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Date: (Filing No. S-)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 181, L.D. 594, “An Act To Promote Individual Savings Accounts through a Public-Private Partnership”

Amend the bill by striking out the title and substituting 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 inserting 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 under 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. An employee covered under the federal Railway Labor Act, 45 United States Code, Section 151;

B. An employee on whose behalf an employer makes contributions to a multiemployer pension trust fund authorized by the federal Labor Management Relations Act, 1947, Public Law 80-101, known as the Taft-Hartley Act; or

COMMITTEE AMENDMENT

1 C. An individual who is an employee of the Federal Government, the State or any
2 other state, any county or municipal corporation or any of the State's or any other state's
3 units or instrumentalities.

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

6 **3. Covered employer.** "Covered employer" means a person or entity engaged in a
7 business, industry, profession, trade or other enterprise in the State, whether for profit or
8 not for profit, that has not offered to an employee, effective in form or operation at any
9 time within the current calendar year or 2 preceding calendar years, a specified tax-favored
10 retirement plan. "Covered employer" does not include:

11 A. The Federal Government, the State or any other state, any county or municipal
12 corporation or any of the State's or any other state's units or instrumentalities; or

13 B. An employer that has not been in business during both the current calendar year
14 and the preceding calendar year.

15 If an employer does not maintain a specified tax-favored retirement plan for a portion of a
16 calendar year ending on or after the effective date of this chapter, but does adopt such a
17 plan for the remainder of that calendar year, the employer is not a covered employer for the
18 remainder of the year.

19 **4. Enterprise fund.** "Enterprise fund" means the Maine Retirement Savings Program
20 Enterprise Fund established in section 178.

21 **5. ERISA.** "ERISA" means the federal Employee Retirement Income Security Act of
22 1974, as amended, 29 United States Code, Section 1001 et seq.

23 **6. Internal Revenue Code.** "Internal Revenue Code" means the United States Internal
24 Revenue Code of 1986, as amended.

25 **7. IRA.** "IRA" means a traditional IRA or Roth IRA.

26 **8. Participant.** "Participant" means an individual who has an IRA under the program.

27 **9. Payroll deduction IRA or payroll deduction IRA arrangement.** "Payroll
28 deduction IRA" or "payroll deduction IRA arrangement" means an arrangement by which
29 an employer allows employees to contribute to an IRA by means of payroll deduction.

30 **10. Program.** "Program" means the Maine Retirement Savings Program established
31 in accordance with this chapter.

32 **11. Retirement system.** "Retirement system" means the Maine Public Employees
33 Retirement System established in section 17101.

34 **12. Roth IRA.** "Roth IRA" means a Roth individual retirement account or Roth
35 individual retirement annuity described in section 408A of the Internal Revenue Code.

36 **13. Specified tax-favored retirement plan.** "Specified tax-favored retirement plan"
37 means a plan, program or arrangement that is tax-qualified under or described in, and
38 satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section
39 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code,
40 without regard to whether it constitutes an employee benefit plan under ERISA.

1 **14. Traditional IRA.** "Traditional IRA" means a traditional individual retirement
2 account or traditional individual retirement annuity described in Section 408(a) or Section
3 408(b) of the Internal Revenue Code.

4 **15. Wages.** "Wages" means any compensation within the meaning of Section 219(f)(1)
5 of the Internal Revenue Code that is received by an employee from an employer during a
6 calendar year.

7 **§172. Maine Retirement Savings Board**

8 The Maine Retirement Savings Board is established pursuant to section 12004-G,
9 subsection 33-G to develop and maintain the Maine Retirement Savings Program for
10 individuals employed or self-employed for wages or other compensation in this State.

