State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6227/1
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2021 SENATE BILL 1100

March 10, 2022 - Introduced by Senators RINGHAND, AGARD, CARPENTER, LARSON, ROYS and L. TAYLOR, cosponsored by Representatives GOYKE, ANDRACA, BALDEH, BROSTOFF, CABRERA, CONLEY, CONSIDINE, DRAKE, HAYWOOD, HEBL, HINTZ, B. MEYERS, MILROY, POPE, RIEMER, SHANKLAND, SINICKI, SNODGRASS, SPREITZER, SUBECK, VINING and VRUWINK. Referred to Committee on Financial Institutions and Revenue.

AN ACT ***to amend*** 16.705 (9), 71.05 (6) (a) 15., 71.21 (4) (a), 71.26 (2) (a) 4., 71.34 (1k) (g) and 71.45 (2) (a) 10.; and ***to create*** 14.57, 14.69, 20.517, 20.923 (4) (c) 7., 25.52, 71.07 (4s), 71.07 (4w), 71.10 (4) (ct) and (cu), 71.28 (4s), 71.28 (4w), 71.30 (3) (ct) and (cu), 71.47 (4s), 71.47 (4w), 71.49 (1) (ct) and (cu) and 230.08 (2) (en) of the statutes; **relating to:** creating WisEARNS and making an appropriation.

Analysis by the Legislative Reference Bureau

WisEARNS retirement savings program

This bill creates a program called "WisEARNS" to provide a defined contribution retirement savings plan for employees of private employers in this state that do not offer an employer-sponsored retirement plan or that do not offer such a plan to all employees. A defined contribution retirement savings plan is one that pays retirement benefits based on an individual's account balance, rather than a prescribed formula.

The bill creates a WisEARNS Board that is attached to the Office of the State Treasurer. Under the bill, the board consists of the following nine members: the state treasurer or his or her designee; the secretary of financial institutions or his or her designee; two members appointed by the governor; two members appointed, respectively, by the speaker of the assembly and president of the senate; one member appointed by the state treasurer; one member appointed by the State of Wisconsin Investment Board; and one member appointed by the other members. The bill requires certain members to possess specified attributes or experience, and all members except the state treasurer and secretary of financial institutions, or their designees, serve four-year terms.

Under the bill, the state treasurer recommends a candidate for executive director of the plan to the board, with the board approving the executive director. The state treasurer sets the duties of the executive director and staff. The executive director serves outside the classified service and appoints staff outside the classified service. The executive director serves at the pleasure of the board.

Under the bill, the board is required to establish the savings plan under which employees may contribute to retirement savings accounts through payroll deductions. Before establishing the plan, the board must conduct a legal analysis of the applicability of the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to the proposed plan, and must issue a request for information from prospective vendors of a variety of defined-contribution retirement accounts authorized under the Internal Revenue Code.

Under the bill, the default account type is a Roth IRA. The bill requires the board to design the plan and contract with third-party investment administrators to operate the plan. Among other requirements, the plan must do at least all of the following: 1) require automatic participation by private employers in this state; 2) require automatic enrollment for employees, but allow employees to opt out before any payroll deduction is made; 3) prohibit employer contributions to employee retirement accounts; and 4) allow an employee to roll over the amounts in an account to a different IRS-qualified retirement account.

Also under the bill, unless the employee directs otherwise, during the employee's first year of enrollment in the plan, the employer must make a payroll deduction each pay period at a rate of 5 percent of the employee's gross wages, with this rate increasing by 1 percent per year until the rate is the maximum rate allowed under the Internal Revenue Code. Under the plan, the eligible employee must have certain investment options within each account type, including a stable value or capital preservation fund and a target date index fund or age-based fund. An eligible employee's first $400 of contributions must be deposited in a savings account that is not a retirement savings account, and thereafter, unless the employee selects a different investment option, the employee's contributions must be deposited in a target date index fund or age-based fund. An employee must be allowed to opt out of this provision before the first $400 is deposited. The bill requires the board to establish a policy for emergency withdrawals from a WisEARNS savings account that is not a retirement savings account.

