

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

---

Legislative Document

No. 1473

H.P. 1054

House of Representatives, April 30, 2013

### An Act To Create a Public Option Pension System

---

Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative RUSSELL of Portland.

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

2 **Sec. 1. 5 MRSA §12004-F, sub-§19** is enacted to read:

3 **19.**

4 <u>Maine Secure Choice</u>	<u>Expenses Only</u>	<u>26 MRSA §3303</u>
5 <u>Retirement Savings Investment</u>		
6 <u>Board</u>		

7 **Sec. 2. 26 MRSA §42, first ¶**, as amended by PL 1999, c. 649, §1, is further  
8 amended to read:

9 The bureau shall collect, assort and arrange statistical details relating to all  
10 departments of labor and industrial pursuits in the State; to trade unions and other labor  
11 organizations and their effect upon labor and capital; to the number and character of  
12 industrial accidents and their effect upon the injured, their dependent relatives and upon  
13 the general public; to other matters relating to the commercial, industrial, social,  
14 educational, moral and sanitary conditions prevailing within the State, including the  
15 names of firms, companies or corporations, where located, the kind of goods produced or  
16 manufactured, the time operated each year, the number of employees classified according  
17 to age and sex and the daily and average wages paid each employee; and the exploitation  
18 of such other subjects as will tend to promote the permanent prosperity of the industries  
19 of the State. The director is authorized and empowered, subject to the approval of the  
20 Governor, to accept from any other agency of government, individual, group or  
21 corporation such funds as may be available in carrying out this section, and meet such  
22 requirements with respect to the administration of such funds, not inconsistent with this  
23 section, as are required as conditions precedent to receiving such funds. An accounting of  
24 such funds and a report of the use to which they were put must be included in the biennial  
25 report to the Governor. Each agency of government shall cooperate fully with the  
26 bureau's efforts to compile labor and industrial statistics. The director shall cause to be  
27 enforced all laws regulating the employment of minors; all laws established for the  
28 protection of health, lives and limbs of operators in workshops and factories, on railroads  
29 and in other places; all laws regulating the payment of wages; ~~and~~ all laws enacted for the  
30 protection of the working classes; and all laws regarding employer compliance with the  
31 Maine Secure Choice Retirement Savings Trust. During an investigation to enforce those  
32 laws, the director may request records and other information relating to an employer's  
33 compliance with unemployment compensation and workers' compensation laws,  
34 including information needed to determine whether the employer has properly classified a  
35 worker as an independent contractor, and shall report suspected violations of those laws  
36 to the state or federal agency responsible for enforcing them. The director may adopt, in  
37 accordance with the Maine Administrative Procedure Act, rules regarding all such laws,  
38 except where this authority is granted to a board or commission. Rules adopted pursuant  
39 to this section are routine technical rules as defined in Title 5, chapter 375, subchapter  
40 ~~H-A~~ 2-A. The director shall, on or before the first day of July, biennially, report to the  
41 Governor, and may make such suggestions and recommendations as the director may  
42 ~~deem~~ consider necessary for the information of the Legislature. The director may from  
43 time to time cause to be printed and distributed bulletins upon any subject that is of public

1 interest and benefit to the State and may conduct a program of research, education and  
2 promotion to reduce industrial accidents. The director may review various data, such as  
3 workers' compensation records, as well as other information relating to any public or  
4 private employer's safety experience. When any individual public or private employer's  
5 safety experience causes the director to question seriously the safe working environment  
6 of that employer, the director may offer any safety education and consultation programs  
7 to that employer that may be beneficial in providing a safer work environment. If the  
8 employer refuses this assistance or is in serious noncompliance ~~which that~~ may lead to  
9 injuries, or if serious threats to worker safety continue, then the director shall  
10 communicate concerns to appropriate agencies, such as the United States Occupational  
11 Safety and Health Administration. As used in this section, the term "noncompliance"  
12 means a lack of compliance with any applicable health and safety regulations of the  
13 United States Occupational Safety and Health Administration or other federal agencies.  
14 The bureau is responsible for the enforcement of indoor air quality and ventilation  
15 standards with respect to state-owned buildings and buildings leased by the State. The  
16 bureau shall enforce air quality standards in a manner to ensure that corrections to  
17 problems found in buildings be made over a reasonable period of time, using consent  
18 agreements and other approaches as necessary and reasonable.

