

LD 594

**Proposed Draft Amendment for HCIFS Committee Consideration
Proposed by Sponsor, Sen. Vitelli
To be presented at Feb. 4, 2020 Work Session**

PROPOSED DRAFT COMMITTEE AMENDMENT to LD 594

Amend the bill by striking out the title and inserting in its place the following:

An Act to Promote Individual Retirement Savings through a Public-Private Partnership

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 5 MRSA c. 7-A is enacted to read:

CHAPTER 7-A

MAINE RETIREMENT SAVINGS BOARD

§ 171. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Maine Retirement Savings Board established in section 172.

2. Covered employee. "Covered employee" means an individual who is 18 years of age or older who is employed by a covered employer and who has wages or other compensation that are allocable to the State during a calendar year. "Covered Employee" does not include:

A. Any employee covered under the federal Railway Labor Act, 45 United States Code, Section 151;

B. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension trust fund; or

C. Any individual who is an employee of the federal government, the State or any other State, any county or municipal corporation, or any of the State's or any other State's units or instrumentalities.

"Covered employee" may include a part-time, seasonal or temporary employee only to the extent permitted in rules adopted by the board pursuant to section 174.

3. Covered employer. "Covered employer" means a person or entity engaged in a business, industry, profession, trade or other enterprise in the State, whether for profit or not for profit, that has not offered to an employee, effective in form or operation at any time within the current or two preceding calendar years, a specified tax-favored retirement plan. "Covered Employer" does not include:

A. The federal government, the State or any other State, any county or municipal corporation, or any of the State's or any other State's units or instrumentalities;

B. Any employer that has five or fewer employees; or

C. Any employer that has not been in business during both the current calendar year and the preceding calendar year.

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If an employer does not maintain a specified tax-favored retirement plan for a portion of a calendar year ending on or after the effective date of this chapter, but does adopt such a plan for the remainder of that calendar year, the employer is not a “Covered Employer” for the remainder of the year.

4. Enterprise Fund. “Enterprise Fund” means the Maine Retirement Savings Program Enterprise Fund established in section 179.

5. ERISA. “ERISA” means the federal Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1001 et seq.

6. Fund. “Fund” means the Maine Retirement Savings Program Trust Fund established in section 178.

7. Internal Revenue Code. “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended.

8. IRA. “IRA” means a traditional or Roth individual retirement account or individual retirement annuity described in Section 408(a), 408(b), or 408A of the Internal Revenue Code.

9. Participant. “Participant” means an individual who has an IRA account under the Program.

10. Payroll Deduction IRA or Payroll Deduction IRA Arrangement. “Payroll Deduction IRA or Payroll Deduction IRA Arrangement” means an arrangement by which an employer allows employees to contribute to an IRA by means of payroll deduction.

11. Participating Employer. “Participating Employer” means a Covered Employer that allows for Covered Employees to use its payroll system to contribute to IRAs.

12. Program. “Program” means the Maine Retirement Savings Program established in accordance with this chapter.

13. Retirement system. “Retirement system” means the Maine Public Employees Retirement System.

14. Roth IRA. “Roth IRA” means a Roth individual retirement account or individual retirement annuity described in section 408A of the Internal Revenue Code.

15. Specified Tax-Favored Retirement Plan. “Specified tax-favored retirement plan” means a plan, program, or arrangement that is tax-qualified under or described in, and satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code, without regard to whether it would or would not constitute an employee benefit plan under ERISA.

16. Traditional IRA. “Traditional IRA” means a traditional individual retirement account or traditional individual retirement annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code

§ 172. Maine Retirement Savings Board

The Maine Retirement Savings Board is established to develop and maintain the Maine Retirement Savings Program for persons employed or self-employed for wages or other compensation in this State and their beneficiaries.

