

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 594

S.P. 181

In Senate, February 5, 2019

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

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative TEPLER of Topsham and
Senators: BREEN of Cumberland, FOLEY of York, SANBORN, H. of Cumberland,
Representatives: BRENNAN of Portland, McCREA of Fort Fairfield, STANLEY of Medway.

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

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

3 **CHAPTER 7-A**

4 **MAINE RETIREMENT SAVINGS BOARD**

5 **§171. Definitions**

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

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

10 **2. Employee.** "Employee" means an individual who is 18 years of age or older who
11 is employed by an employer and who has wages that are allocable to the State during a
12 calendar year.

13 **3. Employer.** "Employer" means a person or entity engaged in a business, industry,
14 profession, trade or other enterprise in the State, whether for profit or not for profit, that
15 has not offered to an employee a qualified retirement plan, including, but not limited to, a
16 plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b),
17 Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code in the
18 preceding 2 years.

19 **4. Internal Revenue Code.** "Internal Revenue Code" means the United States
20 Internal Revenue Code of 1986, as amended.

21 **5. Plan.** "Plan" means the defined contribution retirement plan established by the
22 board in accordance with this chapter.

23 **6. Wages.** "Wages" means any compensation within the meaning of Section
24 219(f)(1) of the Internal Revenue Code that is received by an employee from an employer
25 during a calendar year.

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

27 The Maine Retirement Savings Board is established within the Office of the
28 Treasurer of State to develop and maintain a defined contribution retirement plan for
29 persons employed for compensation in this State and to conduct a market and legal
30 analysis of the plan.

31 **1. Appointments.** The board consists of 5 voting members and 2 nonvoting
32 members as follows:

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

34 B. Four members appointed by the Governor:

- 1 (1) A member who is a representative of employers;
2 (2) A member with experience in the field of investments;
3 (3) A member who is a representative of an association representing employees;
4 and
5 (4) A public member who is retired;
6 C. One member of the Senate appointed by the President of the Senate, who serves
7 as a nonvoting member; and
8 D. One member of the House of Representatives appointed by the Speaker of the
9 House, who serves as a nonvoting member.

10 **2. Confirmation of members.** The 4 members of the board appointed by the
11 Governor are subject to approval by the joint standing committee of the Legislature
12 having jurisdiction over financial services matters and confirmation by the Senate.

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

20 **4. Chair.** The Treasurer of State, or the Treasurer of State's designee, shall serve as
21 the chair of the board.

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

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

27 **7. Staffing.** The Office of the Treasurer of State shall provide staff support to the
28 board.

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

32 **§173. Duties of board; requirements of plan**

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

34 A. Develop, establish, implement and maintain the plan;

35 B. Adopt rules for the general administration of the plan as provided in section 174;

36 C. Direct the investment of the funds contributed to accounts in the plan consistent
37 with any investment restrictions established by the board. The investment restrictions

1 must be consistent with the objectives of the plan, and the board shall exercise the
2 judgment and care that persons of prudence, discretion and intelligence, under
3 circumstances then prevailing, exercise in the management of their own affairs with
4 due regard to the probable income and level of risk from certain types of investments
5 of money, in accordance with the policies established by the board;

6 D. Collect application, account or administrative fees to defray the costs of
7 administering the plan; and

8 E. Make and enter into contracts, agreements or arrangements and retain, employ
9 and contract for any of the following considered necessary or desirable for carrying
10 out the purposes of this chapter:

11 (1) Services of private and public financial institutions, depositories, consultants,
12 investment advisers, investment administrators and 3rd-party plan administrators;

13 (2) Research, technical and other services;

14 (3) Services of other state agencies to assist the board in its duties;

15 (4) Services to evaluate the need for, and procure as needed, pooled private
16 insurance for the plan; or

17 (5) Services to develop and implement an outreach plan to gain input and
18 disseminate information regarding the plan and retirement savings in general.