19 **Sec. 3. 26 MRSA c. 39** is enacted to read:

20 **CHAPTER 39**

21 **MAINE SECURE CHOICE RETIREMENT SAVINGS TRUST ACT**

22 **§3301. Definitions**

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

25 **1. Board.** "Board" means the Maine Secure Choice Retirement Savings Investment  
26 Board under section 3303.

27 **2. Eligible employee.** "Eligible employee" means a person who is employed by an  
28 eligible employer. "Eligible employee" does not include:

29 A. Any employee covered under the federal Railway Labor Act, 45 United States  
30 Code, Section 151, et seq. (Supplement V 2006), or any employee engaged in  
31 interstate commerce so as not to be subject to the legislative powers of the State,  
32 except insofar as application of this chapter is authorized under the United States  
33 Constitution or laws of the United States; and

34 B. Any employee covered by a valid collective bargaining agreement that expressly  
35 provides for a multiemployer pension plan allowed under 29 United States Code,  
36 Section 186(c)(5), commonly referred to as a "Taft-Hartley plan."

37 **3. Eligible employer.** "Eligible employer" means a person or entity engaged in a  
38 business, industry, profession, trade or other enterprise in the State, whether or not for  
39 profit, excluding the Federal Government, the State, any county, any municipal  
40 corporation or any of the State's units or instrumentalities, that has 5 or more employees

1 and that satisfies the requirements of this chapter to establish or participate in a payroll  
2 deposit retirement savings arrangement.

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

5 **5. IRA.** "IRA" means an individual retirement account or individual retirement  
6 annuity under 26 United States Code, Section 408(a) or 408(b).

7 **6. Participating employer.** "Participating employer" means an eligible employer  
8 that provides a payroll deposit retirement savings arrangement under this chapter for  
9 eligible employees.

10 **7. Payroll deposit retirement savings arrangement.** "Payroll deposit retirement  
11 savings arrangement" means an arrangement by which an employer allows employees to  
12 remit payroll deduction contributions to a retirement savings program.

13 **8. Program.** "Program" means the Maine Secure Choice Retirement Savings  
14 Program offered by the trust.

15 **9. Stated interest rate.** "Stated interest rate" means the rate of interest allocated to  
16 program accounts as determined by the board pursuant to section 3307, subsection 1.

17 **10. Trust.** "Trust" means the Maine Secure Choice Retirement Savings Trust  
18 established by section 3302.

19 **11. Vendor.** "Vendor" means an investment company or life insurance company  
20 qualified to do business in the State that provides retirement investment products.  
21 "Vendor" also includes a company that is registered to do business in the State that  
22 provides payroll services or record-keeping services and offers retirement plans or payroll  
23 deposit IRA arrangements using products of regulated investment companies and  
24 insurance companies qualified to do business in the State. "Vendor" does not include  
25 individual registered representatives, brokers, financial planners or agents.

26 **§3302. Maine Secure Choice Retirement Savings Trust**

27 The Maine Secure Choice Retirement Savings Trust is established within the  
28 Department of Labor and administered by the board for the purpose of promoting greater  
29 retirement savings for private employees in a convenient, voluntary, low-cost and  
30 portable manner.

31 **1. Program and administrative funds.** The board shall segregate money received  
32 by the trust into a program fund under subsection 2 and an administrative fund under  
33 subsection 3. The funds in the trust are nonlapsing and must be carried forward to the  
34 next fiscal year.

35 **2. Program fund.** Funds in the program fund may be invested or reinvested by the  
36 Treasurer of State or may be invested in whole or in part under contract with the Board of  
37 Trustees of the Maine Public Employees Retirement System or investment managers, or  
38 both, as determined by the board.

1           **3. Administrative fund.** All costs of administration of the trust must be paid out of  
2 the administrative fund. Transfers may be made from the program fund to the  
3 administrative fund for the purpose of paying operating costs associated with  
4 administering the trust and as required by this chapter. Expenditures from the  
5 administrative fund may not exceed 1% of the total program fund annually. Operating  
6 costs associated with administering the trust do not include the procurement of private  
7 underwriting for the retirement savings' return.

8           **4. Employee and employer contributions.** Contributions paid by an employee and  
9 an employer into the trust must be used exclusively for the purpose of paying benefits to  
10 the participants of the program, for the administration of the program and for investments  
11 made for the benefit of the program.