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

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

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

16 C. Five members appointed by the Governor:

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

20 (2) A member who is a representative of an association representing employees,
21 including covered employees, or who has a favorable reputation for skill,
22 knowledge and experience relating to the interests of employees in retirement
23 saving;

24 (3) A member who is a representative of employers, including covered employers,
25 or who has a favorable reputation for skill, knowledge and experience relating to
26 the interests of small employers in retirement saving;

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

29 (5) A member who has a favorable reputation for skill, knowledge and experience
30 in the field of retirement saving, retirement plans and retirement investment;

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

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

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

38 **3. Terms; vacancy.** The term of office of each member of the board appointed by
39 the Governor is 4 years. A member is eligible for reappointment. If there is a vacancy for
40 any cause for a member appointed by the Governor, the Governor shall make an
41 appointment to become immediately effective for the unexpired term. Each legislative

1 member serves at the pleasure of the appointing authority and may serve as long as the
2 member remains in the body of the Legislature from which the member was appointed.

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

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

7 **6. Compensation.** A member of the board, except for the executive director of the
8 retirement system or the Treasurer of State and any designee of either, must be
9 compensated according to the provisions of section 12004-G, subsection 33-G. The
10 Legislative Council is responsible for compensation of any legislative member of the board.

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

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

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

22 **§173. Duties of board; requirements of program**

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

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

26 B. Adopt rules the board considers necessary or advisable for the implementation and
27 general administration and operation of the program as provided in section 174,
28 consistent with the Internal Revenue Code and regulations under that Code, including
29 to ensure that the program satisfies all criteria for favorable federal tax treatment and
30 complies, to the extent necessary, with any other applicable federal or state law;

31 C. Use private sector partnerships to contract with a program administrator to
32 administer the program and manage the investments under the supervision and
33 guidance of the board in accordance with this chapter;

34 D. Cause funds to be held and invested and reinvested under the program;

35 E. Develop and implement an investment policy that defines the program's investment
36 objectives consistent with the objectives of the program and that provides for policies
37 and procedures consistent with those investment objectives. The board shall strive to
38 select and offer investment options available to participants and other program features
39 that are intended to achieve maximum possible income replacement balanced with an
40 appropriate level of risk in an IRA-based environment consistent with the investment
41 objectives under the policy. The investment options may encompass a range of risk and
42 return opportunities and allow for a rate of return commensurate with an appropriate

1 level of risk in view of the investment objectives under the policy. The menu of
2 investment options must be determined by considering the nature and objectives of the
3 program, the desirability based on behavioral research findings of limiting investment
4 options under the program to a reasonable number and the extensive investment options
5 available to participants in the event that they roll over funds in an IRA established
6 under the program to an IRA outside the program. In accordance with paragraphs K
7 and O, the board, in carrying out its responsibilities and exercising its powers under
8 this chapter, shall employ or retain appropriate entities or personnel to assist or advise
9 it and to whom to delegate the carrying out of such responsibilities and exercise of such
10 powers;

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

15 G. Cause the program, enterprise fund and arrangements and accounts established
16 under the program to be designed, established and operated:

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

26 H. Educate participants and potential participants on the benefits of planning and
27 saving for retirement, help them decide the level of participation and saving strategies
28 that may be appropriate for them and help them develop greater financial capability
29 and financial literacy, including through partnerships with organizations based in the
30 State specializing in financial literacy education;

31 I. In accordance with rules adopted by the board, determine the eligibility of an
32 employer, employee or other individual to participate in the program, including
33 conditions under which an employer that terminates the offering of a specified tax-
34 favorable retirement plan can become a covered employer eligible to participate in the
35 program;

36 J. Arrange for and facilitate compliance by the program or arrangements established
37 under the program with all requirements applicable to the program under the Internal
38 Revenue Code, including requirements for favorable tax treatment of the IRAs, and
39 any other applicable federal or state law or accounting requirements, including using
40 its best efforts to implement procedures minimizing the risk that covered employees
41 will exceed the limits on tax-favored IRA contributions that they are eligible to make
42 and otherwise providing or arranging for assistance to covered employers and covered
43 employees in complying with applicable law and tax-related requirements in a cost-