Under current law, DOA is authorized to purchase contractual services for most bodies of state government. Under the bill, the board is exempted from some of the requirements of contracting through DOA and instead must do all of the following before awarding the contract: 1) conduct a cost-benefit analysis of contracting with different vendors; 2) review and ensure the independence of the vendor and the vendor's employees; and 3) require proof of background checks of the vendor and the vendor's employees. The bill also requires the board to maintain a list of any vendor or party to the contract that violates the contract or requirements of the law, and to provide that list to DOA for inclusion on the ineligible list for state contracts.

Tax credits for retirement plan startup costs and automatic enrollment

The bill creates two income and franchise tax credits that may be claimed by small businesses that have 100 or fewer employees who received at least $5,000 in compensation during the preceding year. Both credits are based on similar federal tax credits. The first credit may be claimed by small businesses for the costs of setting up and administering a retirement plan and educating employees about the plan. The credit is 50 percent of the costs, limited to the greater of $500 or the lesser of $5,000 or $250 multiplied by the number of non-highly compensated employees who are eligible to participate in the plan. The credit may be claimed for three consecutive years and may be not be claimed for any costs that were deducted under federal law. The second credit may be claimed by small businesses that provide for automatic enrollment in their retirement plans. The credit is $500 and may be claimed for three consecutive years, beginning with the year in which the small business first provides for automatic enrollment.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 14.57 of the statutes is created to read:

14.57 Same; attached boards.

(1) WISEARNS BOARD. There is created a WisEARNS board that is attached to the state treasurer under s. 15.03. Of the members appointed under pars. (a) to (e), least one must have experience in the field of investments, at least one must have experience as the owner of a business that employs between 5 and 50 people, and at least one must be an employee who is not eligible for or does not have access to an employer-sponsored retirement plan. The board shall consist of the following members appointed for 4-year terms:

(a) The state treasurer or his or her designee.

(b) The secretary of financial institutions or his or her designee.

(c) One member who has a favorable reputation for skill, knowledge, and experience in the field of retirement saving and investments, appointed by the governor.

(d) One member who has a favorable reputation for skill, knowledge, and experience relating to small business, appointed by the governor.

(e) One member who is a representative of an association representing employees or who has a favorable reputation for skill, knowledge, and experience in the interests of employees in retirement saving, appointed by the speaker of the assembly.

(f) One member who has a favorable reputation for skill, knowledge, and experience in the interests of employers in retirement saving, appointed by the president of the senate.

(g) One member who has a favorable reputation for skill, knowledge, and experience in retirement investment products or retirement plan designs, appointed by the state treasurer.

(h) One member appointed by the investment board.

(i) One member appointed, notwithstanding s. 15.07 (4), by a majority vote of all of the members identified in pars. (a) to (h).

(2) MEMBERSHIP PROHIBITED. No individual appointed under sub. (1) (a) to (h) may be a dealer or broker in securities, or be employed by an entity that is primarily a dealer or broker in securities, and any member who accepts such employment shall vacate his or her membership.

SECTION 2. 14.69 of the statutes is created to read:

14.69 WisEARNS program. (1) DEFINITIONS. In this section:

(a) "Board" means the WisEARNS board.

(b) "Earnings" means all remuneration for employment or services provided to an individual in this state, including salary, fees, bonuses, and including the cash value of all remuneration paid in any medium other than cash.

(c) "Eligible employee" means an employee who is 18 years of age or older who works in this state and whose private employer does not offer a retirement savings plan or who is not eligible to participate in a qualified retirement savings plan offered by his or her private employer.

(d) "Investment administrator" means the vendor selected under sub. (3) (e).

(e) "Plan" means the WisEARNS plan established under sub. (3).

(f) "Private employer" means any person engaging in any activity, enterprise or business in this state that has conducted such activity, enterprise, or business in this state for at least 2 years after the effective date of this paragraph .... [LRB inserts date], and did not offer a retirement plan qualified under the Internal Revenue Code during those 2 years.

(g) "WisEARNS retirement account" means a retirement savings account established under the plan.

(h) "WisEARNS savings account" means a savings account established under the plan that is not a retirement savings account.

(2) DUTIES OF TREASURER, EXECUTIVE DIRECTOR, AND BOARD. (a) The treasurer shall recommend an executive director of the plan to the board, which shall appoint an executive director outside the classified service, to serve at the pleasure of the board. The executive director may not be a member of the board.

