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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

TO: Sen. Anne Carney, Senate Chair
Rep. Thomas Harnett, House Chair
Joint Standing Committee on Judiciary

FROM: Sen. Heather B. Sanborn, Senate Chair HSB
Rep. Denise A. Tepler, House Chair DAT
Joint Standing Committee on Health Coverage, Insurance and Financial Services

DATE: June 2, 2021

RE: Public Records Exception Review of LD 1622

We are writing to request review of LD 1622, An Act To Promote Individual Retirement Savings through a Public-Private Partnership, pursuant to Title 1, section 434, subsection 2. The committee held a public hearing on the bill in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The committee voted 12-1 in favor of the bill as amended; the minority report is ONTP. The provision requiring review is found in the bill on page 13; the draft committee amendment makes technical changes that do not affect the public records exception. A copy of the bill is attached.

P. 18 of packet

During the 129th Legislature, this same bill was considered as LD 594, An Act To Promote Individual Retirement Savings through a Public-Private Partnership. Although LD 594 was reported out of the HCIFS Committee, it could not be fully considered by the Legislature due to the pandemic. As part of the committee process, the Judiciary had the opportunity to review the proposed public records exception in LD 594 and recommended no changes in the language. See attached memo. When the bill was introduced in the 130th Legislature as LD 1622, it included the same proposed public records exception from LD 594.

LD 1622 establishes the Maine Retirement Savings Board and 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. The implementation of the program will be phased in over time and require certain employers to offer the program to their employees beginning April 1, 2023; employers with fewer than 5 employers are not mandated to offer the program to their employees.

There is a provision in LD 1622 that protects as confidential individual account information for accounts under the program, including, but not limited to, names, residential addresses, email addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, except to the extent necessary to administer the program, 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. See proposed 5 MRSA §176 on page 13 of the bill.

We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 1622:

A. Whether the record protected by the proposed exception needs to be collected and maintained.

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception.

A & B. Personal information and financial information for those individuals that establish retirement accounts through the Maine Retirement Savings Program will need to be collected and maintained. This information is necessary for the administration of individual retirement accounts on an individual's behalf.

C. Whether federal law requires a record covered by the proposed exception to be confidential.

C. Personal information related to individual taxpayers held by the Internal Revenue Services is confidential under federal law. In addition, the federal Gramm-Leach-Bliley Act (GLBA) has requirements for financial institutions, including securities firms and brokerages, to provide protections for personally-identifiable information. LD 1622 requires the program to enter into partnerships with private securities firms or other entities for the establishment of individual retirement accounts.

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.

D. Yes, the individual privacy interest here outweighs the public interest in disclosure of the records.

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.

E. We do not believe paragraph E is applicable.

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.

F. We do not believe paragraph F is applicable.

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.

G. We do believe public disclosure of personal and financial information may jeopardize an individual's personal safety.

H. Whether the proposed exception is as narrowly tailored as possible.

H. While the proposed statutory language protects a range of personal information, we believe it in necessary and appropriate to maintain the privacy of individual account information from public disclosure.

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

I. We do not offer any further comments.

Thank you for your consideration of our comments. Please contact us or our legislative analyst, Colleen McCarthy Reid, if you have any questions or need additional information. We look forward to discussing this with your committee.

Enclosures: LD 1622; Judiciary Memo on LD 594

cc: Members, Joint Standing Committee on Health Coverage, Insurance and Financial Services
Sen. Eloise Vitelli

SENATE

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SHENNA BELLOWS, DISTRICT 14
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STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON JUDICIARY

July 29, 2020

TO: Senator Heather B. Sanborn, Senate Chair
Representative Denise A. Tepler, House Chair
Joint Standing Committee on Health Care, Insurance and Financial Services

FROM: Senator Michael Carpenter, Senate Chair
Representative Donna Bailey, House Chair
Joint Standing Committee on Judiciary

Re: LD 594, An Act to Promote Individual Savings Accounts through a Public-Private Partnership

This memo memorializes the recommendations of the Joint Standing Committee on Judiciary pursuant to Title 1, section 434 on the proposed committee amendment to LD 594, An Act to Promote Individual Savings Accounts through a Public-Private Partnership. Please let us know if you would like a more detailed report of our evaluation and review.