1 effective manner. The board may establish any processes it reasonably considers to be
2 necessary or advisable to verify whether an employer is a covered employer, including
3 reference to online data and possible use of questions in employer state tax filings,
4 consistent with the objective of avoiding to the fullest extent practicable any need to
5 require employers that are not covered employers to register with the program or take
6 other action to demonstrate that they maintain specified tax-favored retirement plans
7 or are exempt for other reasons from being treated as covered employers;

8 K. Employ or otherwise retain a program administrator, an executive director, staff, a
9 trustee, a record keeper, investment managers, investment advisors, other
10 administrative, professional and expert advisors and service providers, none of whom
11 may be members of the board and all of whom serve at the pleasure of the board, and
12 the board shall determine their duties and compensation. The board may authorize the
13 executive director employed by the board to enter into contracts, as described in
14 paragraph O, on behalf of the board or conduct any business necessary for the efficient
15 operation of the board;

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

18 (1) For the exclusive purpose of providing benefits to participants and defraying
19 reasonable expenses of administering the program; and

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

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

30 N. Accept any grants, gifts, legislative appropriation, loans and other funds from the
31 State, any unit of federal, state or local government or any other person, firm or entity
32 to defray the costs of administering and operating the program in accordance with the
33 requirements of section 178, subsection 1;

34 O. Make and enter into contracts, agreements or arrangements for and collaborate and
35 cooperate with and retain, employ and contract with or for any of the following to the
36 extent the board considers necessary or advisable for the effective and efficient design,
37 implementation and administration of the program consistent with the purposes set
38 forth in this chapter and to maximize outreach to covered employers and covered
39 employees:

40 (1) Services of private and public financial institutions, depositories, consultants,
41 actuaries, counsel, auditors, investment advisors, investment administrators,
42 investment management firms, other investment firms, 3rd-party administrators,
43 other professionals and service providers, the retirement system, the Office of the
44 Treasurer of State, other state treasurers and other state public retirement systems;

- 1 (2) Research, technical, financial, administrative and other services;
2 (3) Services of other state agencies and instrumentalities, including without
3 limitation those with responsibilities for tax collection, budget, finance, labor and
4 employment regulation, consumer protection, business regulation and liaison,
5 benefits, and public assistance, to assist the board in the exercise of its powers and
6 duties, and all such agencies and instrumentalities shall provide such assistance at
7 the board's request; or
8 (4) Services to develop and implement outreach efforts to gain input and
9 disseminate information regarding the program and retirement saving in general,
10 including timely information to covered employers regarding the program and how
11 it applies to them, with special emphasis on their ability at any time to sponsor a
12 specified tax-favored retirement plan that would exempt them from any
13 responsibilities under the program;
14 P. Ensure that all contributions to an IRA under the program are used only to pay
15 benefits to participants under the program, pay the cost of administering the program
16 or make investments for the benefit of the program and that no assets of the program
17 or enterprise fund are transferred to the General Fund or to any other fund of the State
18 or are otherwise encumbered or used for any other purpose;
19 Q. Consider whether procedures should be adopted to allow employers that are not
20 covered employers because they are exempt from covered employer status to
21 voluntarily participate in the program by automatically enrolling their employees,
22 considering, among other factors, the potential legal consequences and the degree of
23 employer demand to participate or facilitate participation by employees;
24 R. Evaluate the need for, and procure if and as considered necessary, insurance against
25 any loss in connection with the property, assets or activities of the program, including,
26 if and as considered necessary, pooled private insurance;
27 S. Indemnify, including procurement of insurance if and as needed for this purpose,
28 each member of the board from personal loss or liability resulting from a member's
29 action or inaction as a member of the board;
30 T. Collaborate with, and evaluate the role of, financial advisors or other financial
31 professionals, including in assisting and providing guidance for covered employees;
32 U. Along with its members, the program administrator and other staff of the board,
33 comply with any applicable state ethics and gift laws, procurement codes and
34 restrictions and restrictions on honoraria and may not:
35 (1) Directly or indirectly have any interest in the making of any investment under
36 the program or in gains or profits accruing from any such investment;
37 (2) Borrow any program-related funds or deposits, or use any such funds or
38 deposits in any manner, for the benefit of the board or any member or as an agent
39 or partner of others; or
40 (3) Become an endorser, surety or obligor on investments made under the program;
41 and