(b) The executive director appointed under par. (a) shall appoint staff for the plan outside the classified service.

(3) ESTABLISHMENT OF PLAN. The board shall establish, implement, and oversee a plan that meets the requirements specified in sub. (8) that shall enroll eligible employees beginning not more than 2 years after the effective date of this subsection .... [LRB inserts date]. Before establishing and implementing the plan, the board shall do all of the following:

(a) Conduct a legal analysis regarding the applicability of the federal Employee Retirement Income Security Act of 1974, 29 USC 1001 to 1461, and the Internal Revenue Code to the proposed plan.

(b) Enter into interagency agreements with the department of revenue, the department of financial institutions, and the department of workforce development to assist the board in providing outreach services to private employers and employees.

(c) Prepare and issue a request for information from prospective vendors of retirement savings accounts described in 26 USC 408 (a), individual retirement annuities described in 26 USC 408 (b), individual retirement bonds described in 26 USC 409, and individual savings accounts to determine the feasibility of the proposed plan and the existence of plans in the private market that meet the requirements set forth in sub. (8).

(d) Investigate ways of allowing individuals who are not automatically enrolled in the plan to enroll in the plan and make contributions to retirement savings accounts.

(e) Based on the results of the request for information under par. (c), prepare and issue a request for proposals from prospective vendors and select a vendor. The board shall determine the factors to be considered in selecting a vendor for the plan, which shall include the ability of the vendor to meet all of the requirements of the plan set forth in sub. (8) (a) to (z). Sections 16.705 and 16.75 do not apply to a contract entered into under this section. Before awarding a contract under this section, the board shall do all of the following:

1. Conduct a cost-benefit analysis to identify and compare the total cost, quality, and technical expertise of the vendors that submitted proposals.

2. Review the independence and relationship, if any, of the vendors that submitted proposals to employees of the board, disclosure of any former employment of the vendor or employees of the vendor with the board, to minimize the likelihood of selection of a vendor that provides or is likely to provide services to industries, client groups, or individuals who are the object of state regulation or the recipients of state funding to a degree that the vendor's independence would be compromised.

3. If the vendor or employees of the vendor have access to federal tax information received directly from the federal internal revenue service or from a source that is authorized by the federal internal revenue service, for the performance of services under the contract under this section, require proof of a background investigation on each individual performing the services. Such a background check shall meet the standards established by the federal internal revenue service under 26 USC 6103 (p) (4) C.

(f) Annually review the performance of vendors regarding, at a minimum, investment returns, fees, and customer service, and publish results of the review on the plan's Internet site.

(g) Facilitate compliance by the plan with all applicable provisions of the Internal Revenue Code and U.S. department of treasury regulations.

(5) INELIGIBLE VENDOR LIST. The board shall maintain a list of persons that are or have been a party to a contract under this section that have violated a provision of this section or a contract under this section. The board shall annually forward this list to the department of administration for inclusion in the ineligible vendor list under s. 16.705 (9).

(6) POWERS OF BOARD. The board may do any of the following:

(a) Enter into contracts or other arrangements for any of the following services as necessary for implementing and overseeing the plan and otherwise carrying out the purposes of this section:

1. The services of financial institutions and depositories and of consultants, accountants, attorneys, investment advisers, investment administrators, 3rd-party administrators, and other professionals.

2. The services of other state agencies under interagency agreements under sub. (3) (b).

(b) Solicit and accept contributions, gifts, grants, and bequests for the WisEARNS plan administration trust fund or for any other purpose for which a contribution, gift, grant, or bequest is made and received. Moneys received under this paragraph shall be deposited in the WisEARNS plan administration trust fund.

(c) Enter into agreements with other governmental entities in this state or outside this state, which maintain retirement savings programs similar to WisEARNS, to collectively invest the assets of the plan to the extent allowed by federal law to benefit retirement savings account holders participating in the plan by achieving efficiencies designed to minimize costs for the plan and retirement savings account holders participating in the plan.

(7) DUTIES OF BOARD. The board shall do all of the following:

(a) Promulgate rules for the administration of the plan.

(b) Collect application, account, or administrative fees to defray the costs of administering the plan at the lowest cost possible. Fees collected under this paragraph shall be deposited in the WisEARNS plan administration trust fund. Fees under this paragraph may not be linked to the value of the trust fund.