12           **§3303. Maine Secure Choice Retirement Savings Investment Board**

13           The trust is administered by the Maine Secure Choice Retirement Savings Investment  
14 Board, as established in Title 5, section 12004-F, subsection 19, in accordance with this  
15 chapter.

16           **1. Membership.** The board consists of 7 members as follows:

17           A. The Treasurer of State, who is the chair of the board;

18           B. The Commissioner of Administrative and Financial Services, or the  
19 commissioner's designee;

20           C. The State Controller, or the State Controller's designee;

21           D. An individual with retirement savings and investment expertise appointed by the  
22 President of the Senate;

23           E. An employee representative appointed by the Speaker of the House;

24           F. A public member appointed by the Governor; and

25           G. A small business representative appointed by the Governor.

26           **2. Terms of service.** Members of the board appointed by the Governor, the  
27 President of the Senate and the Speaker of the House serve at the pleasure of the  
28 appointing authority. All members of the board serve without compensation. Members  
29 of the board must be reimbursed for necessary travel expenses incurred in connection  
30 with their board duties.

31           **3. Board restrictions.** A board member or the program administrator or other staff  
32 of the board employed pursuant to section 3305 may not:

33           A. Directly or indirectly have an interest in the making of any investment made for  
34 the program, or in the gains or profits accruing from any investment made for the  
35 program;

36           B. Borrow any funds or deposits of the trust, or use those funds or deposits in any  
37 manner, for that board member or as an agent or partner of others; or

38           C. Become an endorser, surety or obligor on investments by the board.

1           **4. Duties.** The board members, individually and collectively as a board, and the  
2 program administrator and staff shall discharge their duties with respect to the trust solely  
3 in the interest of the program participants as follows:

4           A. For the exclusive purposes of providing benefits to program participants and  
5 defraying reasonable expenses of administering the program; and

6           B. By investing with the care, skill, prudence and diligence under the circumstances  
7 then prevailing that a prudent person acting in a like capacity and familiar with those  
8 matters would use in the conduct of an enterprise of a like character and with like  
9 aims.

10           **5. Investment policy.** The board shall annually prepare and adopt a written  
11 statement of investment policy that includes a risk management and oversight program.  
12 The board shall consider the statement of investment policy and any changes in the  
13 investment policy at a public hearing. The investment policy must adhere to the  
14 following guiding principles.

15           A. The primary objective of the investment policy is to preserve the safety of  
16 principal and provide a stable and low-risk rate of return.

17           B. The investment policy must mitigate risk by maintaining a balanced investment  
18 portfolio that provides assurance that no single investment or class of investments  
19 will have a disproportionate impact on the total portfolio.

20           **6. Investment policy restrictions.** The board may not adopt an investment policy  
21 that includes any of the following:

22           A. Borrowing for investment purposes, or for leverage;

23           B. Investing in instruments known as variable rate demand notes, floaters, inverse  
24 floaters, leveraged floaters and equity-linked securities;

25           C. Investing in any instrument that is commonly considered a derivative instrument,  
26 including, but not limited to, options, futures, swaps, caps, floors and collars; or

27           D. Contracting to sell securities not yet acquired in order to purchase other securities  
28 for purposes of speculating on developments or trends in the market.

29           **7. Available investment options.** The board may only consider the following  
30 categories of asset and investment types for the investment of funds:

31           A. Domestic equities and international equities;

32           B. Medium-term and long-term debt obligations of domestic corporations;

33           C. United States government and government-sponsored entity debt obligations;

34           D. Real estate commingled funds that invest in publicly traded real estate securities;

35           E. Money market instruments, cash and money market mutual funds that are  
36 registered in the United States and denominated in United States dollars;

37           F. Investments in mutual funds limited to existing, rated mutual funds that are  
38 registered in the United States and denominated in United States dollars;

1           G. Insurance agreements; and

2           H. Bank products insured by the Federal Deposit Insurance Corporation.

3           **8. Equity limit.** Equities may not exceed 50% of the overall asset allocation of the  
4 fund.