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

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

6 A. Allow an eligible individual in this State to choose whether or not to contribute to
7 an IRA under the program, including allowing a covered employee in the State the
8 choice to contribute to an IRA under the program through a payroll deduction IRA
9 arrangement;

10 B. Notwithstanding any provision of state law related to payroll deduction to the
11 contrary, require each covered employer to offer its covered employees the choice
12 whether or not to contribute to a payroll deduction IRA by automatically enrolling them
13 in the payroll deduction IRA with the opportunity to opt out. A covered employee who
14 is not a participant because that employee has opted out will be automatically
15 reenrolled with the opportunity to opt out again at regular or ad hoc intervals
16 determined by the board in its discretion, but not more frequently than annually;

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

21 D. Provide that, unless otherwise specified by the covered employee, a covered
22 employee must automatically initially contribute 5% of the covered employee's salary
23 or wages to the program and may elect to opt out of the program at any time or
24 contribute at any higher or lower rate, expressed as a percentage of salary or wages, or,
25 if the board in its discretion permits, expressed as a flat dollar amount, subject in all
26 cases to the IRA contribution and income eligibility limits applicable under the Internal
27 Revenue Code at no additional charge. The board is authorized to change, from time
28 to time, the 5% automatic initial default contribution rate for all covered employees in
29 its discretion;

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

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

- 1 G. Provide that employer contributions by a covered employer are not required or
2 permitted;
- 3 H. Be professionally managed;
- 4 I. When possible and practicable, use existing employer and public infrastructure to
5 facilitate contributions, record keeping and outreach and use pooled or collective
6 investment arrangements for amounts contributed to the program;
- 7 J. Require the maintenance of separate records and accounting for each account under
8 the program and allow for participants to maintain their accounts regardless of place of
9 employment and to roll over funds into other IRAs or other retirement accounts;
- 10 K. Provide for reports on the status of each participant's account to be provided to each
11 participant at least annually and make best efforts to provide each participant frequent
12 or continual online access to information on the status of that participant's account;
- 13 L. Provide that each participant owns the contributions to and earnings on amounts
14 contributed to the participant's account under the program and that the State and
15 covered employers have no proprietary interest in those contributions or earnings;
- 16 M. Be designed and implemented in a manner consistent with federal law to the extent
17 that it applies and consistent with the program not being preempted by, and the payroll
18 deduction IRAs and covered employers not being subject to, ERISA;
- 19 N. Promote expanded retirement savings by encouraging employers in the State that
20 would otherwise be covered employers to instead adopt a specified tax-favored
21 retirement plan;
- 22 O. Make provision for participation in the program by individuals who are not
23 employees, such as self-employed individuals and independent contractors, as
24 provided in rules adopted pursuant to section 174, subsection 2;
- 25 P. Seek to keep fees, costs and expenses of the program as low as practicable, except
26 that any administrative fee imposed on a covered employee for participating in the
27 program may not exceed an asset-based or investment return fee of 1.05% per year;
- 28 Q. Adopt rules and establish procedures governing the distribution of funds from the
29 program, including such distributions as may be permitted or required by the program
30 and any applicable provisions of tax laws, with the objectives of maximizing financial
31 security in retirement, helping to protect spousal rights and assisting participants with
32 the challenges of decumulation of savings. The board has the authority to provide for
33 one or more reasonably priced distribution options to provide a source of regular
34 retirement income, including income for life or for the participant's life expectancy or
35 for joint lives and life expectancies, as applicable;
- 36 R. Adopt rules and establish procedures promoting portability of benefits, including
37 the ability to make tax-free rollovers or transfers from IRAs under the program to other
38 IRAs or to tax-qualified plans that accept such rollovers or transfers;
- 39 S. Establish penalties in accordance with subsection 4 for a covered employer that fails
40 without reasonable cause to enroll a covered employee in the program as required or
41 that fails to transmit a payroll deduction IRA contribution to the program as required;