(c) Establish a policy for the investment of moneys contributed to a retirement savings account, and direct the investment of such moneys in a manner that is consistent with any investment restrictions established by the board. Those investment restrictions shall be consistent with the objectives of the plan and with the standard of responsibility specified in s. 25.15 (2).

(d) Evaluate the need for, and procure as needed, insurance to cover any liabilities of the plan and to cover each member of the board for loss or liability resulting from the board member's act or omission as a member of the board.

(e) Determine the eligibility of employers, employees, or individuals to participate in the plan.

(f) Establish policies for emergency withdrawals from WisEARNS savings accounts.

(g) Exercise any other powers as may be necessary to oversee the plan and otherwise carry out the purposes of this section.

(8) REQUIREMENTS FOR PLAN. The board shall design the plan so that it meets all of the following requirements:

(a) The plan allows eligible individuals employed for compensation in this state by a private employer in this state to contribute to WisEARNS accounts through payroll deductions. The plan allows self-employed individuals with earnings in this state to contribute to WisEARNS accounts.

(b) The plan requires all private employers in this state to withhold and remit employee contributions to the plan through payroll deductions. If an employer offers a qualified retirement plan under the Internal Revenue Code, including a plan qualified under section 401 (a) or (k), 403 (a) or (b), 408 (k), or 457 (b) of the Internal Revenue Code, the employer does not need to withhold and remit employee contributions for employees who are eligible to participate in the employer-sponsored plan.

(c) Except as provided in par. (d), the plan provides that the default individual retirement account is a Roth IRA account.

(d) If the plan offers options for account types other than a Roth IRA, the plan allows an enrolled eligible employee to select any of these other account types for investing contributions under the plan.

(e) The plan provides an eligible employee who is enrolled in the plan with multiple investment options within each account type, which may include any of the following investment options:

1. A stable value or capital preservation fund.

2. A target date index fund or age-based fund that automatically rebalances asset allocations based on the eligible employee's age.

3. A low-cost fund focused on income generation.

4. A low-cost fund focused on asset growth.

5. A low-cost fund focused on balancing risk and return.

(f) The investment policy for the plan includes all of the following concepts:

1. Best practices in the industry for retirement savings vehicles.

2. The promotion of portability of retirement savings accounts.

3. The minimization of fees and expenses.

4. The maximization of possible income replacement, balanced with appropriate levels of risk.

(g) The plan requires the investment administrator to offer to each enrolled eligible employee, before the employee makes his or her investment selections, a tool allowing the employee to identify the employee's risk tolerance and projected retirement date as an aid to the employee in selecting suitable investments under the plan.

(h) The plan requires that the first $400 of an enrolled eligible employee's contributions be deposited in a WisEARNS savings account and thereafter, unless the employee selects a different investment option, the employee's contributions be to a WisEARNS retirement account and deposited in a fund described in par. (e) 2. The plan shall allow an employee to select a different investment option before the first $400 is deposited in a WisEARNS retirement account. An employee shall be allowed to withdraw the first $400 for emergency use from the employee's WisEARNS savings account, and contributions subsequent to the withdrawal shall be deposited in the WisEARNS savings account until the amount in the employee's WisEARNS savings account is restored to $400.

(i) Except as provided in par. (k), during an eligible employee's first year of enrollment in the plan, the participating employer's payroll deduction each pay period shall be at a rate of 5 percent of the employee's gross wages, and this deducted amount shall be remitted to the investment administrator as the employee's account contribution.

(j) Except as provided in par. (k), a participating employer shall increase the payroll deduction rate under par. (i) by 1 percent per year until the payroll deduction rate is the maximum allowed under the Internal Revenue Code.

(k) An enrolled eligible employee may elect a different payroll deduction rate than that provided for in pars. (i) and (j), except the rate may not be less than 1 percent or more than the maximum allowed under the Internal Revenue Code.

(L) The plan sets forth a process for enrollment of eligible employees in the plan, which shall include all of the following processes:

1. Automatic enrollment of eligible employees in the plan.

2. Opting out of enrollment in the plan before any payrolls deduction is made.

3. Opting out of enrollment in the plan at any time after a payroll deduction is made.

4. Changing the contribution rate from the default contribution rate set by the board under par. (e).

(m) The plan provides a process for all of the following:

1. Employer withholding from employees' wages contributions to WisEARNS accounts and remittance of those contributions to the investment administrator of the plan.

