this chapter for an eligible employee.

(17)  "Payroll" means any method of transferring compensation to an employee of an employer.

(18)  "Program" means the secure retirement savings program established by this chapter.

Sec. 83.002.  BOARD OF TRUSTEES. (a) The board of trustees is composed of five trustees as follows:

(1)  the comptroller, or a designee, who serves as chair;

(2)  a participating employer, appointed by the governor;

(3)  a participant, appointed by the speaker of the house of representatives;

(4)  a resident of this state with expertise in regulatory matters relating to retirement savings, appointed by the chief justice of the supreme court; and

(5)  a resident of this state with expertise in investment matters relating to retirement savings, appointed by the attorney general.

(b)  Appointments to the board are subject to the advice and consent of the senate.

(c)  The term of office for each trustee is two years.

(d)  In the event of a trustee vacancy, the appointing official shall appoint a replacement to serve for the trustee's unexpired term.

(e)  A majority of the board constitutes a quorum for the transaction of business.

(f)  A trustee serves without compensation but is entitled to receive reimbursement of travel expenses incurred by the trustee while conducting the business of the board as provided in the General Appropriations Act.

Sec. 83.003.  BOARD POWERS AND DUTIES; ANNUAL FINANCIAL REPORT REQUIRED. (a) The board shall:

(1)  design, establish, administer, and enforce the program in accordance with Subchapter B;

(2)  employ a program director and other individuals as the board considers necessary to administer the program and the administrative fund;

(3)  adopt administrative rules and procedures, including contested case and enforcement provisions, to carry out the purposes of this chapter;

(4)  enter into contracts necessary or recommended to administer the program;

(5)  request and receive information from any state agency or entity as needed to administer the program;

(6)  request and receive information from employers of eligible employees residing in this state as needed to administer the program;

(7)  annually publish an audited financial report on the operations of the program in accordance with Subsection (b); and

(8)  annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program.

(b)  The audited financial report required by Subsection (a)(7) must be prepared in accordance with generally accepted accounting principles. The audited financial report must include a calculation of the program's actual net rate of return less expenses. The audit must:

(1)  be conducted by an independent certified public accountant; and

(2)  include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not employees of the program.

Sec. 83.004.  FIDUCIARY DUTIES. (a) The board and each investment adviser or other person who has control over the assets of the trust funds established under this chapter are fiduciaries and subject to the fiduciary standards established under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) with respect to the trust funds and the individual accounts.

(b)  Each fiduciary shall discharge duties with respect to the program solely in the interest of the participants and 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 the same or similar enterprise.

(c)  The board may require each eligible employer to provide eligible employees with certain information as the board directs. An employer acting in that capacity:

(1)  is not a fiduciary with respect to the trust funds established under this chapter or the participants' accounts within a trust fund; and

(2)  does not have fiduciary duties under this chapter.

Sec. 83.005.  IMMUNITY FROM LIABILITY. (a) The board, executive director, plan administrator, members of any advisory committee appointed by the board, and employees of the program are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or trust administered under this chapter.

(b)  This section does not waive the state's immunity from suit or liability.

SUBCHAPTER B. PROGRAM DESIGN AND OPERATION

Sec. 83.051.  PROGRAM DESIGN. (a)  The board shall design and implement the secure retirement savings program. The board shall design, establish, and administer the program in accordance with this subchapter.

(b)  The board shall require an eligible employer to offer to each eligible employee an opportunity to contribute through payroll deduction to:

(1)  an individual retirement account in the IRA plan; and

(2)  a savings account in the multiple-employer plan.

(c)  Unless an eligible employee chooses otherwise, the board shall automatically enroll the employee in the IRA plan.

(d)  A participant is not responsible for choosing investments in the program.

(e)  The board shall allow the following persons to enroll in the program:

(1)  self-employed individuals; and

(2)  employers who are not eligible employers.

(f)  The board shall operate the program in a manner that prevents the program from being considered an employee pension benefit plan as defined by Section 3(2)(A), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(2)(A)).

Sec. 83.052.  PARTICIPANT BENEFIT. (a) A participant's retirement savings benefit is calculated from the participant's plan account balance on the date the retirement savings benefit becomes payable.

(b)  The board shall establish the minimum savings requirement to create an adequate lifetime annuity.

(c)  The board may establish benefits other than a lifetime annuity when the minimum savings requirement is not met.

(d)  For a married participant, the automatic form of benefit payment is a joint and survivor annuity.

Sec. 83.053.  PARTICIPANT CONTRIBUTIONS. (a) The employee's employer shall deduct contributions from the employee's compensation at a rate set by the board, unless the employee elects not to contribute or to contribute at a higher rate.