1 T. In accordance with subsection 1, paragraph C, use private sector partnerships to
2 administer the program and invest the contributions to the program under the
3 supervision and guidance of the board; and

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

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

10 A. Beginning July 1, 2022, the board shall require a covered employer with 25 or more
11 covered employees to offer the program to its covered employees.

12 B. Beginning January 1, 2023, the board shall require a covered employer with 15 to
13 24 covered employees to offer the program to its covered employees.

14 C. Beginning June 1, 2023, the board shall require a covered employer with 5 to 14
15 covered employees to offer the program to its covered employees.

16 Notwithstanding paragraphs A to C, a covered employer may voluntarily offer the program
17 to its covered employees on or after March 1, 2022. A covered employer with fewer than
18 5 employees is not required to offer the program to its covered employees but may offer
19 the program to its employees at the option of the employer.

20 **4. Penalties.** The board shall establish and enforce penalties in accordance with this
21 subsection.

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

32 (1) Prior to July 1, 2023, the maximum penalty per covered employee is \$10;

33 (2) From July 1, 2023 to June 30, 2024, the maximum penalty per covered
34 employee is \$20;

35 (3) From July 1, 2024 to December 31, 2025, the maximum penalty per covered
36 employee is \$50; and

37 (4) On or after January 1, 2026, the maximum penalty per covered employee is
38 \$100.

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

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

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

10 E. If a covered employer fails to transmit a payroll deduction contribution to the
11 program on the earliest date the amount withheld from the covered employee's
12 compensation can reasonably be segregated from the covered employer's assets, but
13 not later than the 15th day of the month following the month in which the covered
14 employee's contribution amounts are withheld from the covered employee's paycheck,
15 the failure to remit the contribution on a timely basis is subject to the same penalties as
16 apply to employer misappropriation of employee wage withholdings and to the
17 penalties specified in paragraph A.

18 F. The Attorney General shall represent the board in enforcement and collection of
19 penalties.

20 **§174. Rules**

21 1. Authority. The board may adopt rules as necessary to implement this chapter,
22 except that the board shall adopt rules required pursuant to subsection 2. Rules adopted
23 pursuant to this chapter are routine technical rules as defined in chapter 375, subchapter
24 2-A.

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

26 A. Establish the processes for enrollment and contributions to an IRA under the
27 program, notwithstanding any provision of state law related to payroll deductions to
28 the contrary, including withholding by covered employers of employee payroll
29 deduction contributions from wages and remittance for deposit to an IRA, automatic
30 enrollment in a payroll deduction IRA and opt-outs by covered employees, voluntary
31 contributions by others, including self-employed individuals and independent
32 contractors, through payroll deduction or otherwise, the making of default
33 contributions using default investments and participant selection of alternative
34 contribution rates or amounts and alternative investments from among the options
35 offered under the program;