5           **9. Risk management and oversight program.** The board shall establish a risk  
6 management and oversight program designed to ensure that an effective risk management  
7 system is in place to monitor the risk levels of the program investment portfolio and  
8 ensure that the risks taken are prudent and properly managed. The program must be  
9 managed to provide an integrated process for overall risk management on both a  
10 consolidated and disaggregated basis and to monitor investment returns as well as risk to  
11 determine if the risks taken are adequately compensated compared to the prudent  
12 performance benchmarks and standards established by the board.

13           **§3304. Board-approved investment managers; report to the board**

14           The board shall approve and contract with one or more investment managers, the  
15 costs of which must be paid out of the program fund as described under section 3302.

16           **1. Investment and deposit report.** No later than 30 days after the close of each  
17 month, the board must place on file for public inspection during business hours a report  
18 with respect to all investments of the trust and a report of all deposits of trust funds in  
19 financial institutions.

20           **2. Content of report.** The investment manager or managers shall report the  
21 following information to the board within 20 days following the end of the each month:

22           A. The type of investment, name of the issuer, date of maturity and the par and dollar  
23 amount invested in each security investment, and the money within the program fund;

24           B. The weighted average maturity of the investments within the program fund;

25           C. The amounts in the program fund that are under the management of private  
26 money managers;

27           D. The amounts in the program fund that are under the management of the Board of  
28 Trustees of the Maine Public Employees' Retirement System;

29           E. The market value as of the date of the report and the source of this valuation for  
30 each security within the program fund; and

31           F. A description of compliance with the board's investment policy established under  
32 section 3303.

33           **§3305. Authority of the board as trustee**

34           **1. Authorizations.** The board, in its capacity as trustee, is authorized to:

35           A. Make and enter into contracts necessary for the administration of the trust;

36           B. Adopt a seal and change and amend it from time to time;

37           C. Cause money in the program fund to be held and invested and reinvested;



- 1           D. Accept grants, gifts, legislative appropriations and other money from the State,  
2           any unit of federal, state or local government or any other person, firm, partnership or  
3           corporation for deposit to the administrative fund or the program fund;
- 4           E. Appoint a program administrator, the costs of which must be paid out of funds  
5           held in the trust and may not be attributed to the administrative costs of the board in  
6           operating the trust, and determine the duties of the program administrator and other  
7           staff as necessary and set their compensation;
- 8           F. Make provisions for the payment of costs of administration and operation of the  
9           trust;
- 10          G. Employ staff;
- 11          H. Contract with the Board of Trustees of the Maine Public Employees Retirement  
12          System, private financial institutions, other financial and service providers,  
13          consultants, actuaries, counsel, auditors, 3rd-party administrators and other  
14          professionals as necessary;
- 15          I. Procure insurance against any loss in connection with the property, assets or  
16          activities of the trust, and secure private underwriting and reinsurance to manage risk  
17          and insure the retirement savings rate of return;
- 18          J. Procure insurance indemnifying each member of the board from personal loss or  
19          liability resulting from a member's action or inaction as a member of the board;
- 20          K. Set minimum and maximum investment levels in accordance with contribution  
21          limits set for IRAs by the Internal Revenue Code;
- 22          L. Collaborate and cooperate with the Board of Trustees of the Maine Public  
23          Employees Retirement System, private financial institutions, service providers and  
24          business, financial, trade, membership and other organizations to the extent necessary  
25          or desirable for the effective and efficient design, implementation and administration  
26          of the program and to maximize outreach to eligible employers and eligible  
27          employees;
- 28          M. Cause expenses incurred to initiate, implement, maintain and administer the  
29          program to be paid from contributions to, or investment returns or assets of, the  
30          program or arrangements established under the program, to the extent permitted  
31          under state and federal law;
- 32          N. Facilitate compliance by the program or arrangements established under the  
33          program with all applicable requirements for the program under the Internal Revenue  
34          Code, including, but not limited to, tax qualification requirements or any other  
35          applicable law and accounting requirements, including providing or arranging for  
36          assistance to program sponsors and individuals in complying with applicable law and  
37          tax qualification requirements in a cost-effective manner; and
- 38          O. Carry out the duties and obligations of the trust pursuant to this chapter and  
39          exercise all other powers as may be reasonably necessary for the effectuation of the  
40          purposes, objectives and provisions of this chapter pertaining to the trust.
- 41          2. Rules. The board may adopt rules it considers necessary to implement this  
42          chapter, consistent with the Internal Revenue Code and regulations issued pursuant to the