The Committee reviewed the draft attached to the July 7, 2020 memo, and recommends no changes concerning freedom of access issues in the proposed language.

We would appreciate the work that went into the memo transmitting the amended bill to our committee for review and evaluation.

Thank you for your serious consideration of the Freedom of Access issues, and for your cooperation in this process.

Please contact us if you have any questions.

100 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0100 TELEPHONE 207-287-1327

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document **No. 1622**

S.P. 515 In Senate, April 28, 2021

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

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative GRAMLICH of Old Orchard Beach and
Senators: SANBORN of Cumberland, STEWART of Aroostook, Representatives: BROOKS of Lewiston, FAY of Raymond, TEPLER of Topsham.

Printed on recycled paper

Be it enacted by the People of the State of Maine as follows:

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

C. An 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 calendar year or 2 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; or

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

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 178.

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

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

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

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

9. 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.

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

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

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

13. 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 constitutes an employee benefit plan under ERISA.

14. 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.

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

§172. Maine Retirement Savings Board

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

1. Appointments. The board consists of 9 voting members as follows:

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

B. Eight members appointed by the Governor:

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

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

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

(6) A member who has expertise and experience in stakeholder outreach and engagement and marketing;

(7) A member who has expertise and experience in developing or maintaining online platforms and systems; and

(8) A member who has expertise and experience in program development and management.

2. Confirmation of members. The 8 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. 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.

4. Chair. The Treasurer of State, or the Treasurer of State'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.

6. Compensation. A member of the board, except for the Treasurer of State and any designee of the Treasurer of State, must be compensated according to the provisions of section 12004-G, subsection 33-G.

7. Staffing. Except as otherwise provided, the Office of the Treasurer of State shall provide staff support to the board. The board shall reimburse the Office of the Treasurer of State for the full cost of any staff time provided to the board.

8. Meetings. The board shall meet monthly beginning no later than May 2022 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.

§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 considers them advisable;

B. Adopt rules the board considers 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 under that Code, 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. Use private sector partnerships to contract with a program administrator to administer the program and manage the investments under the supervision and guidance of the board in accordance with this chapter;

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

E. 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 select and offer investment options available to participants 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 options under the program to a reasonable number and the extensive investment options available to participants in the event that they roll over funds in an IRA established under the program to an IRA outside the program. In accordance with paragraphs K and O, the board, in carrying out its responsibilities and exercising its powers under this chapter, shall employ or retain appropriate entities or personnel to assist or advise it and to whom to delegate the carrying out of such responsibilities and exercise of such powers;

F. Arrange for collective, common and pooled investment of assets of the program and enterprise 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;

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

(1) In accordance with best practices for retirement savings accounts;

(2) To encourage participation and saving and to make it simple, easy and convenient for participants 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;

H. 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, including through partnerships with organizations based in the State specializing in financial literacy education;

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

J. 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 considers to be necessary or advisable to verify whether an employer is a covered employer, including reference to online 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;

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

L. Discharge its duties and ensure 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

(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;

M. 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 investment returns or assets of the program or from the charging and collection of other fees, charges or funds, 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;

N. Accept any grants, gifts, legislative appropriation, loans and other funds 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 in accordance with the requirements of section 178, subsection 1;

O. Make and enter into contracts, agreements or arrangements for and collaborate and cooperate with and retain, employ and contract with or for any of the following to the extent the board considers necessary or advisable 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 advisors, investment administrators, investment management firms, other investment firms, 3rd-party administrators, other professionals and service providers, the 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 shall 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 saving 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 that would exempt them from any responsibilities under the program;

P. Ensure that all contributions to an IRA under the program are used only to pay benefits to participants under the program, pay the cost of administering the program or make investments for the benefit of the program and that no assets of the program or enterprise fund are transferred to the General Fund or to any other fund of the State or are otherwise encumbered or used for any other purpose;