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1. Appointments. The board consists of 7 voting members and 2 nonvoting members as follows:

A. The executive director of the retirement system, or the executive director's designee;

B. The Treasurer of State, or the Treasurer of State's designee;

C. Five members appointed by the Governor:

(1) An individual who has a favorable reputation for skill, knowledge, and experience relating to the interests of employees in achieving financial security and developing financial capability, including through retirement saving;

(2) A member who is a representative of an association representing employees who include Covered Employees or who has a favorable reputation for skill, knowledge, and experience relating to the interests of employees in retirement saving;

(3) A member who has a favorable reputation for skill, knowledge, and experience relating to the interests of small employers in retirement saving or who is a representative of employers that include Covered Employers;

(4) A public member who is retired who shall be a representative of the interests of retirees and employees; and

(5) A member who has a favorable reputation for skill, knowledge, and experience in the field of retirement saving, retirement plans, and retirement investments.

D. One member of the Senate appointed by the President of the Senate, who serves as a nonvoting member; and

E. One member of the House of Representatives appointed by the Speaker of the House, who serves as a nonvoting member.

2. Confirmation of members. The 5 members of the board appointed by the Governor are subject to approval by the joint standing committee of the Legislature having jurisdiction over financial services matters and confirmation by the Senate.

3. Terms; vacancy. The term of office of each member of the board appointed by the Governor is 4 years, but such a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause for a member appointed by the Governor, the Governor shall make an appointment to become immediately effective for the unexpired term. Each legislative member serves at the pleasure of the appointing authority and may serve as long as the member remains in the body of the Legislature from which the member was appointed.

4. Chair. The executive director of the retirement system, or the executive director's designee, shall serve as the chair of the board.

5. Quorum. A majority of the voting members of the board constitutes a quorum for the transaction of business.

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6. Compensation. A member of the board must be compensated according to the provisions of section 12004-G, subsection 33-G. The Legislative Council is responsible for compensation of any legislative member of the board.

7. Staffing. Except as otherwise provided, the retirement system shall provide staff support to the board. The board shall reimburse the retirement system for the full cost of any staff time provided to the board, including staff time of the executive director.

8. Meetings. The board shall meet monthly and may also meet at other times at the call of the chair. All meetings of the board are public proceedings within the meaning of Title 1, chapter 13, subchapter 1.

9. Program and Fund not affiliated with retirement system. Notwithstanding the provisions of subsections 4 and 7, the program and the fund are not a part of, affiliated with, or related to the retirement system. The program and the fund are independent of and separate from the retirement system.

§ 173. Duties of board; requirements of program

1. Duties. In carrying out the purposes of this chapter, the board shall:

A. Develop, establish, implement, and maintain the program, and, to that end, may conduct market, legal, and feasibility analyses if the board deems them advisable;

B. Adopt rules and regulations it deems necessary or advisable for the implementation and general administration and operation of the program as provided in section 174, consistent with the Internal Revenue Code and regulations thereunder, including to ensure that the program satisfies all criteria for favorable Federal tax treatment and complies, to the extent necessary, with any other applicable Federal or State law;

C. Cause moneys to be held and invested and reinvested under the program;

D. Develop and implement an investment policy that defines the program's investment objectives, consistent with the objectives of the program, and that provides for policies and procedures consistent with those investment objectives. The board shall strive to design and implement investment options available to holders of accounts established as part of the program and other program features that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA-based environment consistent with the investment objectives under the policy. The investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options must be determined by considering the nature and objectives of the program, the desirability based on behavioral research findings of limiting investment choices under the program to a reasonable number, and the extensive investment choices available to participants in the event that they roll over to an IRA outside the program. In accordance with paragraphs J and N, the board, to the extent it deems it necessary or advisable, in its discretion, in carrying out its responsibilities and exercising its powers under this and other provisions of this chapter, shall employ or retain appropriate entities or personnel to assist or advise it or to whom to delegate the carrying out of such responsibilities and exercise of such powers;

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E. Arrange for collective, common, and pooled investment of assets of the program and fund, including investments in conjunction with other funds with which these assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale;

F. Cause the program, fund, and arrangements and accounts established under the program to be designed, established, and operated:

- (1) In accordance with best practices for retirement saving vehicles;
- (2) To encourage participation and saving and to make it as simple, easy, and convenient for ordinary individuals to contribute and manage their savings;
- (3) To promote sound investment practices and appropriate investment menus and default investments;
- (4) To maximize simplicity and ease of administration for covered employers;
- (5) To minimize costs, including by collective investment and economies of scale;
- (6) To promote portability of benefits; and
- (7) To avoid preemption of the program by federal law;

G. Educate participants and potential participants on the benefits of planning and saving for retirement, help them decide the level of participation and saving strategies that may be appropriate for them, and help them develop greater financial capability and financial literacy;

H. In accordance with rules adopted by the board, determine the eligibility of an employer, employee, or other individual to participate in the program;

I. Arrange for and facilitate compliance by the program or arrangements established under the program with all requirements applicable to the program under the Internal Revenue Code, including requirements for favorable tax treatment of the IRAs, and any other applicable Federal or State law or accounting requirements, including using its best efforts to implement procedures minimizing the risk that covered employees will exceed the limits on tax-favored IRA contributions that they are eligible to make, and otherwise providing or arranging for assistance to covered employers and covered employees in complying with applicable law and tax-related requirements in a cost-effective manner. The board may establish any processes it reasonably deems to be necessary or advisable to verify whether an employer is a covered employer, including reference to on-line data and possible use of questions in employer State tax filings, consistent with the objective of avoiding to the fullest extent practicable any need to require employers that are not covered employers to register with the program or take other action to demonstrate that they maintain specified tax-favored retirement plans or are exempt for other reasons from being treated as covered employers;

J. Employ or otherwise retain a program administrator, an executive director, staff, a trustee, a recordkeeper, investment managers, investment advisors, other administrative, professional, expert advisors and service providers, none of whom shall be members of the board and all of whom shall serve at the pleasure of the board, and determine their duties and compensation. the board may authorize the executive director to enter into contracts, as described below, on behalf of the board or conduct any business necessary for the efficient operation of the board;

K. Discharge its duties and see to it that the members of the board discharge their duties with respect to the program solely in the interest of the participants as follows:

- (1) For the exclusive purpose of providing benefits to Participants and defraying reasonable expenses of administering the Program; and

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(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with those matters, would use in the conduct of an enterprise of a like character and with like aims;

L. Make provision for costs and expenses incurred to initiate, implement, maintain, manage, and administer the program and its investments to be paid or defrayed from contributions to, or investment returns or assets of, the program or from the charging and collection of other fees, charges, or moneys, whether account-based, asset-based, per capita, or otherwise, by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law;

M. Accept any grants, gifts, legislative appropriation, loans, and other moneys from the State, any unit of Federal, State, or local government, or any other person, firm, or entity to defray the costs of administering and operating the program;

N. Make and enter into contracts, agreements, or arrangements, to collaborate and cooperate with, and to retain, employ, and contract with or for any of the following to the extent the board deems necessary or desirable, for the effective and efficient design, implementation, and administration of the program consistent with the purposes set forth in this chapter and to maximize outreach to covered employers and covered employees:

(1) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisers, investment administrators, investment management firms, other investment firms, third-party administrators, other professionals and service providers, retirement system, the Office of the Treasurer of State, other State Treasurers, and other state public retirement systems;

(2) Research, technical, financial, administrative, and other services;

(3) Services of other state agencies and instrumentalities, including without limitation those with responsibilities for tax collection, budget, finance, labor and employment regulation, consumer protection, business regulation and liaison, benefits, and public assistance, to assist the board in the exercise of its powers and duties, and all such agencies and instrumentalities are hereby directed to provide such assistance at the board's request; or

(4) Services to develop and implement outreach efforts to gain input and disseminate information regarding the program and retirement savings in general, including timely information to covered employers regarding the program and how it applies to them, with special emphasis on their ability at any time to sponsor a specified tax-favored retirement plan which would exempt them from any responsibilities under the program;

O. Ensure that all contributions to IRAs under the program may be used only to pay benefits to participants under the program; pay the cost of administering the program; and make investments for the benefit of the program, and that no assets of the program or fund are transferred to the general fund of the state or to any other fund of the state or are otherwise encumbered or used for any other purpose;