2. Eligible employees' and self-employed individuals' nonpayroll contributions to their WisEARNS retirement accounts.

3. Emergency withdrawals from WisEARNS savings accounts in accordance with procedures established by the board under sub. (7) (f).

(n) The plan requires contributions to WisEARNS accounts to be deposited directly with the investment administrator of the plan.

(o) The plan, to the greatest extent possible, uses existing employer and public infrastructure to facilitate contributions to WisEARNS accounts and outreach to employees and private employers.

(p) The plan prohibits employer contribution to an employee WisEARNS account.

(q) The plan requires the maintenance of separate records and accounting for each WisEARNS account and provides for reports on the status of accounts to be provided to plan participants at least once per quarter.

(r) The plan allows the owner of a WisEARNS retirement account to maintain that account regardless of his or her place of employment and to roll over money from that account to other retirement accounts as allowed under the Internal Revenue Code.

(s) The plan provides for the pooling of WisEARNS retirement accounts for investment purposes by the investment administrator of the plan.

(t) The plan is professionally managed in a way that keeps administrative costs low. The plan shall allow the investment administrator of the plan to charge and collect application, account, and administrative fees in an amount that does not exceed an amount that is sufficient to defray the costs of administering the plan.

(u) The plan provides that the state and any employer participating in the plan have no proprietary interest in an employee's contributions to a WisEARNS account or in the earnings of such an account.

(v) The plan provides that the investment administrator of the plan is the trustee of all contributions to a WisEARNS account and earnings on those contributions.

(w) The plan does not impose any duties under the federal Employee Retirement Income Security Act of 1974, 29 USC 1001 to 1461, on an employer and does not expose any employer or the state, either as an employer or in the administration of the plan, to any potential liability under that act.

(x) The plan provides a process for making withdrawals from an employee's WisEARNS retirement account.

(y) The plan sets forth the requirements that an employer that offers a qualified retirement plan described in par. (b) must meet in order to obtain an exemption from the requirement under par. (b) that the employer withhold and remit employee contributions to the plan through payroll deductions and a process for obtaining such an exemption.

(z) The plan sets forth the contents and frequency of disclosures that the board must make to employers, eligible employees and other individuals participating in the plan. Those disclosures shall include all of the following:

1. A discussion of the benefits and risks associated with making contributions to a retirement savings account.

2. Instructions on the process for making contributions to a WisEARNS account, opting out of participation in the plan, and making withdrawals from a WisEARNS account.

3. Instructions on how to obtain additional information about the plan.

4. A notice advising that employees should contact a financial or investment adviser for financial or investment advice, that participating employers may not provide financial or investment advice, and that participating employers are not liable for financial or investment decisions made by an employee.

5. A notice advising that the plan is not an employer-sponsored retirement savings plan.

6. A notice that a rate of interest or return on a WisEARNS retirement account, and the payment of principal, interest, or a return on such an account, are not

guaranteed by the state and that the state may not be held liable for any loss incurred by any person as a result of participating in the plan.

(9) CONSTRUCTION. Nothing in this section guarantees any rate of interest or return on a WisEARNS retirement account or the payment of principal, interest, or a return on such an account. The state may not be held liable for any loss incurred by any person as a result of participating in the plan.

(10) CONFIDENTIALITY. All personal and financial information pertaining to the owner or a beneficiary of a WisEARNS account is confidential and may not be disclosed except as follows:

(a) As necessary to administer the plan, the tax laws of this state, and the Internal Revenue Code.

(b) With the prior written consent of the subject of the information.

(11) LIABILITY FOR PRIVATE EMPLOYERS. No private employer is a fiduciary with respect to the plan. No private employer is liable for any of the following with respect to the plan or an eligible employee:

(a) An eligible employee's decision to participate in the plan.

(b) Investment decisions made by the board or an eligible employee who participates in the plan.

(c) The administration or investment performance of the plan, including any interest rate or other rate of return on any contribution or account balance.

(d) The plan design.

(e) An eligible employee's familiarity with and compliance with the applicable provisions of the Internal Revenue Code and U.S. department of treasury regulations related to individual retirement accounts.