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

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

S. 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;

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

U. Along with its members, the program administrator and other staff of the board, 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 the benefit of the board or any member or as an agent or partner of others; or

(3) Become an endorser, surety or obligor on investments made under the program; and

V. Carry out its powers and duties under the program pursuant to this chapter and exercise any 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 program. In accordance with the implementation dates set forth in subsection 3, the program must:

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

B. Notwithstanding any provision of state law related to payroll deduction to the contrary, require each covered employer to offer its covered employees the 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. A covered employee who is not a participant because that employee has 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 is 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 the covered employee, a covered employee must 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 the Internal Revenue Code at no additional charge. 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 an annual increase 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 must apply to participants, as determined by the board in its discretion, either by default or only if initiated by affirmative participant election and are in either case subject to the IRA contribution and income eligibility 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. Provide that employer contributions by a covered employer are not required or permitted;

H. Be professionally managed;

I. When possible and practicable, use existing employer and public infrastructure to facilitate contributions, record keeping 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 each participant frequent or continual online access to information on the status of that participant's account;

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 retirement saving 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 by individuals who are not employees, such as self-employed individuals and independent contractors, as provided in rules adopted pursuant to section 174, subsection 2;

P. Seek to keep fees, costs and expenses of the program as low as practicable, except that any administrative fee imposed on a covered employee for participating in the program may not exceed a reasonable amount relative to fees charged by similar established programs in other states. The fee may be an asset-based or investment return fee, flat fee or hybrid of the permissible fee structures identified in this paragraph;

Q. Adopt rules and establish 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 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. Adopt rules and establish 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 in the program as required or that fails to transmit a payroll deduction IRA contribution to the program as required;

T. In accordance with subsection 1, paragraph C, use 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 April 1, 2023, the board shall require a covered employer with 25 or more covered employees to offer the program to its covered employees.

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

C. Beginning April 1, 2024, the board shall require a covered employer with 5 to 14 covered employees to offer the program to its covered employees.

Notwithstanding paragraphs A to C, a covered employer may voluntarily offer the program to its covered employees on or after April 1, 2023. A covered employer with fewer than 5 employees is not required to offer the program to its covered employees but may offer the program to its employees at the option of the employer.

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

A. If a covered employer fails to enroll a covered employee without reasonable cause, the covered employer is subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the program or had not opted 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 opting out of participation in the program. The amount of any penalty imposed on a covered employer for the failure to enroll a covered employee without reasonable cause is determined as follows:

(1) Prior to April 1, 2024, the maximum penalty per covered employee is $10;

(2) From April 1, 2024 to March 31, 2025, the maximum penalty per covered employee is $20;

(3) From April 1, 2025 to September 30, 2026, the maximum penalty per covered employee is $50; and

(4) On or after October 1, 2026, the maximum penalty per covered employee is $100.

B. 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.

C. 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.

D. 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.

E. If a covered employer fails to remit 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 the covered employee's paycheck, the failure to remit the contribution on a timely basis is subject to the same penalties as apply to employer misappropriation of employee wage withholdings and to the penalties specified in paragraph A.

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

§174. Rules

1. Authority. The board may adopt rules as necessary to implement this chapter, except that the board shall adopt rules required pursuant to subsection 2. Rules adopted pursuant to this chapter 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, notwithstanding any provision of state law related to payroll deductions to the contrary, 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;

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 an employer to be determined to be exempt from the program because the employer sponsors a specified tax-favored retirement plan; and

G. Conduct outreach to individuals, employers, other stakeholders and the public regarding the program, including specifying 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 must include, but are not limited to, the following:

(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 is 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 automatic 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;

(12) That the participant is solely responsible for investment performance, including market gains and losses, and that IRAs 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

1. Employer protection from liability. A covered employer or other employer is not and may not be considered a fiduciary in relation to the program or enterprise fund or any other arrangement under the program. A covered employer or other employer is not and may not be liable for and does not and may not 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, 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.