(b)  The board shall set the default contribution rate of at least three percent of an eligible employee's gross income. Subject to Subsection (c), the board may increase the default contribution rate of each IRA plan participant in an amount and at intervals determined by the board.

(c)  An IRA plan participant may opt out of increases determined by the board.

Sec. 83.054.  PARTICIPATING EMPLOYER POWERS AND DUTIES. (a) A participating employer shall:

(1)  make the program available to an eligible employee not later than the 15th day after the date the employee begins employment; and

(2)  deposit a participant's deduction in a manner determined by the board, provided that the employer delivers the amount withheld in a reasonable time period and not later than the 10th business day after the date the amount otherwise would have been paid to the participant.

(b)  A participating employer may not contribute to the IRA plan.

(c)  A participating employer may:

(1)  make voluntary contributions to a participating employee's multiple-employer plan account in the manner established by the board; and

(2)  elect to contribute an amount above the payroll deduction amount by contributing from an eligible rollover that an individual retirement account or Roth IRA may accept under the Internal Revenue Code.

(d)  Participating employer contributions under Subsection (c) must be equal to or less than the applicable limitation to contributions to a defined contribution plan prescribed by Section 415(c), Internal Revenue Code.

Sec. 83.055.  VESTING. Contributions to a participant's account vest immediately with the participant.

Sec. 83.056.  ADMINISTRATIVE FEES AND INVESTMENT EXPENSES. (a) The board shall allocate administrative fees and investment expenses to each participant's account balance or annuity on a pro rata basis or another basis as the board determines fair and equitable.

(b)  The board shall keep the program's administrative fees and investment expenses as low as possible, and the fees and expenses combined may not exceed 0.25 percent of the total balance of the trust funds established under this chapter.

Sec. 83.057.  REQUIRED DISCLOSURES. (a) The board shall design and disseminate to participating employers an employee information packet to be further distributed to the employer's employees. The packet must include background information on the program, the two plans offered under the program, and appropriate disclosures for employees with regard to a lifetime annuity.

(b)  The disclosure form must:

(1)  include information about:

(A)  federal income tax and retirement benefits and investment risks associated with participating in the plans;

(B)  how to join each plan;

(C)  how to opt out of the IRA plan, including an opt-out form;

(D)  how to apply for payment of retirement benefits; and

(E)  how to obtain additional information on the program; and

(2)  clearly state that:

(A)  the program is not an employer-sponsored retirement plan;

(B)  an employer is not liable for an employee's decision under this chapter; and

(C)  plan investments are not guaranteed by the state.

(c)  The board shall provide the required disclosures in English. An employer may notify the board of an eligible employee who speaks a language other than English, and the board shall provide a translation of the required disclosures in the eligible employee's language to the employer to distribute to the employee.

Sec. 83.058.  SECURE RETIREMENT SAVINGS PROGRAM ADMINISTRATIVE FUND. (a) The secure retirement savings program administrative fund is established as a trust fund held outside the treasury by the comptroller and administered by the board. The board shall use money in the administrative fund to pay for administrative and investment expenses the board incurs in the performance of the board's duties under this chapter.

(b)  The administrative fund is separate from the trust fund established under Section 83.059.

(c)  The administrative fund may receive gifts, grants, or other money deposited to the administrative fund, including money received from a governmental entity.

(d)  The legislature may appropriate money to the fund for the initial administrative costs required to establish the program. The board shall repay to the state any amount appropriated under this subsection.

Sec. 83.059.  SECURE RETIREMENT SAVINGS PROGRAM TRUST FUND. (a) The secure retirement savings program trust fund is established as a trust fund held outside the treasury by the comptroller and administered by the board. The board shall:

(1)  invest the trust fund assets as a pooled single fund without distinction as to their source;

(2)  hold the trust fund assets collectively for the proportionate benefit of the participants; and

(3)  use the trust fund assets to defray reasonable expenses of administering, maintaining, and managing investments of the trust.

(b)  The trust fund is intended to provide participants with a source of retirement income for life. The trust fund holds separate accounts for each plan within the program as follows:

(1)  the IRA trust account is established to accept individual contributions into individual retirement accounts established under Sections 408 and 408A, Internal Revenue Code, in an IRA plan established by the board; and

(2)  the multiple-employer trust account is established for purposes of administering a defined contribution plan under Sections 401(a)(27) and 414(i), Internal Revenue Code, that:

(A)  is a qualified plan under Section 401(a), Internal Revenue Code; and

(B)  may accept contributions from an employer and employee participating in the multiple-employer plan established by the board.

