ENGROSSED SENATE
BILL NO. 1890

By: Montgomery, Leewright and Coleman of the Senate

and

McEntire and Mize of the House

An Act relating to public finance; creating the Oklahoma Prosperity Act; subjecting implementation of act to certain appropriation; defining terms; requiring State Treasurer to develop and operate the Oklahoma Prosperity Act Program; authorizing Treasurer to collect administrative fees and enter into certain contracts; authorizing Treasurer to hire third-party service providers for certain purpose; authorizing Treasurer to determine terms of program; authorizing Treasurer to provide certain information to employees; authorizing Treasurer to promulgate rules; authorizing Treasurer to contract with other states for certain purpose; establishing certain persons as fiduciary for accounts established under program; specifying fiduciary duty to program; requiring employers to provide certain information to employees; establishing terms of program; establishing opt-out requirement for program; establishing the minimum contribution rate of covered employees to program; establishing terms of employers depositing contributions into funds under the program; providing that certain program accounts shall receive favorable federal income tax treatment; requiring program information be available on website; requiring audited financial reports be submitted to Governor and Legislature; specifying program information required to be sent to covered employees; requiring program information be sent in certain manner; specifying program is not a certain employee benefit plan; creating the Oklahoma Prosperity Act Administrative Fund; specifying terms of the fund; creating the Oklahoma Prosperity Act Trust; authorizing Treasurer to appoint certain persons as trustee or custodian; requiring assets of certain IRAs be allocated to trust and managed for certain purpose; requiring establishment of at least one investment fund within the trust; establishing terms of investment funds; authorizing Treasurer to hire investment advisers for certain purpose; specifying terms of trust maintenance and investments; requiring trust assets be held separate from state assets; prohibiting liability of state for trust; exempting trust monies from state income tax; authorizing trust to be established by adoption of fund of other state in certain circumstances; requiring program be established in certain time frame; authorizing Treasurer to extend time frame; authorizing Treasurer to establish pilot program or rollouts for implementing act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3600 of Title 62, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Prosperity Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3601 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Implementation of this act shall be subject to the receipt of appropriations sufficient to establish the Oklahoma Prosperity Act Program, as defined in this section.

B. As used in this act:

1. "Administrative fund" shall mean the Oklahoma Prosperity Act administrative fund established under this act;

2. "Contribution rate" means the percentage of the wages of a covered employee that is withheld from his or her wages and paid to the IRA established for the covered employee under the Program;

3. "Covered employee" means any individual who is eighteen (18) years of age or older, who is employed by a covered employer and who has wages that are allocable to the state. For purposes of the investment, withdrawal, transfer, rollover or other distribution of an IRA, the term covered employee also includes the beneficiary of a deceased covered employee;

4. "Covered employer" means an employer that either:

a. satisfies the following requirements:

(1) has at no time during the previous calendar year employed fewer than ten (10) employees in this state,

(2) has been in business for at least two (2) years, and

(3) 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) of Title 26 of Internal Revenue Code at any time during the preceding two (2) calendar years, or

b. elects to be a covered employer if and as permitted in accordance with rules and procedures established by the Oklahoma Prosperity Act Program;

5. “Employer” means a person or entity engaged in a business, profession, trade or other enterprise in the state, whether for profit or not-for-profit, that employs one or more individuals in the state; provided, that a federal or state entity, agency or instrumentality or any political subdivision thereof, shall not be an employer;

6. “Enrollee” means any covered employee enrolled in the Oklahoma Prosperity Act Program;

7. “Internal Revenue Code” means the federal Internal Revenue Code of 1986, as amended;

8. “Investment adviser” means either:

a. an investment adviser registered as such under the U.S. Investment Advisers Act of 1940, or

b. a bank or other institution exempt from registration under the U.S. Investment Advisers Act of 1940;

9. “Investment fund” means each investment portfolio established within the trust for investment purposes;

10. “IRA” means either an individual retirement account or individual retirement annuity established under Section 408 or 408A of Title 26 of the Internal Revenue Code;

11. “Program” means the Oklahoma Prosperity Act Program established under this act;

12. “State” means the State of Oklahoma;

13. “State Treasurer” means the Oklahoma State Treasurer;

14. “Trust” means the IRA retirement trust or annuity contract established under Section 7 of this act;