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

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

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

- 1 E. Establish a process for a participant to make nonpayroll contributions to accounts
2 under the program;
- 3 F. Establish a process for an employer to be determined to be exempt from the program
4 because the employer sponsors a specified tax-favored retirement plan; and
- 5 G. Conduct outreach to individuals, employers, other stakeholders and the public
6 regarding the program, including specifying the contents, frequency, timing and means
7 of required disclosures from the program to covered employees, participants, other
8 individuals eligible to participate in the program, covered employers and other
9 interested parties. These disclosures must include, but are not limited to, the following:
- 10 (1) The benefits and risks associated with tax-favored retirement saving under the
11 program;
- 12 (2) The potential advantages and disadvantages associated with contributing to a
13 Roth IRA and, if applicable, a traditional IRA under the program;
- 14 (3) The eligibility rules for a Roth IRA and, if applicable, a traditional IRA;
- 15 (4) That the individual and not the employer, the State, the board, any board
16 member or other state official or the program is solely responsible for determining
17 whether, and, if so, how much, the individual is eligible to contribute on a tax-
18 favored basis to an IRA;
- 19 (5) The penalty for excess contributions to an IRA and the method of correcting
20 excess contributions;
- 21 (6) Instructions for enrolling, opting out of participation, making contributions and
22 making withdrawals, including the possibility of contributing to an IRA, whether
23 offered under the program or not, by means other than automatic enrollment in a
24 payroll deduction IRA;
- 25 (7) Instructions for opting out of each of the Roth IRA, the default contribution
26 rate and the default investment if the covered employee prefers a traditional IRA,
27 including the possibility of contributing to a traditional IRA, if offered as an option
28 under the program, a higher or lower contribution rate or different investment
29 alternatives;
- 30 (8) The potential availability of a saver's tax credit, including the eligibility
31 conditions for the credit and instructions on how to claim it;
- 32 (9) That employees seeking tax, investment or other financial advice should
33 contact appropriate professional advisors and that covered employers are not in a
34 position to provide such advice and are not liable for decisions individuals make
35 in relation to the program;
- 36 (10) That the payroll deduction IRA is intended not to be an employer-sponsored
37 retirement plan and that the program is not an employer-sponsored retirement plan;
- 38 (11) The potential implications of account balances under the program for the
39 application of asset limits under certain public assistance programs;
- 40 (12) That the participant is solely responsible for investment performance,
41 including market gains and losses, and that IRAs and rates of return are not

1 guaranteed by any employer, the State, the board, any board member or state
2 official or the program;

3 (13) Additional information about retirement and saving and other information
4 designed to promote financial literacy and capability, which may take the form of
5 links to, or explanations of how to obtain, such information; and

6 (14) How to obtain additional information about the program.

7 **§175. Protection from liability**

8 **1. Employer protection from liability.** A covered employer or other employer is not
9 and may not be considered a fiduciary in relation to the program or enterprise fund or any
10 other arrangement under the program. A covered employer or other employer is not and
11 may not be liable for and does not and may not bear responsibility for:

12 A. An employee's decision to participate in or opt out of the program;

13 B. Investment decisions of the board or any participant;

14 C. The administration, investment, investment returns or investment performance of
15 the program, including without limitation any interest rate or other rate of return on any
16 contribution or account balance;

17 D. The program design or the benefits paid to participants;

18 E. An individual's awareness of or compliance with the conditions and other provisions
19 of the tax laws that determine which individuals are eligible to make tax-favored
20 contributions to an IRA, in what amount and in what time frame and manner; or

21 F. Any loss, deficiency, failure to realize any gain or any other adverse consequences,
22 including without limitation any adverse tax consequences or loss of favorable tax
23 treatment, public assistance or other benefits, incurred by any person as a result of
24 participating in the program.

25 **2. Protection for the State and others.** The State, the board, each member of the
26 board or other state official, any other state board, commission or agency and the retirement
27 system, and any member, officer or employee of any of these entities, and the program:

28 A. Have no responsibility for compliance by individuals with the conditions and other
29 provisions of the Internal Revenue Code that determine which individuals are eligible
30 to make tax-favored contributions to IRAs, in what amount and in what time frame and
31 manner;

32 B. Have no duty, responsibility or liability to any party for the payment of any benefits
33 under the program, regardless of whether sufficient funds are available under the
34 program to pay such benefits;

35 C. Do not and may not guarantee any interest rate or other rate of return on or
36 investment performance of any contribution or account balance; and

37 D. Are not and may not be liable or responsible for any loss, deficiency, failure to
38 realize any gain or any other adverse consequences, including without limitation any
39 adverse tax consequences or loss of favorable tax treatment, public assistance or other
40 benefits, incurred by any person as a result of participating in the program.