(c)  The board shall establish investments within the trust fund that pursue an investment strategy set by the board. The underlying investments of the trust fund must be diversified so as to maintain an overall rate of return that is reflective of a medium level of risk, as determined by the board.

(d)  Subject to Subsection (e), money in the trust accounts may be invested or reinvested by the comptroller or may be invested wholly or partly under contract with other retirement systems, private money managers, or both, as determined by the board.

(e)  The board shall preserve, invest, and expend the assets of the trust fund at all times solely for the benefit of participants.

(f)  The state or an eligible employer has no property rights in the trust fund.

(g)  The state may not transfer or use trust fund assets for any purpose other than the purpose of the trust fund or funding the expenses of operating the program. Amounts deposited in the trust fund are not property of the state and may not be commingled with state money. The state has no claim to or against, or interest in, the trust fund assets.

(h)  The trust fund assets must at all times be held separate and apart from the assets of the state. The state, the program, the board, a board member, or an employer may not make a representation of a guaranty on any investment, rate of return, or interest rate on amounts held in the trust fund.

SUBCHAPTER C. ENFORCEMENT

Sec. 83.101.  ATTORNEY GENERAL. (a) The attorney general is the legal adviser to the board and shall represent the board in all litigation.

(b)  The attorney general may enforce the provisions of this chapter.

Sec. 83.102.  ADMINISTRATIVE PENALTIES. (a) The board may impose an administrative penalty on a participating employer for failure to comply with the requirements under this chapter or a rule or order adopted under this chapter. The amount of the penalty may not exceed $1,000 per employee per year.

(b)  The amount of an administrative penalty must be based on:

(1)  the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2)  the economic harm caused by the violation;

(3)  the history of previous violations;

(4)  the amount necessary to deter a future violation;

(5)  efforts to correct the violation; and

(6)  any other matter that justice may require.

(c)  The enforcement of the penalty may be stayed during the time the order is under judicial review if the participating employer pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A participating employer who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(d)  The board or the attorney general may recover reasonable expenses, including attorney's fees, incurred in recovering the administrative penalty.

(e)  Except as provided by Subsection (g), an administrative penalty collected under this section shall be deposited to the credit of the secure retirement savings program trust fund established under Section 83.059.

(f)  In addition to the penalty prescribed by Subsection (a), the board may impose an administrative penalty on a participating employer that does not deposit a participant's deduction within the time required by Section 83.054. The amount of the penalty is equal to the lost earnings and interest on the participant's contribution. The comptroller shall prescribe a methodology for calculating the lost earnings and interest.

(g)  An administrative penalty collected under Subsection (f) shall be deposited to the credit of the secure retirement savings program trust fund established under Section 83.059 and credited to the accounts of the affected participants on a pro rata basis.

SUBCHAPTER D. UNCLAIMED PROPERTY

Sec. 83.151.  UNCLAIMED PROPERTY. (a) Subject to this section, the board shall adopt rules regarding the disposition of unclaimed proceeds from a participant's account.

(b)  The board shall, using due diligence, contact the participant or the participant's beneficiaries.

(c)  Unclaimed proceeds of an account must be delivered to the comptroller as provided by Chapter 74, Property Code, except if the participant's or beneficiary's last known address is in this state, the comptroller may elect to leave the proceeds deposited in the fund under the program until a claim is made.

SECTION 2.  (a)  Not later than December 1, 2021, the state officials described by Section 83.002, Labor Code, as added by this Act, shall appoint individuals to the board of trustees as required by that section.

(b)  The board of trustees of the secure retirement savings program established under Chapter 83, Labor Code, as added by this Act, shall:

(1)  not later than September 1, 2022, design and establish the secure retirement savings program required under Chapter 83, Labor Code, as added by this Act, including establishing and opening up for enrollment the IRA plan described by Section 83.059(b)(1), Labor Code, as added by this Act;

(2)  not later than December 1, 2022, allow eligible employers, as defined by Section 83.001, Labor Code, as added by this Act, with more than 100 eligible employees, as defined by Section 83.001, Labor Code, as added by this Act, to implement a board-approved procedure that allows each of its eligible employees to participate in the plan;

(3)  not later than March 1, 2023, allow eligible employers with more than 50 eligible employees to implement a board-approved procedure that allows each of its eligible employees to participate in the plan; and

(4)  not later than June 1, 2023, allow all eligible employers and other employers permitted to participate in the program under Section 83.051(e), Labor Code, as added by this Act, to implement a board-approved procedure that allows each of its eligible employees to participate in the plan.

SECTION 3.  This Act takes effect September 1, 2021.