1 Internal Revenue Code to ensure that the program meets all criteria for federal tax-  
2 deferral or tax-exempt benefits, or both. Rules adopted pursuant to this subsection are  
3 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4 **3. Additional powers of the board.** In addition to the powers and authority granted  
5 to the board pursuant to subsections 1 and 2, the board shall:

6 A. In accordance with best practices for retirement savings vehicles, design, establish  
7 and operate the program or arrangements established under the program to maximize  
8 participation;

9 B. Arrange for collective, common and pooled investment of assets of the program  
10 or arrangements established under the program, including, but not limited to,  
11 investments in conjunction with other funds with which those assets are permitted to  
12 be collectively invested to effectuate costs savings through efficiencies and  
13 economies of scale;

14 C. Explore and establish investment options that offer employees returns on  
15 contributions and the conversion of individual retirement savings account balances to  
16 secure retirement income without incurring debt or liabilities to the State;

17 D. Disseminate educational information concerning saving and planning for  
18 retirement;

19 E. Disseminate information concerning the tax credits available to small business  
20 owners for establishing new retirement plans and a federal retirement savings  
21 contribution tax credit pursuant to the Internal Revenue Code available to lower-  
22 income and moderate-income households for qualified savings contributions;

23 F. Submit progress and status reports to participating employers and eligible  
24 employees;

25 G. If necessary, determine the eligibility of an employer, employee or other  
26 individual to participate in the program;

27 H. Establish and evaluate the process by which an eligible employee of an eligible  
28 employer is able to contribute a portion of the employee's salary or wages to the  
29 program and the employer, through a payroll deposit retirement savings arrangement,  
30 forwards that employee contribution and related information to the program or its  
31 agents. This process may include, but is not limited to, financial services companies  
32 and 3rd-party administrators with the capability to receive and process employee  
33 information and contributions for payroll deposit retirement savings arrangements or  
34 other arrangements authorized by this chapter;

35 I. Design and establish the process for the enrollment of program participants;

36 J. Allow a participating employer to use the program to remit employee  
37 contributions to an employee's individual retirement accounts;

38 K. Allow a participating employer to make that employer's own contributions to an  
39 employee's individual retirement accounts, as long as the contribution is permitted  
40 under the Internal Revenue Code and does not cause the program to be treated as an

1 employee benefit plan under the federal Employee Retirement Income Security Act  
2 of 1974, 29 United States Code, Section 1001, et seq. (Supplement V 2006); and

3 L. Establish and evaluate a process by which an individual or an employee of a  
4 nonparticipating employer may enroll in and make contributions to the program.

5 **§3306. Gain and loss reserve account**

6 The board may establish a segregated gain and loss reserve account within the  
7 program fund. If established, the board has sole authority over the gain and loss reserve  
8 account.

9 **1. Allocation of interest.** The gain and loss reserve account may be used to allocate  
10 interest at the stated interest rate for program years in which the board determines that the  
11 stated interest rate cannot be met from investment earnings.

12 **2. Review of reserve account.** The board shall establish a goal for the balance of  
13 the gain and loss reserve account and shall periodically review the sufficiency of the gain  
14 and loss reserve account based on the recommendations of the board's actuary.

15 **3. Allocation of earnings and gains.** The board may allocate excess earnings of the  
16 program with respect to assets attributable to the program to the gain and loss reserve  
17 account. In addition, the board may allocate any liability gains and losses to the gain and  
18 loss reserve account. Based on an actuarial valuation following each program year, the  
19 board shall determine annually the amount, if any, that is to be allocated to the gain and  
20 loss reserve account for that program year. In determining whether to allocate excess  
21 earnings to the gain and loss reserve account, the board must consider all of the  
22 following:

23 A. Whether or not the program has excess earnings;

24 B. The sufficiency of the gain and loss reserve account in light of the goal  
25 established pursuant to subsection 2;

26 C. The amount required for the program's administrative costs; and

27 D. The amount required for making allocations to individuals' accounts at the stated  
28 interest rate.

29 In determining whether to allocate liability gains and losses to the gain and loss reserve  
30 account, the board shall consider the matters described in paragraphs B, C and D.