19 **2. Required elements of plan.** The plan must:

20 A. Allow an eligible employee in this State to contribute to an account established
21 under the plan through payroll deductions;

22 B. Require an employer to offer its employees the opportunity to contribute to the
23 plan through payroll deductions unless the employer offers a qualified retirement
24 plan, including, but not limited to, a plan qualified under Section 401(a), Section
25 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p) or Section
26 457(b) of the Internal Revenue Code;

27 C. Provide for automatic enrollment of employees and allow employees to opt out of
28 the plan;

29 D. Have a minimum or default contribution amount;

30 E. Offer default escalation of contribution levels that can be increased or decreased
31 within the limits allowed by the Internal Revenue Code;

32 F. Provide for contributions to the plan to be deposited directly with any investment
33 administrator for the plan;

34 G. Whenever possible, use existing employer and public infrastructure to facilitate
35 contributions to the plan, record keeping and outreach;

36 H. Require the maintenance of separate records and accounting for each plan
37 account;

38 I. Provide for reports on the status of plan accounts to be provided to plan
39 participants at least annually;

- 1 J. Allow for plan account owners to maintain their accounts regardless of place of
2 employment and to roll over funds into other retirement accounts;
- 3 K. Pool accounts established under the plan for investment;
- 4 L. Be professionally managed;
- 5 M. Provide that the State and employers that participate in the plan have no
6 proprietary interest in the contributions to or earnings on amounts contributed to
7 accounts established under the plan;
- 8 N. Provide that any investment administrator for the plan is the trustee of all
9 contributions and earnings on amounts contributed to accounts established under the
10 plan;
- 11 O. Keep administration fees in the plan low;
- 12 P. Allow the use of private sector partnerships to administer and invest the
13 contributions to the plan under the supervision and guidance of the board; and
- 14 Q. Allow employers to establish an alternative retirement plan for some or all
15 employees.
- 16 **3. Prohibitions.** The plan may not:
 - 17 A. Require an employer to contribute to an employee's plan account;
 - 18 B. Impose any duties under the federal Employee Retirement Income Security Act of
19 1974, 29 United States Code, Section 1001 et seq., on employers; or
 - 20 C. Guarantee any rate of return or any interest rate on any contribution.

21 **§174. Rules**

- 22 **1. Authority.** The board shall adopt rules to implement this chapter. Rules adopted
23 pursuant to this section are routine technical rules as defined in chapter 375, subchapter
24 2-A.
- 25 **2. Required rules.** The board shall adopt rules that:
 - 26 A. Establish the process for voluntary enrollment in the plan, including procedures
27 for automatic enrollment of employees and for employees to opt out of the plan;
 - 28 B. Establish the process for plan participants to make the default contributions to
29 plan accounts and to adjust the contribution levels;
 - 30 C. Establish the process for employers to withhold employee contributions to plan
31 accounts from employees' wages and send the contributions to any investment
32 administrator for the plan;
 - 33 D. Establish the process for allowing employees to opt out of enrollment in the plan;
 - 34 E. Establish the process for plan participants to make nonpayroll contributions to
35 plan accounts;
 - 36 F. Set minimum, maximum and default contribution levels in accordance with limits
37 established by the Internal Revenue Code;

1 G. Establish the process for withdrawals from plan accounts;

2 H. Establish the process and requirements for an employer to obtain an exemption
3 from offering the plan if the employer offers a qualified retirement plan, including,
4 but not limited to, a plan qualified under Section 401(a), Section 401(k), Section
5 403(a), Section 403(b), Section 408(k), Section 408(p) or Section 457(b) of the
6 Internal Revenue Code; and

7 I. Mandate the contents and frequency of required disclosures to employees,
8 employers and other plan participants. These disclosures must include, but need not
9 be limited to:

10 (1) The benefits and risks associated with making contributions to the plan;

11 (2) Instructions for making contributions to the plan;

12 (3) How to opt out of the plan;

13 (4) How to participate in the plan with a level of contributions other than the
14 default rate;

15 (5) The process for withdrawal of retirement savings;

16 (6) How to obtain additional information about the plan;

17 (7) That employees seeking financial advice should contact financial advisers,
18 that participating employers are not in a position to provide financial advice and
19 that participating employers are not liable for decisions employees make pursuant
20 to this chapter;

21 (8) That the plan is not an employer-sponsored retirement plan; and

22 (9) That the plan accounts and rate of return are not guaranteed by the State.