(f) Any loss, failure to realize any gain, or other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any eligible employee as a result of participating in the plan.

(12) LIABILITY OF BOARD AND STATE. No cause of action of any nature may arise against and no civil liability may be imposed upon a member of the board for any act or omission in the performance of his or her powers and duties related to the plan, unless the individual asserting liability proves that the act or omission constitutes willful misconduct. No cause of action of any nature may arise against and no civil liability may be imposed upon the state or an employee of the state for any act or omission related to the powers and duties of the state or employee in the performance of any powers or duties related to the plan unless the individual asserting liability proves that the act or omission constitutes willful misconduct. No member of the board, the state, board or commission of the state, appointee, or employee of the state is liable for any of the following:

(a) An eligible employee's familiarity with and compliance with the applicable provisions of the Internal Revenue Code and U.S. department of treasury regulations related to individual retirement accounts.

(b) The interest rate or other rate of return, on an account balance or investment performance.

(c) Any loss, failure to realize any gain, or other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any eligible employee as a result of participating in the plan.

(d) The debts, contracts, and obligations of the plan or the board.

(13) REPORTS. (a) By October 15 of each year, the board shall submit a report of its activities to the governor and the appropriate standing committees of the legislature under s. 13.172 (3). The report shall include information on the performance of the plan and any recommended changes to the plan.

(b) By January 1, 2026, the board shall submit a report of its activities and recommendations regarding making the plan permanent to the governor and the appropriate standing committees of the legislature under s. 13.172 (3).

(14) STANDARD OF RESPONSIBILITY. Members of the board and any 3rd-party administrators of the plan shall discharge their duties as fiduciaries with respect to the trust fund under s. 25.52 for the interest of eligible employees who participate in the plan as follows:

(a) To administer assets of the trust fund solely for the purpose of providing benefits to eligible employees who are enrolled in the plan at a reasonable cost and not for any other purpose.

(b) To manage the money and property of the trust fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity, with the same resources, and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims.

(15) ASSISTANCE. The office of the state treasurer shall provide the board with any assistance necessary to carry out this section, including staff, equipment, and office space.

SECTION 3. 16.705 (9) of the statutes is amended to read:

16.705 **(9)** The department shall maintain a list of persons that are or have been a party to a contract with the state under this subchapter <u>or s. 14.69</u> who have violated a provision of this subchapter or a contract under this subchapter <u>or s. 14.69</u>.

The parties on the list are ineligible for state contracts and no state contract may be awarded to a party on the ineligible list. The department may remove any party from the ineligible list if the department determines that the party's practices comply with this subchapter <u>or s. 14.69</u> and provide adequate safeguards against future violations of this subchapter <u>or s. 14.69</u> or contracts under this subchapter <u>or s. 14.69</u>.

SECTION 4. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

			2021-22	**2022-23**
20.517 WisEARNS board				
(1) WISEARNS PLAN				
(a) Establishment and administration of plan	GPR	B	$200,000	$200,000

SECTION 5. 20.517 of the statutes is created to read:

20.517 WisEARNS. There is appropriated to the WisEARNS board for the following programs:

(1) WISEARNS PLAN. (a) *Establishment and administration of plan.* Biennially, the amounts in the schedule to establish and administer the plan under s. 14.69.

(q) *Administrative expenses; WisEARNS plan administration trust fund.* From the WisEARNS plan administration trust fund, all moneys deposited in that fund under s. 14.69 (7) (b) for the operating expenses of the board.

(r) *Gifts and grants; WisEARNS plan administration trust fund.* From the WisEARNS plan administration trust fund, all moneys received as contributions, gifts, grants, and bequests for that trust fund under s. 14.69 (6) (b) to carry out the purposes for which made and received.

SECTION 6. 20.923 (4) (c) 7. of the statutes is created to read:

20.923 **(4)** (c) 7. State treasurer; WisEARNS board: executive director.

SECTION 7. 25.52 of the statutes is created to read:

25.52 WisEARNS plan administration trust fund. There is established a separate nonlapsible trust fund designated as the WisEARNS plan administration trust fund, to consist of all moneys deposited in that fund under s. 14.69 (6) (b) and (7) (b).