P. Consider whether procedures should be adopted to allow employers that are not covered employers because they are exempt from covered employer status to voluntarily participate in the program by automatically enrolling their employees, considering, among other considerations, the

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potential legal consequences and the degree of employer demand to participate or facilitate participation by employees;

Q. Evaluate the need for, and procure if and as deemed necessary, insurance against any and all loss in connection with the property, assets, or activities of the program, including, if and as deemed necessary, pooled private insurance;

R. indemnify, including procurement of insurance if and as needed for this purpose, each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board;

S. Collaborate with, and evaluate the role of, financial advisors or other financial professionals, including in assisting and providing guidance for covered employees;

T. The board, its members, the program administrator, and other staff of the board shall comply with any applicable state ethics and gift laws, procurement codes and restrictions, and restrictions on honoraria, and may not:

- (1) Directly or indirectly have any interest in the making of any investment under the program or in gains or profits accruing from any such investment;
- (2) Borrow any program-related funds or deposits, or use any such funds or deposits in any manner, for himself or herself or as an agent or partner of others; or
- (3) Become an endorser, surety, or obligor on investments made under the program; and

U. Carry out its powers and duties under the program pursuant to this chapter and exercise any and all other powers as are appropriate for the effectuation of the purposes, objectives, and provisions of this chapter pertaining to the program.

2. Required elements of plan. In accordance with the implementation dates set forth in subsection 3, the program must:

A. Allow eligible individuals in this State to voluntarily choose whether or not to contribute to an IRA under the program, including allowing covered employees in the State the choice to contribute to an IRA through payroll deduction under the program;

B. Require each covered employer to offer its covered employees the voluntary choice whether or not to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out. Covered employees who are not participants because they have opted out will be automatically reenrolled with the opportunity to opt out again at regular or ad hoc intervals determined by the Board in its discretion (but not more frequently than annually);

C. Provide that the IRA to which contributions are made will be a Roth IRA, except that the board has the authority at any time, in its discretion, to add an option for all participants to affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA;

D. Provide that, unless otherwise specified by a covered employee, the covered employee shall automatically initially contribute 5% of the covered employee's salary or wages to the program and may elect to opt out of the program at any time or contribute at any higher or lower rate, expressed as a percentage of salary or wages, or, if the board in its discretion permits, expressed as a flat dollar amount, subject in all cases to the IRA contribution and income eligibility limits applicable under

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the Internal Revenue Code. The board is authorized to change, from time to time, the 5% automatic initial default contribution rate for all covered employees in its discretion;

E. Provide on a uniform basis, if and when the board so determines in its discretion, for annual increases of each participant's contribution rate, by not more than 1% of salary or wages per year up to a maximum of 8%. Any such increases shall apply to participants, as determined by the board in its discretion, either by default or only if initiated by affirmative participant election, in either case subject to the IRA contribution limits applicable under the Internal Revenue Code;

F. Provide for direct deposit of contributions into investments under the program, including, but not limited to, a default investment such as a series of target date funds and a limited number of investment alternatives including a principal preservation option determined by the board. In addition, the board may provide that each participant's initial contributions, up to a specified dollar amount or for a specified period of time, are required to be invested in a principal preservation investment or, in the board's discretion, must be defaulted into such an investment unless the participant affirmatively opts for a different investment for those contributions. The board shall determine how often participants will have the opportunity to change their selections of investments for future contributions or existing balances or both;

G. Not require or permit employer contributions by covered employers;

H. Be professionally managed;

I. When possible and practicable, use existing employer and public infrastructure to facilitate contributions, recordkeeping, and outreach, and use pooled or collective investment arrangements for amounts contributed to the program;

J. Require the maintenance of separate records and accounting for each account under the program, and allow for participants to maintain their accounts regardless of place of employment and to roll over funds into other IRAs or other retirement accounts;

K. Provide for reports on the status of each participant's account to be provided to each participant at least annually and make best efforts to provide participants frequent or continual online access to information on the status of their accounts;