15. “Trustee” means the trustee of the trust, including an insurance company issuing an annuity contract, selected under Section 4 of this act; and

16. “Wages” means compensation within the meaning of Section 219(f)(1) of Title 26 the Internal Revenue Code that is received by a covered employee from a covered employer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3602 of Title 62, unless there is created a duplication in numbering, reads as follows:

The State Treasurer shall have the following powers and duties in implementing the provisions of this act:

1. To design, establish and operate the Oklahoma Prosperity Act Program in accordance with the requirements established in this act;

2. To collect fees to defray the costs of administering the Program;

3. To enter into contracts necessary or desirable for the establishment and administration of the Program;

4. To hire, retain and terminate third-party service providers for the Program, including, but not limited to, consultants, investment managers or advisors, trustees, custodians, insurance companies, record keepers, administrators, actuaries, counsel, auditors and other professionals; provided, that each service

provider shall be authorized to do business in this state. For purposes of selecting a third-party service provider, the Office of the State Treasurer shall be exempt from the Oklahoma Central Purchasing Act; provided, that a competitive process shall be developed and utilized to select service providers;

5. To determine the type or types of IRAs to be offered;

6. To employ a program administrator and any other individuals necessary to administer the Program and the administrative fund;

7. To develop and implement an outreach plan and disseminate information regarding the Program and retirement and financial education in general, to employees, employers and other constituents in the state;

8. Determine the number of days by which an eligible employer must make the Program available to a covered employee upon first becoming an eligible employer or covered employee;

9. To adopt rules and procedures for the establishment and operation of the Program and to take such other actions as necessary to operate the Program in accordance with the provisions of this act. Any guidelines or procedures affecting the Program may be implemented after reasonable notice to the public and a public comment period, in a manner similar to the requirements of the Administrative Procedures Act. However, the Administrative Procedures Act shall not apply for purposes of this section; and

10. To establish and maintain the Program by contracting with another state, partnering with one or more states to create a joint auto-IRA Program, allowing states to participate in the Program or forming a consortium with one or more other states in which certain aspects of the Program of each state are combined for administrative convenience and efficiency.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3603 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The trustee and each investment adviser shall be a fiduciary with respect to the trust and IRAs established and maintained under the Oklahoma Prosperity Act Program.

B. Each covered employer shall be required to provide covered employees with such information as required by the Program. No employer acting as such shall be considered a fiduciary with respect to the trust or an IRA or have fiduciary responsibilities under the act.

C. Each fiduciary shall discharge its duties with respect to the Program solely in the interests of covered employees and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of like character and aims.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3604 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Prosperity Act Program shall be designed, established and operated in accordance with the following provisions:

1. Each covered employer shall be required to offer to each covered employee an opportunity to contribute to an IRA established under the Program for the benefit of the covered employee through withholding from his or her wages. No employer shall be permitted to contribute to the Program;

2. Unless the covered employee elects not to participate in the Program, he or she shall be automatically enrolled in the Program and contributions shall be withheld from the wages of the covered employee;

3. The minimum contribution rate of each covered employee shall be three percent (3%); the minimum contribution rate shall be the default contribution rate;

4. The IRAs shall qualify for favorable federal income tax treatment under Sections 408 and 408A of Title 26, as appropriate, of the Internal Revenue Code;

5. Each covered employer shall deposit withheld contributions of the covered employee under the Program with the trustee in such manner as is determined by the State Treasurer, provided that the

employer shall deliver the amounts withheld to the trustee within ten (10) business days after the date the amounts otherwise would have been paid to the covered employee;

6. Additional rules and procedures may be adopted in conjunction with established IRS regulations for withdrawals, distributions, transfers and rollovers of IRAs and for the designation of IRA beneficiaries;