1 **3. Debts, contracts and obligations.** The debts, contracts and obligations of the
2 program or the board are not the debts, contracts and obligations of the State, and the faith
3 and credit or the taxing power of the State is not pledged directly or indirectly to the
4 payment of the debts, contracts and obligations of the program or the board.

5 **4. Immunity of board members.** The board and its staff are immune from suit on any
6 and all tort claims seeking recovery of damages to the same extent as governmental entities
7 under the Maine Tort Claims Act.

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

13 **§176. Confidentiality of account information**

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

22 **2. Restriction on use of personal information.** An individual or organization that has
23 access to personal information of participants solely because of its contracts or agreements
24 with the board to provide services or support to the program, including plan administration,
25 may not use that information to market its products or services not associated with the
26 program to participants unless the participant affirmatively consents to receive such
27 information.

28 **§177. Intergovernmental collaboration and cooperation**

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

40 **§178. Maine Retirement Savings Program Enterprise Fund**

41 **1. Fund established.** The Maine Retirement Savings Program Enterprise Fund is
42 established as an enterprise fund. The board shall use funds deposited in the enterprise
43 fund in accordance with this section. The enterprise fund may receive grants, gifts,
44 donations, appropriations, loans or other funds designated for administrative expenses or

1 otherwise transferred to the enterprise fund from or deposited in the enterprise fund by the
2 State or a unit of federal, state or local government or any other person, firm, partnership
3 or corporation, including appropriations to the enterprise fund by the Legislature and funds
4 from the payment of application, account, administrative or other fees and the payment of
5 other funds due the board. Interest or other investment earnings or returns that are
6 attributable to funds in the enterprise fund must be deposited into or retained in the
7 enterprise fund. The enterprise fund may not lapse but must be carried forward to carry
8 out the purposes of this chapter. The board shall amortize any amounts appropriated to the
9 enterprise fund by the Legislature to ensure that those amounts are paid back to the funding
10 sources based on an amortization schedule determined by the board, but no later than 5
11 years after the program is fully implemented.

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

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

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

36 **§179. Accounting and annual report**

37 **1. Account; audit.** The board shall cause an accurate account of all of the program's,
38 enterprise fund's and board's activities, operations, receipts and expenditures to be
39 maintained on a calendar year basis. A full audit of the books and accounts of the board
40 pertaining to those activities, operations, receipts and expenditures must be conducted by
41 a certified public accountant, including, but not limited to, direct and indirect costs
42 attributable to the use of outside consultants, independent contractors and any other persons
43 who are not state employees for the administration of the program. For the purposes of the
44 audit, the auditors must have access to the properties and records of the program and board
45 and may prescribe methods of accounting and the rendering of periodic reports in relation
46 to projects undertaken by the program.

1 **2. Submission of report.** Beginning February 1, 2023 and annually thereafter, the
2 board shall submit to the Governor, the Treasurer of State and the Legislature an audited
3 financial report, prepared in accordance with generally accepted accounting principles,
4 detailing the activities, operations, receipts and expenditures of the program and board
5 during the preceding calendar year. The report must include the number of participants, the
6 investment options and their rates of return and other information regarding the program
7 and must also include projected activities of the program for the current calendar year.

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

9 **33-G.**

| | | | |
|-----------------------------|-------------------------|--------------------------|--------------------|
| 10 <u>Retirement System</u> | <u>Maine Retirement</u> | <u>Legislative Per</u> | <u>5 MRSA §172</u> |
| 11 | <u>Savings Board</u> | <u>Diem and Expenses</u> | |