L. Provide that each participant owns the contributions to and earnings on amounts contributed to the participant's account under the program and that the state and covered employers have no proprietary interest in those contributions or earnings;

M. Be designed and implemented in a manner consistent with federal law to the extent that it applies and consistent with the program not being preempted by, and the payroll deduction IRAs and covered employers not being subject to, ERISA;

N. Promote expanded coverage by encouraging employers in the state that would otherwise be covered employers to instead adopt a specified tax-favored retirement plan;

O. Make provision for participation in the program of individuals who are not employees, such as self-employed and independent contractors, as provided below;

P. Seek to keep fees, costs, and expenses of the program as low as practicable;

Q. Establish rules and procedures governing the distribution of funds from the program, including such distributions as may be permitted or required by the program and any applicable provisions of

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tax laws, with the objectives of maximizing financial security in retirement, helping to protect spousal rights, and assisting participants with the challenges of decumulation of savings. The board has the authority to provide for one or more reasonably priced distribution options to provide a source of regular retirement income, including income for life or for the participant's life expectancy or for joint lives and life expectancies, as applicable;

R. Establish rules and procedures promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept such rollovers or transfers;

S. Establish penalties in accordance with subsection 4 for a covered employer that fails without reasonable cause to enroll a covered employee as required or that fails to transmit a payroll deduction contribution to the program as required;

T. Allow the use of private sector partnerships to administer the program and invest the contributions to the program under the supervision and guidance of the board; and

U. Allow the board to provide for the establishment, maintenance, administration, operation, and implementation of the program to be carried out jointly with, or in partnership, collaboration, coordination, or alliance with one or more other states, the federal government, or any federal, state, or local agencies or instrumentalities.

3. Implementation. The board shall implement the program in phases as required in this subsection.

A. Beginning September 1, 2021, the board shall require covered employers with 25 or more employees to offer the program to its covered employees;

B. Beginning March 1, 2022, the board shall require covered employers with between 15 and 24 employees to offer the program to its covered employees;

C. Beginning December 1, 2022, the board shall require covered employers with between 5 and 14 employees to offer the program to its covered employees; and

D. Beginning March 1, 2023, the board shall require covered employers with less than 5 employees to offer the program to its covered employees.

4. Penalties. The board shall establish penalties in accordance with this subsection.

A. As set forth in this paragraph, if a covered employer fails to enroll a covered employee without reasonable cause is subject to a penalty for each covered employee for each calendar year or portion thereof during which the covered employee was not enrolled in the program or had not elected out of participation in the program, and, for each calendar year beginning after the date on which a penalty has been assessed with respect to a covered employee, is subject to a penalty for any portion of that calendar year during which the covered employee continues to be unenrolled without electing out of participation in the program. The amount of any penalty imposed on a covered employee for the failure to enroll a covered employee without reasonable cause is determined as follows:

(1) Until December 31, 2021, the maximum penalty per covered employee is \$10;

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(2) From January 1, 2022 until December 31, 2022, the maximum penalty per covered employee is \$20;

(3) From January 1, 2023 until December 31, 2023, the maximum penalty per covered employee is \$50; and

(4) On or after January 1, 2024, the maximum penalty per covered employee is \$100.

B. A covered employee or any appropriate official of the State may bring a civil action to require the covered employer to enroll the covered employee and shall recover such costs and reasonable attorney's fees as may be allowed by the court.

C. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee for which it is established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirements of this chapter.

D. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee if the covered employer exercised reasonable diligence to meet the requirements of this chapter and the covered employer complies with those requirements with respect to each covered employee by the end of the 90-day period beginning on the first date the covered employer knew, or exercising reasonable diligence would have known, that the failure existed.

E. In the case of a failure that is due to reasonable cause and not to willful neglect, all or part of the penalty may be waived to the extent that the payment of the penalty would be excessive or otherwise inequitable relative to the failure involved.