31 **§3307. IRA arrangements**

32 The program must include, as determined by the board, one or more payroll  
33 deduction IRA arrangements.

34 **1. Program amendment.** Prior to July 1st of the initial program year, and prior to  
35 the beginning of each program year thereafter, the board shall adopt a program  
36 amendment in coordination with its investment manager with respect to the program to  
37 declare the stated rate at which interest must be allocated to program accounts for the  
38 following program year. Interest must be allocated to program accounts and must be

1 computed at the stated interest rate on the balance of an individual's account compounded  
2 daily.

3 **2. Individual retirement savings.** An individual's retirement savings benefit under  
4 the program must be an amount equal to the balance in the individual's program account  
5 on the date the retirement savings benefit becomes payable.

6 **§3308. Indemnity**

7 The board shall ensure that an insurance, annuity or other funding mechanism is in  
8 place at all times that protects the value of individuals' accounts. The costs of the funding  
9 mechanism must be paid out of the program funds held in the trust and may not be  
10 attributed to the administrative costs of the board in operating the trust. In accordance  
11 with section 3319, the State is not liable for payment of any benefit pursuant to this  
12 chapter.

13 **§3309. Employee information**

14 Prior to opening the program for enrollment, the board shall design and disseminate  
15 to employers through the bureau an employee information packet. The packet must  
16 include background information on the program and appropriate disclosures for  
17 employees.

18 **1. Disclosure form.** The packet must contain a disclosure form that:

19 **A. Includes, but is not limited to:**

20 (1) The benefits and risks associated with making contributions to the program;

21 (2) The mechanics of how to make contributions to the program;

22 (3) How to opt out of the program;

23 (4) The process for withdrawal of retirement savings; and

24 (5) How to obtain additional information on the program;

25 **B. Clearly articulates the following:**

26 (1) That employees seeking financial advice should contact financial advisors,  
27 that employers are not in a position to provide financial advice and that  
28 employers are not liable for decisions employees make pursuant to section 3318;

29 (2) That the program is not an employer-sponsored retirement plan; and

30 (3) That the program fund is privately insured and is not guaranteed by the State;  
31 and

32 **C. Includes a signature line for the employee to sign and date acknowledging that the**  
33 **employee has read all of the disclosures and understands their content.**

34 **2. Opt-out option.** The employee information packet must also include an opt-out  
35 form for an eligible employee to note the employee's decision to opt out of participation  
36 in the program. The opt-out form must be simple and concise and drafted in a manner  
37 that the board determines necessary to appropriately evidence the employee's

1 understanding that the employee is choosing not to automatically deduct earnings to save  
2 for retirement.

3 **3. Review of employee packet.** The employee information packet must be made  
4 available and reviewed by employers and employees as follows.

5 A. The packet must be made available to employers through the bureau and supplied  
6 to employees at the time of hiring. The packet must include an acknowledgment form  
7 for new employees to acknowledge having read the packet. The form must include a  
8 signature line for the employee to sign and date. All new employees must review the  
9 packet and acknowledge having read it by signing the signature line.

10 B. The employee information packet must be supplied to existing employees when  
11 the program is initially launched for that participating employer pursuant to section  
12 3317 and those employees shall review and sign the disclosure form described in  
13 subsection 1 at that time.

14 **§3310. Retirement investments clearinghouse**

15 **1. Retirement investments clearinghouse established by the board.** The board  
16 shall maintain a retirement investments clearinghouse containing the information required  
17 in section 3317 about the retirement investment products offered by each vendor and  
18 objective comparisons of vendors and types of products. The clearinghouse must include  
19 information on investment performance based upon the investment's average annual total  
20 return as measured by a nationally recognized rating service selected by the board for  
21 standard periods of time of not less than one year.

22 **2. Retirement investments clearinghouse publicly accessible website.** The  
23 board's publicly accessible website must include a table showing, for each investment  
24 option, the total fee cost in dollars incurred by a shareholder who initially invested  
25 \$5,000, earned a 5% rate of return for one-year, 5-year, 10-year, 15-year and 20-year time  
26 periods. This table must be accompanied by a disclaimer that the rate of return is for  
27 purposes of illustrating the respective impacts of different fee amounts on each  
28 investment, and is not to predict future investment returns.

29 **3. Notice of retirement investments clearinghouse.** The board shall include a  
30 notice of the existence of, and the Internet address for, the retirement investments  
31 clearinghouse in a notice disseminated to eligible employers through the bureau.

