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HOUSE BILL NO. 2431

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend the Code of Virginia by adding in Chapter 24 of Title 2.2 an article numbered 27, consisting of sections numbered 2.2-2491 through 2.2-2499, relating to My Virginia Plan Program; multiple employer plan for private employers and their employees.*

Patron—Torian

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 24 of Title 2.2 an article numbered 27, consisting of sections numbered 2.2-2491 through 2.2-2499, as follows:

*Article 27.**My Virginia Plan Program.***§ 2.2-2491. Definitions.**

As used in this article, unless the context requires a different meaning:

"Board" means the My Virginia Plan Board.

"Eligible employee" means an employee of an eligible employer in the Commonwealth who meets Internal Revenue Service requirements to make contributions to a retirement account.

"Eligible employer" means a self-employed individual, sole proprietor, or nongovernmental employer.

"Enrollee" means any eligible employee of a participating employer who voluntarily enrolls in the Program.

"Individual account information" means names, addresses, telephone numbers, amounts contributed, earnings, and any personal identification information of an enrollee.

"My Virginia Plan Program" or "Program" means the defined contribution retirement plan for persons employed for compensation in the Commonwealth established in § 2.2-2493.

"Participating employer" means any eligible employer with an enrollee.

"Substitute retirement plan" means a retirement plan providing benefits at least equivalent to benefits offered under the Program, including a plan qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code.

§ 2.2-2492. My Virginia Plan Board; membership; terms; quorum.

A. The My Virginia Plan Board is established as a supervisory board in the executive branch of state government. The purpose of the Board is to establish and maintain the My Virginia Plan Program.

B. The Board shall have a total membership of 14 members that shall consist of six legislative members, seven nonlegislative citizen members, and one ex officio member. Members shall be appointed as follows: four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate, to be appointed by the Senate Committee on Rules; and seven nonlegislative citizen members who shall have experience in the financial industry related to retirement to be appointed by the Governor, subject to confirmation by the General Assembly. The Secretary of the Treasury or his designee shall serve ex officio with nonvoting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.

C. Legislative members and ex officio members of the Board shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. No House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. The Board shall elect a chairman and vice-chairman from among its membership. The chairman shall be a nonlegislative citizen member. A majority of the members shall constitute a quorum. Any decision by the Board shall require an affirmative vote of a majority of the members of the Board.

E. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses

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HB2431

59 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the
60 costs of compensation and expenses of the members shall be provided by the Department of the
61 Treasury.

62 F. Staff support and technical assistance to the Board in carrying out the provisions of this article
63 shall be provided by the agencies of the Secretary of the Treasury.

64 **§ 2.2-2493. Powers and duties of the Board.**

65 A. The Board shall develop the Program and conduct a market and legal analysis of the Program.

66 B. The Board shall have the following powers:

67 1. To establish, implement, and maintain the Program;

68 2. To adopt regulations for the administration of the Program;

69 3. To direct the investment of the funds contributed to accounts in the Program consistent with
70 objectives and restrictions established by the Board. In doing so, the Board shall exercise the judgment
71 and care then prevailing that persons of prudence, discretion, and intelligence exercise in the
72 management of their own affairs with due regard to the probable income and level of risk from certain
73 types of investments of money;

74 4. To collect application, account, or administrative fees to defray the costs of administering the
75 Program; and

76 5. To make and enter into contracts, agreements, or arrangements and to retain, employ, and
77 contract for any of the following considered necessary or desirable for carrying out the purposes of this
78 article:

79 a. Services of private and public financial institutions, depositories, consultants, investment advisors,
80 investment administrators, and third-party plan administrators;

81 b. Research and technical services;

82 c. Services of other agencies to assist the Board in its duties;

83 d. Evaluation of and procurement of pooled private insurance of the Program; and

84 e. Development and implementation of an outreach plan to gain input and disseminate information
85 regarding the Program and retirement savings in general.

86 **§ 2.2-2494. Requirements for the Program.**

87 The Program developed and established by the Board shall:

88 1. Allow enrollees to contribute to an account established under the Program through payroll
89 deduction;

90 2. Require an eligible employer to offer eligible employees the opportunity to contribute to the
91 Program through payroll deductions unless the eligible employer offers a substitute retirement plan;

92 3. Not require automatic enrollment of eligible employees or enrollees;

93 4. Have a default contribution rate, as determined by the Board and promulgated by regulation;

94 5. Offer default escalation of contribution levels that may be increased or decreased within the limits
95 allowed under the Internal Revenue Code;

96 6. Provide for contributions to the Program to be deposited directly with the investment
97 administrator for the Program;