7. Information regarding the Program shall be made available to the public on a website maintained for the Program;

8. Audited financial reports shall be submitted to the Governor and Legislature;

9. Each covered employer shall be provided information regarding the Program and disclosures including:

a. a description of the benefits and risks associated with investments offered in the Program,

b. instructions about how to obtain additional information about the Program,

c. a description of the federal and state income tax consequences of an IRA, which may consist of or include the disclosure statement required to be distributed under the Internal Revenue Code and the Treasury Regulations thereunder,

d. a statement that covered employees seeking financial advice should contact their own financial advisors, that covered employers shall not provide financial advice and that covered employers are not liable for decisions covered employees make under the act,

e. a statement that the Program is not an employer-sponsored retirement plan,

f. a statement that neither the Program nor the IRA of the covered employee established under the Program is guaranteed by the state,

g. a statement that neither a covered employer nor the state will monitor or has an obligation to monitor the eligibility of the covered employee under the Internal Revenue Code to make contributions to an IRA or to monitor whether the contributions of the covered employee to the IRA established for the covered employee under the Program exceeds the maximum permissible IRA contribution; it shall be the responsibility of the covered employee, and

h. a statement that neither the State nor the covered employer will have any liability with respect to any failure of the covered employee to be eligible to make IRA contributions or any contribution in excess of the maximum IRA contribution;

10. Any information, forms or instructions to be furnished to covered employees that provide the covered employee with the procedures for:

a. making contributions to the IRA of the covered employee established under the Program, including a description of the minimum contribution rate and the right to elect to make no contribution or to change the contribution rate under the Program,

b. making an investment election with respect to the IRA of the covered employee established under the Program, including a description of the default investment fund, and

c. making transfers, rollovers, withdrawals and other distributions from the IRA of the covered employee;

11. Each covered employer shall deliver or facilitate the delivery of the information about the Program to each covered employee at the time and in the manner as established by Program guidelines; and

12. The Program shall be designed and operated in a manner that will cause it not to be an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3605 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the Office of the State Treasurer a fund to be designated as the "Oklahoma Prosperity Act Administrative Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies appropriated for the administration of the Oklahoma Prosperity Act Program, all administrative fees collected and any other monies designated to the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Treasurer for expenses related to the administration and support of the Program. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management of Enterprise Services for approval and payment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3606 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created as an instrumentality of the state a trust to be known as the "Oklahoma Prosperity Act Trust".

B. The State Treasurer may appoint qualified financial institutions to act as trustee or custodian of the IRA accounts.

C. The assets of IRAs established for covered employees shall be allocated to the trust and combined for investment purposes. Trust assets shall be managed and administered for the purposes of providing services to covered employees and defraying reasonable administrative expenses of the Oklahoma Prosperity Act Program.

D. There shall be established within the trust one or more investment funds. The first One Thousand Dollars ($1,000.00) in contributions made by, or on behalf of, an enrollee may be deposited into a default capital preservation investment fund and the enrollee may be provided an account revocation period during which, if the enrollee chooses to end participation in the Program, the enrollee may withdraw the deposited amounts from the default investment without penalty.

E. Covered employees may allocate assets of their IRAs among investment funds and a default investment fund may be designated for the IRAs of covered employees who do not select an investment fund.

F. The State Treasurer may retain investment advisers to select and manage the investments of investment funds on a discretionary basis, subject to ongoing review and oversight.

G. The assets of the trust shall be maintained, invested and expended solely for the purposes of the trust and no property rights therein shall exist in favor of the state or any covered employer. Trust assets shall not be transferred or used by the state for any purposes other than the purposes of the trust or funding the expenses of operating the Program.

H. The assets of the trust shall be held separate and apart from the assets of the state.

I. There shall be no liability for the state, the Program, the State Treasurer, or any employer for investment losses incurred by any covered employee as a result of participating in the Program.

J. The trust and each investment fund shall not be subject to income tax of this state.

K. If the Program is established by using the auto-IRA Program of another state, a joint Program or a consortium with one or more other states, then the trust may be established by adopting the trust established under the Program of the other state or states or as a master trust or similar arrangement with the other state or states; provided, that the trust, master trust or similar arrangement satisfies the requirements of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3607 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Prosperity Act Program shall be established so that covered employees may begin making contributions within twenty-four (24) months of the effective date of this act; provided, that the State Treasurer may extend the time period within which the Program is implemented by twelve (12) months. The State Treasurer may establish a pilot program for certain covered employers, may provide for a staggered rollout of the Program so that covered employers are initially required to offer the Program to covered employees in stages based on employee headcount or other criteria, or both.

SECTION 9. This act shall become effective November 1, 2020.

Passed the Senate the 10th day of March, 2020.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of __________, 2020.

Presiding Officer of the House of Representatives