SECTION 8. 71.05 (6) (a) 15. of the statutes is amended to read:

71.05 **(6)** (a) 15. Except as provided under s. 71.07 (3p) (c) 5., the amount of the credits computed under s. 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), <u>(4s), (4w),</u> (5e), (5i), (5j), (5k), (5r), (5rm), (6n), and (10) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 9. 71.07 (4s) of the statutes is created to read:

71.07 **(4s)** RETIREMENT PLAN STARTUP COSTS TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 45E (c) of the Internal Revenue Code, that files a claim under this subsection.

2. "First credit year" has the meaning given in section 45E (d) (3) of the Internal Revenue Code.

3. "Qualified startup costs" has the meaning given in section 45E (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the tax, an amount equal to 50 percent of the qualified startup costs paid or incurred by the claimant during the taxable year.

(c) *Limitations.* 1. The credit claimed under this subsection in a taxable year may not exceed the greater of the following:

a. $500.

b. The lesser of $250 for each employee of the claimant who is not a highly compensated employee, as defined in section 414 (q) of the Internal Revenue Code, or $5,000.

2. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first credit year.

3. The rules under section 45E (e) (1) and (3) of the Internal Revenue Code apply to the credit under this subsection.

4. No credit may be claimed under this subsection for an amount that is deducted under section 162 of the Internal Revenue Code.

5. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the payments of the qualified startup costs by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 10. 71.07 (4w) of the statutes is created to read:

71.07 **(4w)** AUTO-ENROLLMENT TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 408 (p) (2) (C) (i) of the Internal Revenue Code, that includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant and that files a claim under this subsection.

2. "Eligible automatic contribution arrangement" has the meaning given in section 414 (w) (3) of the Internal Revenue Code.

3. "Qualified employer plan" has the meaning given in section 4972 (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the tax, $500.

(c) *Limitations.* 1. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first taxable year for which the claimant includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant, except that no credit may be claimed in a taxable year if an eligible automatic contribution arrangement is not included in the qualified employer plan for that taxable year.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the inclusion by the partnership, limited liability company, or tax-option corporation of an eligible automatic contribution

arrangement in a qualified employer plan that is sponsored by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 11. 71.10 (4) (ct) and (cu) of the statutes are created to read:

71.10 **(4)** (ct) Retirement plan startup costs tax credit under s. 71.07 (4s).

(cu) Auto-enrollment tax credit under s. 71.07 (4w).

SECTION 12. 71.21 (4) (a) of the statutes is amended to read:

71.21 **(4)** (a) The amount of the credits computed by a partnership under s. 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), <u>(4s), (4w),</u> (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), and (10) and passed through to partners shall be added to the partnership's income.

SECTION 13. 71.26 (2) (a) 4. of the statutes, as affected by 2021 Wisconsin Act 127, is amended to read:

71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dm), (1dx), (1dy), (3g), (3h), (3n), (3q), (3t), (3w), (3wm), (3y), <u>(4s), (4w),</u> (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), (9s), and (10) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 14. 71.28 (4s) of the statutes is created to read:

71.28 **(4s)** RETIREMENT PLAN STARTUP COSTS TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 45E (c) of the Internal Revenue Code, that files a claim under this subsection.

2. "First credit year" has the meaning given in section 45E (d) (3) of the Internal Revenue Code.

3. "Qualified startup costs" has the meaning given in section 45E (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, an amount equal to 50 percent of the qualified startup costs paid or incurred by the claimant during the taxable year.

(c) *Limitations.* 1. The credit claimed under this subsection in a taxable year may not exceed the greater the following:

a. $500.

b. The lesser of $250 for each employee of the claimant who is not a highly compensated employee, as defined in section 414 (q) of the Internal Revenue Code, or $5,000.

2. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first credit year.

3. The rules under section 45E (e) (1) and (3) of the Internal Revenue Code apply to the credit under this subsection.

4. No credit may be claimed under this subsection for an amount that is deducted under section 162 of the Internal Revenue Code.

5. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the payment of the qualified startup costs by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 15. 71.28 (4w) of the statutes is created to read:

71.28 **(4w)** AUTO-ENROLLMENT TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 408 (p) (2) (C) (i) of the Internal Revenue Code, that includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant and that files a claim under this subsection.