12
13 **Sec. 3. Implementation of Maine Retirement Savings Program.** Except as
14 provided in this section, the Maine Retirement Savings Board shall establish the Maine
15 Retirement Savings Program as required under this Act so that individuals may begin
16 making contributions under the program no later than July 1, 2022. The board shall phase
17 in the program with regard to covered employers and accept contributions from covered
18 employees employed by those covered employers as required under this Act and may in its
19 discretion phase in the program for individuals who are not employees, such as self-
20 employed individuals or independent contractors, expect that any implementation schedule
21 set by the board must be such that all individuals may begin making contributions under
22 the program no later than January 1, 2024. The board may not implement the program if
23 and to the extent that the board determines that the program is preempted by the federal
24 Employee Retirement Income Security Act of 1974, as amended, 29 United States Code,
25 Section 1001 et seq. If and to the extent that the board determines that a portion or aspect
26 of the program is preempted by the federal Employee Retirement Income Security Act of
27 1974, the board may not implement that portion or aspect of the program but shall proceed
28 to implement the remainder of the program to the extent practicable. If the board determines
29 that some but not all of the payroll deduction individual retirement account arrangements
30 or other arrangements under the program are or would be employee benefit plans under the
31 federal Employee Retirement Income Security Act of 1974, the board shall implement the
32 program with respect to the other arrangements under the program to the extent practicable
33 and may not implement the program with respect to plans covered by the federal Employee
34 Retirement Income Security Act of 1974 or proceed to implement the program with respect
35 to plans covered by the federal Employee Retirement Income Security Act of 1974 on a
36 basis reflecting their status or possible status as such, as long as such actions do not create
37 an undue risk of causing the federal Employee Retirement Income Security Act of 1974 to
38 preempt state law with respect to other portions of the program or causing other
39 arrangements under the program to be treated as plans covered by the federal Employee
40 Retirement Income Security Act of 1974.

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

1 for a 4-year term. The Governor shall appoint the initial members of the board no later
 2 than July 1, 2021.

3 **Sec. 5. Transfer of settlement funds; fiscal year 2020-21.** Notwithstanding
 4 any other provision of law to the contrary, no later than February 1, 2021, the State
 5 Controller shall transfer \$1,600,000 of the funds received pursuant to court order in State
 6 of Maine v. Equifax, Inc., Kennebec County Superior Court Docket No. CV-19-152 and
 7 the Wells Fargo & Company multistate settlement agreement signed December 28, 2018
 8 to the Maine Retirement Savings Program Enterprise Fund established in the Maine
 9 Revised Statutes, Title 5, section 178. Funds transferred pursuant to this section must be
 10 used solely for consumer and antitrust activities identified in the court decree and approved
 11 by the Attorney General with the consent of the President of the Senate, the Speaker of the
 12 House of Representatives, the Minority Leader of the Senate and the Minority Leader of
 13 the House of Representatives.

14 **Sec. 6. Appropriations and allocations.** The following appropriations and
 15 allocations are made.

16 **Maine Retirement Savings Board**

17 **Maine Retirement Savings Program N347**

18 Initiative: Allocates funds to the Maine Retirement Savings Program Enterprise Fund to be
 19 used in accordance with the requirements in the bill.

| | | | |
|----|---|----------------|----------------|
| 20 | MAINE RETIREMENT SAVINGS PROGRAM | 2019-20 | 2020-21 |
| 21 | ENTERPRISE FUND | | |
| 22 | All Other | \$0 | \$1,600,000 |
| 23 | | | |
| 24 | MAINE RETIREMENT SAVINGS PROGRAM | \$0 | \$1,600,000 |
| 25 | ENTERPRISE FUND TOTAL | | |

26 '
 27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 28 number to read consecutively.

29 **SUMMARY**

30 This amendment replaces the bill and is the majority report of the committee. Like the
 31 bill, the amendment establishes the Maine Retirement Savings Board except that the
 32 amendment designates the executive director of the Maine Public Employees Retirement
 33 System as chair of the board instead of the Treasurer of State and removes the program
 34 from the Office of the Treasurer of State. The amendment requires the board to develop a
 35 voluntary program to offer individual defined contribution retirement accounts for persons
 36 employed in the State who do not have access to a qualified retirement plan through their
 37 employers or who are self-employed.

38 **FISCAL NOTE REQUIRED**

39 (See attached)

40