32 **§3311. Retirement investments clearinghouse vendors**

33 **1. Enrollment into the program.** Prior to opening the program for enrollment, the  
34 board shall establish:

35 A. A retirement investments clearinghouse in accordance with section 3310; and

36 B. A vendor registration process through which information about employer-  
37 sponsored retirement plans and payroll deduction IRAs offered by private sector  
38 providers is made available for consideration by eligible employers.

1           **2. Vendor registration.** In order to be registered by the board and listed on the  
2 board's publicly accessible website, vendors must provide the following information to  
3 the board:

4           A. A statement of experience in providing employer-sponsored retirement plans and  
5 payroll deduction IRAs;

6           B. A description of the types of retirement investment products offered;

7           C. A disclosure of all expenses paid directly or indirectly by retirement plan  
8 participants, including, but not limited to, penalties for early withdrawals, declining  
9 or fixed withdrawal charges, surrender or deposit charges, management fees and  
10 annual fees, supported by documentation as required for prospectus disclosure by the  
11 National Association of Securities Dealers or a successor organization and the federal  
12 Securities and Exchange Commission. Vendors must provide information regarding  
13 the impact of product fees upon a hypothetical investment, as described in section  
14 3310;

15           D. The types of products, product features, services offered to participants and  
16 information about how to obtain product prospectuses or other relevant product  
17 information;

18           E. A narrative of the ability, experience and commitment of the vendor to provide  
19 retirement counseling and education services, including, but not limited to, access to  
20 group meetings and individual counseling by various means, including telephone and  
21 telecommunications devices for the deaf, Internet and face-to-face consultations with  
22 registered representatives of the vendor;

23           F. A statement of the vendor's financial strength that identifies its ratings assigned by  
24 nationally recognized rating services that evaluate the financial strength of similar  
25 companies;

26           G. The location of offices and counselors, vendor representatives, brokers, financial  
27 planners, agents or others that would serve employers and their employees;

28           H. A description of the ability of the vendor to comply with all applicable provisions  
29 of federal and state law governing retirement plans, including minimum distribution  
30 requirements and contribution limits;

31           I. To the extent applicable, the demonstrated ability of the vendor to offer an  
32 appropriate array of accumulation funding options, including, but not limited to,  
33 investment options that offer guaranteed returns on contributions and the conversion  
34 of retirement savings account balances to secure retirement income, a diversified mix  
35 of value, growth, growth and income, hybrid and index funds or accounts across  
36 large, medium and small capitalization asset classes, both domestic and international;

37           J. A description of the range of administrative and customer services provided,  
38 including asset allocation, accounting and administration of benefits for individual  
39 participants, record keeping for individual participants, asset purchase, control and  
40 safekeeping, execution of a participant's instructions as to asset and contribution  
41 allocation, calculation of daily net asset values, direct access for participants to their  
42 account information, periodic reporting that is not less than quarterly to active  
43 participants on their account balances and transactions and compliance with the

1 standard of care required by applicable law to the provision of investment services;  
2 and

3 K. Certification by the vendor that the information provided to the board accurately  
4 reflects the provisions of the retirement investment products it registers.

5 The board shall prescribe the format for information submitted by vendors pursuant to  
6 this subsection.

7 **§3312. Vendor registration and renewal**

8 The board shall open registration to vendors under section 3311 annually and shall  
9 require renewal of registration at least once every 5 years. The board shall provide prior  
10 public notice of each annual registration and of the required registration renewal period.

11 **§3313. Removal of a vendor**

12 **1. Discretionary removal.** The board may remove a vendor registered under section  
13 3311, subsection 2 if the vendor submits materially inaccurate information to the board,  
14 does not remit assessed fees within 60 days or fails to submit notice of material changes  
15 to its registered investment products. Vendors found to have submitted materially  
16 inaccurate information to the board have 60 days to correct the information.

17 **2. Mandatory removal.** The board shall revoke a vendor's registration and remove  
18 the vendor from the publicly accessible website if investments offered by the vendor are  
19 products of a regulated investment company or insurance company that is not licensed or  
20 has had its license revoked by the Financial Industry Regulatory Authority or a successor  
21 organization or the Department of Professional and Financial Regulation, Bureau of  
22 Insurance for engaging in conduct prohibited by those entities.