F. If a covered employer fails to transmit a payroll deduction contribution to the program on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the covered employer's assets, but not later than the 15th day of the month following the month in which the covered employee's contribution amounts are withheld from his or her paycheck, the failure to remit such contributions on a timely basis is subject to the same sanctions as employer misappropriation of employee wage withholdings and to the penalties specified in paragraph A.

§ 174. Rules

1. Authority. The board shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.

2. Required rules. The board shall adopt rules to:

A. Establish the processes for enrollment and contributions to an IRA under the program, including withholding by covered employers of employee payroll deduction contributions from wages and remittance for deposit to an IRA, automatic enrollment in a payroll deduction IRA and opt-outs by covered employees, voluntary contributions by others, including self-employed individuals and independent contractors, through payroll deduction or otherwise, the making of default contributions using default investments, and participant selection of alternative contribution rates or amounts and alternative investments from among the options offered under the program;

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B. Establish the processes for withdrawals, rollovers, and direct transfers from an IRA under the program in the interest of facilitating portability of benefits;

C. Establish processes for phasing in enrollment of eligible individuals, including phasing in enrollment of covered employees by size or type of covered employer in accordance with section 173, subsection 3;

D. Establish requirements for the determination of whether a part-time, seasonal or temporary employee is a “covered employee” eligible to participate in the program;

E. Establish a process for a participant to make nonpayroll contributions to accounts under the program;

F. Establish a process for employers to be determined to be exempt from the program because the employer sponsors a tax-favored retirement savings plan.

G. Conduct outreach to individuals, employers, other stakeholders, and the public regarding the program. specify the contents, frequency, timing, and means of required disclosures from the program to covered employees, participants, other individuals eligible to participate in the program, covered employers, and other interested parties. these disclosures include, but are not limited to:

- (1) The benefits and risks associated with tax-favored retirement saving under the program;
- (2) The potential advantages and disadvantages associated with contributing to a Roth IRA and, if applicable, a traditional IRA under the program;
- (3) The eligibility rules for a Roth IRA and, if applicable, a traditional IRA;
- (4) That the individual and not the employer, the State, the board, any board member or other state official, or the program will be solely responsible for determining whether, and, if so, how much, the individual is eligible to contribute on a tax-favored basis to an IRA;
- (5) The penalty for excess contributions to an IRA and the method of correcting excess contributions;
- (6) Instructions for enrolling, opting out of participation, making contributions, and making withdrawals; including the possibility of contributing to an IRA, whether offered under the program or not, by means other than auto enrollment in a payroll deduction IRA;
- (7) Instructions for opting out of each of the Roth IRA, the default contribution rate, and the default investment if the covered employee prefers a traditional IRA including the possibility of contributing to a traditional IRA if offered as an option under the program, a higher or lower contribution rate, or different investment alternatives;
- (8) The potential availability of a saver’s tax credit, including the eligibility conditions for the credit and instructions on how to claim it;
- (9) That employees seeking tax, investment, or other financial advice should contact appropriate professional advisors, and that covered employers are not in a position to provide such advice and are not liable for decisions individuals make in relation to the program;
- (10) That the payroll deduction IRA is intended not to be an employer-sponsored retirement plan and that the program is not an employer-sponsored retirement plan;
- (11) The potential implications of account balances under the program for the application of asset limits under certain public assistance programs;

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- (12) That the account owner is solely responsible for investment performance, including market gains and losses, and that IRA accounts and rates of return are not guaranteed by any employer, the state, the board, any board member or state official, or the program;
- (13) Additional information about retirement and saving and other information designed to promote financial literacy and capability, which may take the form of links to, or explanations of how to obtain, such information; and
- (14) How to obtain additional information about the program.

§175. Protection from Liability for Employers

1. Employers. A covered employer or other employer is not and may not be considered a fiduciary in relation to the program or fund or any other arrangement under the program. A covered employer or other employer is not and may not be liable for or bear responsibility for:

- A. An employee's decision to participate in or opt out of the program;
- B. Investment decisions of the board or any participant;
- C. The administration, investment, investment returns, or investment performance of the program, including without limitation any interest rate or other rate of return on any contribution or account balance;
- D. The program design or the benefits paid to participants;
- E. An individual's awareness of or compliance with the conditions and other provisions of the tax laws that determine which individuals are eligible to make tax-favored contributions to an IRA, in what amount, and in what time frame and manner; or
- F. Any loss, failure to realize any gain, or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the program.