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

A. Have 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. Have 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. Do 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. Are not and may not be 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 the faith and credit or the taxing power of the State is not pledged directly or indirectly to the payment of the debts, contracts and obligations of the program or the board.

4. Immunity of board members. The board and its staff are 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

1. Individual account information. Individual account information for accounts under the program, including, but not limited to, names, residential addresses, e-mail 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.

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

§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 to 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 agreements or 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 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 in accordance with this section. The enterprise fund may receive grants, gifts, donations, appropriations, loans or other funds designated for administrative expenses or otherwise transferred to the enterprise fund from or deposited in the enterprise fund 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 funds from the payment of application, account, administrative or other fees and the payment of other funds 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. The board shall amortize any amounts appropriated to the enterprise fund by the Legislature to ensure that those amounts are paid back to the funding sources based on an amortization schedule determined by the board, but no later than 5 years after the program is fully implemented.

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, partnership or corporation 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 start-up funds provided by the State, must be repaid only out of money on deposit in the enterprise fund. 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.

§179. Accounting and annual report

1. Account; audit. The board shall cause an accurate account of all of the program's, enterprise fund's and board's activities, operations, receipts and expenditures to be maintained on a calendar year basis. A full audit of the books and accounts of the board pertaining to those activities, operations, receipts and expenditures 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 February 1, 2024 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 must include the number of participants, the investment options and their rates of return and other information regarding the program and must 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.

Treasurer of State	Maine Retirement Savings Board	Legislative Per Diem and Expenses	5 MRSA §172

Sec. 3. Implementation of Maine Retirement Savings Program. Except as provided in this section, the Maine Retirement Savings Board shall establish the Maine Retirement Savings Program as required under this Act so that individuals may begin making contributions under the program no later than April 1, 2023. 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, except that any implementation schedule set by the board must be such that all individuals may begin making contributions under the program no later than January 1, 2025. 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 or aspect of the program is preempted by the federal Employee Retirement Income Security Act of 1974, 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 of 1974, 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 of 1974 or proceed to implement the program with respect to plans covered by the federal Employee Retirement Income Security Act of 1974 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 of 1974 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 of 1974.

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, 2 members for a 2-year term, 3 members for a 3-year term and any other member for a 4-year term. The Governor shall appoint the initial members of the board no later than April 1, 2022.

Sec. 5. Transfer of settlement funds; fiscal year 2021-22. Notwithstanding any provision of law to the contrary, no later than February 1, 2022, the State Controller shall transfer $1,600,000 of the funds received pursuant to court order in State of Maine v. Equifax, Inc., Kennebec County Superior Court Docket No. CV-19-152 and the Wells Fargo & Company multistate settlement agreement signed December 28, 2018 to the Maine Retirement Savings Program Enterprise Fund established in the Maine Revised Statutes, Title 5, section 178. Funds transferred pursuant to this section must be used solely for consumer and antitrust activities identified in the court decree and approved by the Attorney General with the consent of the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

MAINE RETIREMENT SAVINGS BOARD

Maine Retirement Savings Program N347

Initiative: Allocates funds to the Maine Retirement Savings Program Enterprise Fund to be used in accordance with the Maine Revised Statutes, Title 5, chapter 7-A.

MAINE RETIREMENT SAVINGS PROGRAM ENTERPRISE FUND	**2021-22**	**2022-23**
All Other	$1,600,000	$500
MAINE RETIREMENT SAVINGS PROGRAM ENTERPRISE FUND TOTAL	$1,600,000	$500

SUMMARY

This bill establishes the Maine Retirement Savings Board to establish and administer the Maine Retirement Savings Program. The bill designates the Treasurer of State as the chair of the board and places the program under the oversight of the Office of the Treasurer of State. The bill requires 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.

LD1622
HCIFS

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
***If the proposed exception creates broad confidentiality for an entity*: 2-A. Accountability review of agency or official.** In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		