98 7. Whenever possible, use existing employer and public infrastructure to facilitate contributions to
99 the Program, recordkeeping, and outreach;

100 8. Not require a participating employer to contribute to the account of an enrollee;

101 9. Require the maintenance of separate records and accounting for each account in the Program;

102 10. Provide for reports on the status of Program accounts to be provided to enrollees at least
103 annually;

104 11. Allow for an enrollee to maintain an account regardless of his place of employment and to roll
105 over funds into other retirement accounts;

106 12. Pool accounts established under the Program for investment;

107 13. Be professionally managed;

108 14. Provide that the Commonwealth and participating employers have no proprietary interest in the
109 contributions to or earnings on amounts contributed to accounts established under the Program;

110 15. Provide that the investment administrator for the Program is the trustee of all contributions and
111 earnings on amounts contributed to accounts established under the Program;

112 16. Not impose any duties under the Employee Retirement Income Security Act of 1974 (29 U.S.C.
113 § 1001 et seq.) on participating employers;

114 17. Keep administration fees in the plan low;

115 18. Allow the use of private sector partnerships to administer and invest the contributions to the
116 Program under the supervision and guidance of the Board; and

117 19. Allow eligible employers and participating employers to establish a substitute retirement plan for
118 some or all of their employees.

119 **§ 2.2-2495. Program regulations.**

120 A. The Board shall adopt regulations that establish the process for:

1. Voluntary enrollment in the Program;
2. Enrollees to make default contributions to Program accounts and to adjust contribution levels;
3. Participating employers to withhold enrollee contributions to Program accounts from enrollee wages and send the contributions to the investment administrator for the Program;
4. Enrollees to make nonpayroll contributions to Program accounts;
5. Setting minimum, maximum, and default contribution levels in accordance with limits established by the Internal Revenue Code;
6. Withdrawing from Program accounts; and
7. An eligible employer or a participating employer to obtain an exemption from participating in the Program if it offers a substitute retirement plan.

B. The Board shall adopt regulations that mandate the content and frequency of required disclosures to enrollees and participating employers, which shall include:

1. Benefits and risks associated with making contributions to the Program;
2. Instructions for making contributions to the Program;
3. Instructions for participating in the Program with a contribution level that is different from the default contribution rate;
4. The process for withdrawal of retirement savings;
5. A statement that an enrollee seeking financial advice should contact a financial advisor, that a participating employer is not qualified to provide financial advice, and that a participating employer is not liable for any decision made by an enrollee related to the Program;
6. A statement that the Program is not an employer-sponsored retirement plan; and
7. A statement that neither the funds in Program accounts nor a rate of return are guaranteed by the Commonwealth.

§ 2.2-2496. Confidentiality of account information.

The Board and any entity working with the Board on the program shall keep individual account information confidential:

1. Except to the extent necessary to administer the Program and comply with Title 58.1 (§ 58.1-1 et seq.) and the Internal Revenue Code; and
2. Unless the enrollee who is the subject of the individual account information agrees in writing that such information may be disclosed.

§ 2.2-2497. Prerequisites to establishment of the Program.

- A. Before establishing the Program, the Board shall:
 1. Conduct a market analysis to determine the feasibility of the Program; and
 2. Obtain legal advice regarding the applicability of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.) and the Internal Revenue Code to the Program.
- B. The Board shall coordinate with the efforts of other states that pursue legal guidance for similar retirement savings programs.
- C. The Board shall report to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance on or before July 1, 2020, on:
 1. The results of the market analysis conducted pursuant to subsection A;
 2. The findings from the legal advice obtained pursuant to subsection A;
 3. Its analysis of potential costs to participating employers, including administrative costs, costs associated with providing payroll deductions for enrollees, and recommendations on how to reduce those costs;
 4. A plan and timeline for implementing the Program; and
 5. An overview of any contracts entered into by the Board.
- D. The Board shall establish the Program so that enrollees may begin making contributions to the Program on or before July 1, 2021; however, if the Board determines that the Program 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 shall not establish the Program.

§ 2.2-2498. Reporting.

The Board shall report biennially to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance on the effectiveness and efficiency of the Program. The report shall include nonidentifying information regarding levels of enrollment and retirement savings levels of enrollees.

§ 2.2-2499. Indemnification.

The Program, the Board, each board member, and the Commonwealth shall not guarantee any rate of return or interest rate on any contribution, nor shall they be liable for any loss incurred by any person as a result of participating in the Program.

2. That the initial appointments of nonlegislative citizen members shall be staggered as follows: three members for two years and four members for four years appointed by the Governor.