2. State. The State, the board, each member of the board or other State official, other State boards, commissions, or agencies, any member, officer, or employee thereof, and the program:

- A. Has no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;
- B. Has no duty, responsibility, or liability to any party for the payment of any benefits under the program, regardless of whether sufficient funds are available under the program to pay such benefits,
- C. Does not and may not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and
- D. Is not any may not liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits, incurred by any person as a result of participating in the program.

3. Debts, contracts and obligations. the debts, contracts, and obligations of the program or the board are not the debts, contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the program or the board.

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4. Immunity of board members. The board is immune from suit on any and all tort claims seeking recovery of damages to the same extent as governmental entities under the Maine Tort Claims Act.

5. Legal representation and defense of board. The Attorney General is legal counsel to the board and shall represent and defend the board, as a group and individually, in connection with any claim, suit or action at law arising out of the performance or nonperformance of any actions related to the program under this chapter to the same extent as provided for governmental entities in the Maine Tort Claims Act.

§ 176. Confidentiality of account information

Individual account information for accounts under the program developed under this chapter, including, but not limited to, names, residential addresses, email addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, is confidential and must be maintained as confidential except to the extent necessary to administer the program in a manner consistent with this chapter, the tax laws of this State and the Internal Revenue Code or unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.

§177. Intergovernmental Collaboration and Cooperation

The board may enter into an intergovernmental agreement or memorandum of understanding with the State and any agency or instrumentality of the State to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program subject to such obligations of confidentiality as may be agreed or required by law, or other services or assistance. The State and any agencies or instrumentalities of the State that enter into such agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the board. The memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

§178. Maine Retirement Savings Program Trust Fund

1. Trust fund. The fund is established as a trust outside of the State Treasury. The fund must include the IRAs of participants, which must be accounted for as individual accounts. Funds in the fund consist of funds received as contributions to IRAs from Participants and from Participating Employers through payroll deduction on behalf of Participants under this chapter. The fund must be operated in a manner determined by the board, in consultation with the Treasurer of State, as long as the fund is operated so that participants' accounts established under this chapter meet the requirements for IRAs under the Internal Revenue Code.

2. Funds not property of State. The amounts deposited in the fund do not constitute property of the State, and the fund may not be construed to be a department, institution, or agency of the State. Amounts on deposit in the fund may not be commingled with State funds, and the State has no claim to or against, or interest in, amounts on deposit in the fund.

§179. Maine Retirement Savings Program Enterprise Fund

1. Fund established. The Maine Retirement Savings Program Enterprise Fund is established as an enterprise fund. The board shall use funds deposited in the enterprise fund to pay for administrative expenses incurred in the performance of the retirement system's duties under this chapter. The enterprise fund may receive grants, gifts, donations, appropriations, loans, or other funds designated for

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administrative expenses or otherwise transferred to it from or deposited in it by the State or a unit of federal, State, or local government or any other person, firm, partnership, or corporation, including appropriations to the enterprise fund by the Legislature and moneys from the payment of application account, administrative, or other fees and the payment of other moneys due the board. Interest or other investment earnings or returns that are attributable to funds in the enterprise fund must be deposited into or retained in the enterprise fund. the enterprise fund may not lapse but must be carried forward to carry out the purposes of this chapter.

2. Borrowing. To enable or facilitate the start-up and continuing operation, maintenance, administration, and management of the program until the program accumulates sufficient balances and can generate sufficient funding through fees assessed on program accounts for the program to become financially self-sustaining, the board may borrow from the State, any unit of federal, state, or local government, or any other person, firm, corporation, or other entity working capital funds and other funds as may be necessary for this purpose, as long as such funds are borrowed in the name of the program and board only and that any such borrowing is repaid solely from the revenues of the program. The board may not borrow from the retirement system for any purpose. The board may enter into long-term procurement contracts with one or more financial or service providers that provide a fee structure that would assist the program in avoiding or minimizing the need to borrow or to rely upon general assets of the State.