2. "Eligible automatic contribution arrangement" has the meaning given in section 414 (w) (3) of the Internal Revenue Code.

3. "Qualified employer plan" has the meaning given in section 4972 (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, $500.

(c) *Limitations.* 1. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first taxable year for which the claimant includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant, except that no credit may be claimed in a taxable year if an eligible automatic contribution arrangement is not included in the qualified employer plan for that taxable year.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the inclusion by the partnership, limited liability company, or tax-option corporation of an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 16. 71.30 (3) (ct) and (cu) of the statutes are created to read:

71.30 **(3)** (ct) Retirement plan startup costs tax credit under s. 71.28 (4s).

(cu) Auto-enrollment tax credit under s. 71.28 (4w).

SECTION 17. 71.34 (1k) (g) of the statutes is amended to read:

71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dm), (1dx), (1dy), (3), (3g), (3h), (3n), (3q), (3t), (3w), (3wm), (3y), (4), (4s), (4w), (5), (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), and (10) and passed through to shareholders.

SECTION 18. 71.45 (2) (a) 10. of the statutes, as affected by 2021 Wisconsin Act 127, is amended to read:

71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dm) to (1dy), (3g), (3h), (3n), (3q), (3w), (3y), (4s), (4w), (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), (9s), and (10) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 19. 71.47 (4s) of the statutes is created to read:

71.47 **(4s)** RETIREMENT PLAN STARTUP COSTS TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 45E (c) of the Internal Revenue Code, that files a claim under this subsection.

2. "First credit year" has the meaning given in section 45E (d) (3) of the Internal Revenue Code.

3. "Qualified startup costs" has the meaning given in section 45E (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, an amount equal to 50 percent of the qualified startup costs paid or incurred by the claimant during the taxable year.

(c) *Limitations.* 1. The credit claimed under this subsection in a taxable year may not exceed the greater the following:

a. $500.

b. The lesser of $250 for each employee of the claimant who is not a highly compensated employee, as defined in section 414 (q) of the Internal Revenue Code, or $5,000.

2. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first credit year.

3. The rules under section 45E (e) (1) and (3) of the Internal Revenue Code apply to the credit under this subsection.

4. No credit may be claimed under this subsection for an amount that is deducted under section 162 of the Internal Revenue Code.

5. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the payment of the qualified startup costs by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 20. 71.47 (4w) of the statutes is created to read:

71.47 **(4w)** AUTO-ENROLLMENT TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an eligible employer, as defined in section 408 (p) (2) (C) (i) of the Internal Revenue Code, that includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant and that files a claim under this subsection.

2. "Eligible automatic contribution arrangement" has the meaning given in section 414 (w) (3) of the Internal Revenue Code.

3. "Qualified employer plan" has the meaning given in section 4972 (d) (1) of the Internal Revenue Code.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, $500.

(c) *Limitations.* 1. The credit under this subsection may be claimed only for 3 consecutive taxable years beginning with the first taxable year for which the claimant includes an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the claimant, except that no credit may be claimed in a taxable year if an eligible automatic contribution arrangement is not included in the qualified employer plan for that taxable year.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection, but the partners, members, and shareholders may claim the credit based on the inclusion by the partnership, limited liability company, or tax-option corporation of an eligible automatic contribution arrangement in a qualified employer plan that is sponsored by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to each of them. The partners, members, and shareholders may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 21. 71.49 (1) (ct) and (cu) of the statutes are created to read:

71.49 **(1)** (ct) Start-up retirement plan costs tax credit under s. 71.47 (4s).

(cu) Auto-enrollment tax credit under s. 71.47 (4w).

SECTION 22. 230.08 (2) (en) of the statutes is created to read:

230.08 **(2)** (en) State treasurer; WisEARNS board: executive director and staff.

SECTION 23. Initial applicability.

(1) TAX CREDITS. The treatment of ss. 71.05 (6) (a) 15., 71.07 (4s) and (4w), 71.10 (4) (ct) and (cu), 71.21 (4) (a), 71.26 (2) (a) 4., 71.28 (4s) and (4w), 71.30 (3) (ct) and (cu), 71.34 (1k) (g), 71.45 (2) (a) 10., 71.47 (4s) and (4w), and 71.49 (1) (ct) and (cu) first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(END)