23 **§175. Confidentiality of account information**

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

32 **§176. Maine Retirement Savings Plan Trust Fund**

33 **1. Trust fund.** The Maine Retirement Savings Plan Trust Fund, referred to in this
34 section as "the fund," is established as a trust outside of the State Treasury. The fund
35 must include the individual retirement accounts of enrollees, which must be accounted for
36 as individual accounts. Funds in the fund consist of funds received from enrollees and
37 participating employers pursuant to automatic payroll deductions and contributions to
38 plan accounts made under this chapter. The fund must be operated in a manner
39 determined by the Treasurer of State, as long as the fund is operated so that the plan

1 accounts of enrollees established under this chapter meet the requirements for individual
2 retirement accounts under the Internal Revenue Code.

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

8 **§177. Maine Retirement Savings Plan Enterprise Fund**

9 The Maine Retirement Savings Plan Enterprise Fund is established as an enterprise
10 fund. The Treasurer of State shall use funds deposited in the enterprise fund to pay for
11 administrative expenses incurred in the performance of the treasurer's duties under this
12 chapter. The enterprise fund may receive grants or other funds designated for
13 administrative expenses from the State or a unit of federal or local government or any
14 other person, firm, partnership or corporation. Interest earnings that are attributable to
15 funds in the enterprise fund must be deposited into the enterprise fund. The enterprise
16 fund may not lapse but must be carried forward to carry out the purposes of this chapter.

17 **§178. Duty and liability of the State**

18 **1. No liability.** The State or the board has no duty or liability to any party for the
19 payment of retirement savings benefits accrued by an employee under the plan. Financial
20 liability for the payment of retirement savings benefits in excess of funds available under
21 the plan must be borne solely by the entities with whom the board contracts to provide
22 insurance to protect the value of the plan.

23 **2. Losses or deficiencies.** The board or any officer, employee or member of the
24 Office of the Treasurer of State is not liable for any loss or deficiency resulting from
25 particular investments selected under this chapter.

26 **§179. Annual reports**

27 Beginning in January 2022 and annually thereafter, the board shall report to the
28 Governor and to the Legislature on the board's activities and the operations of the plan,
29 including, but not limited to, the number of employees in the plan, the number of
30 investment options and rates of return and other information that is relevant to make a
31 full, fair and effective disclosure of the operations of the plan.

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

33 **33-G.**

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

36 **Sec. 3. Market analysis and feasibility study.** Before establishing a plan
37 developed under this Act, the Maine Retirement Savings Board shall conduct a market
38 analysis to determine the feasibility of the plan; determine whether and to what extent

1 plans with the characteristics described in the Act currently exist in the private market;
2 obtain legal advice regarding the applicability of the federal Employee Retirement
3 Income Security Act of 1974, 29 United States Code, Section 1001 et seq., and the
4 Internal Revenue Code to the plan; investigate whether employers that are not required to
5 participate in the plan can make the plan available to their employees; investigate how to
6 allow individuals who are not automatically enrolled in the plan to opt in to the plan and
7 make contributions to an account, either through payroll contributions or another method
8 of contribution; and coordinate efforts with other states that have similar retirement
9 savings programs. The Maine Retirement Savings Board shall report to the Legislature
10 on or before December 31, 2020. The report must include the results of the market
11 analysis and feasibility study; the findings from legal advice obtained by the board; an
12 analysis of potential costs to employers, including administrative costs, associated with
13 providing automatic payroll deductions for participation in the plan and recommendations
14 on how to eliminate or reduce those costs through incentives, tax credits or other means; a
15 draft of the request for proposals to solicit bids from plan administrators; a timeline for
16 implementation of the plan; and an overview of any contracts entered into by the board in
17 the performance of its duties.

18 **Sec. 4. Effective date for contributions.** Except as provided in this section, the
19 Maine Retirement Savings Board shall establish the plan developed under this Act so that
20 individuals may begin making contributions to the plan no later than July 1, 2021. If the
21 Maine Retirement Savings Board determines that the plan developed by the board under
22 this Act would qualify as an employee benefit plan under the federal Employee
23 Retirement Income Security Act of 1974, 29 United States Code, Section 1001 et seq., the
24 board may not establish the plan.

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

30 **SUMMARY**

31 This bill establishes the Maine Retirement Savings Board and authorizes the board to
32 develop a program to offer individual defined contribution retirement accounts for
33 persons employed in the State who do not have access to a qualified retirement plan
34 through their employers or who are self-employed.