3. Administrative costs. Subject to appropriation by the Legislature, the State may pay administrative costs associated with the creation, maintenance, operation, and management of the program and provide funding for the program until sufficient assets are available in the enterprise fund for that purpose. Thereafter, all administrative costs of the enterprise fund, including any repayment of startup funds provided by the State, must be repaid only out of money on deposit therein. However, private funds or federal funding received in order to implement the program until the enterprise fund is self-sustaining may not be repaid unless those funds were offered contingent upon the promise of such repayment.

4. Use of enterprise fund. The board shall use the money in the enterprise fund solely to pay the administrative costs and expenses of the program and the administrative costs and expenses the board incurs in the performance of its duties under this chapter.

§180. Annual reports

1. Report. The board shall cause an accurate account of all of the program's, fund's, enterprise fund's and board's activities, operations, receipts, and expenditures to be maintained. each year. A full audit of the books and accounts of the board pertaining to those activities, operations, receipts and expenditures, personnel, services, or facilities must be conducted by a certified public accountant, including, but not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not State employees for the administration of the program. For the purposes of the audit, the auditors must have access to the properties and records of the program and board and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

2. Submission of report. Beginning August 1, 2022 and annually thereafter, the board shall submit to the Governor, the Treasurer of State, and the Legislature an audited financial report, prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts, and expenditures of the program and board during the preceding calendar year. The report shall include the number of participants, the investment options and their rates of return, and other information

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regarding the program, and shall also include projected activities of the program for the current calendar year.

Sec. 2. 5 MRSA §12004-G, sub-§33-G is enacted to read:

33-G.

Maine Public Employees Retirement System

Maine Retirement Savings Board

Legislative Per Diem and Expenses

5 MRSA §172

Sec. 3. Effective date and applicability dates. Except as provided in this section, the Maine Retirement Savings Board shall establish the Maine Retirement Savings Program as required under this so that individuals may begin making contributing under the program no later than July 1, 2021. The board shall phase in the program with regard to covered employers and accept contributions from covered employees employed by those covered employers as required under this Act and may in its discretion phase in the program for individuals who are not employees, such as self-employed individuals or independent contractors, as long as any implementation schedule set by the board must be such that all individuals may begin making contributions under the program no later than July 1, 2023. The board may not implement the program if and to the extent that the board determines that the program is preempted by the federal Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1001 et seq. If and to the extent that the Board determines that a portion of aspect of the program is preempted by the federal Employee Retirement Income Security Act, the board may not implement that portion or aspect of the program but shall proceed to implement the remainder of the program to the extent practicable. If the board determines that some but not all of the payroll deduction individual retirement account arrangements or other arrangements under the program are or would be employee benefit plans under the federal Employee Retirement Income Security Act, the board shall implement the program with respect to the other arrangements under the program to the extent practicable; and may not implement the program with respect to plans covered by the federal Employee Retirement Income Security Act or proceed to implement the program with respect to plans covered by the federal Employee Retirement Income Security Act on a basis reflecting their status or possible status as such, as long as such actions do not create an undue risk of causing the federal Employee Retirement Income Security Act to preempt State law with respect to other portions of the program or causing other arrangements under the program to be treated as plans covered by the federal Employee Retirement Income Security Act.

Sec. 4. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 5, section 172, subsection 3, with regard to the original appointments of the members of the Maine Retirement Savings Board, the Governor shall appoint one member for a one-year term, one member for a 2-year term, one member for a 3-year term and any other member for a 4-year term.

SUMMARY

This amendment replaces the bill. Like the bill, the amendment establishes the Maine Retirement Savings Board except that the amendment directs the Maine Public Employees Retirement System and its Executive Director to have an oversight role for the board instead of the Treasurer of the State. The amendment authorizes the board to develop a voluntary program to offer individual defined contribution retirement accounts for persons employed in the State who do not have access to a qualified retirement plan through their employers or who are self-employed.