23 **3. Appeals.** The board shall establish an appeals process for a vendor that is denied  
24 registration or whose registration is revoked.

25 **§3314. Fees charged by vendors**

26 A vendor may not charge a fee that is not disclosed.

27 **§3315. Funding sources; vendor fees**

28 **1. Cost of establishing the vendor registration system and the retirement**  
29 **investments clearinghouse.** The cost of establishing the vendor registration system and  
30 the retirement investments clearinghouse must be borne equally by registered vendors,  
31 based on the total number of registered vendors. Each registered vendor must pay a one-  
32 time establishment fee equal to a pro rata share of the establishment costs charged to  
33 vendors that register with the board prior to the close of the initial registration period, as  
34 determined by the board. The one-time establishment fee charged to vendors that register  
35 with the board after the completion of the initial registration period must be distributed  
36 equally among registered vendors that have paid the establishment fee and credited  
37 toward subsequent maintenance and administrative fees charged to each vendor.

1           **2. Cost of maintaining the vendor registration system and the retirement**  
2 **investments clearinghouse.** The cost of maintaining the vendor registration system and  
3 the retirement investments clearinghouse, and the costs associated with publicizing the  
4 availability of the clearinghouse to eligible employers, must be borne equally by  
5 registered vendors, based on the total number of registered vendors. Each registered  
6 vendor must pay a renewal fee equal to a pro rata share of the maintenance costs, as  
7 determined by the board.

8           **3. Administrative fee.** Each registered vendor must pay an administrative fee for  
9 each retirement investment product it offers to employers. The administrative fee must  
10 represent the actual costs associated with processing the information related to the  
11 investment option and presenting it on the retirement investments clearinghouse, as  
12 determined by the board.

13           **4. Use of trust funds.** The board may not divert trust funds to establish or maintain  
14 the vendor registration system or the retirement investments clearinghouse.

15 **§3316. Board liability**

16           The board and the program, and its officers and employees, are not responsible for,  
17 and may not be held liable for, the adequacy of the information provided by the  
18 participating vendors and contained in the clearinghouse. The clearinghouse maintained  
19 by the board serves only to provide information supplied by the participating vendors for  
20 the consideration of the selection of retirement investment products. The board and the  
21 program may not be held liable for the actions of registered vendors.

22           Vendors participating in the program may not use the program's logo or claim or infer  
23 endorsement or recommendation by the board or the program with respect to products  
24 and services identified by the vendors in the clearinghouse. At the discretion of the board,  
25 a violation of this section may lead to a vendor's registration being revoked.

26 **§3317. Schedule to allow employee participation in the program**

27           After the board opens the program for enrollment, an employer may choose to have a  
28 payroll deduction retirement savings arrangement to allow employee participation in the  
29 program.

30           **1. Three months after program is open for enrollment.** Beginning 3 months after  
31 the board opens the program for enrollment, eligible employers with more than 100  
32 eligible employees that do not offer an employer-sponsored retirement plan or automatic  
33 enrollment payroll deduction IRA shall have a payroll deduction retirement savings  
34 arrangement to allow employee participation in the program.

35           **2. Six months after program is open for enrollment.** Beginning 6 months after the  
36 board opens the program for enrollment, eligible employers with more than 50 eligible  
37 employees that do not offer an employer-sponsored retirement plan or automatic  
38 enrollment payroll deduction IRA shall have a payroll deduction retirement savings  
39 arrangement to allow employee participation in the program.



1           **3. Nine months after program is open for enrollment.** Beginning 9 months after  
2 the board opens the program for enrollment, all eligible employers that do not offer an  
3 employer-sponsored retirement plan or automatic enrollment payroll deduction IRA shall  
4 have a payroll deduction retirement savings arrangement to allow employee participation  
5 in the program.

6           **4. Employee opt-out option.** An eligible employee must be enrolled in the program  
7 unless the employee elects not to participate in the program. An eligible employee may  
8 elect to opt out of the program by submitting the opt-out form in the employee  
9 information packet distributed by employers pursuant to section 3309.

10           A. An eligible employee who elects to opt out of the program who subsequently  
11 wants to participate may enroll during the employer's designated open enrollment  
12 period under subsection 5 or if permitted by the employer at an earlier time.

13           B. An eligible employee may also terminate that employee's participation in the  
14 program at any time in a manner prescribed by the board by submitting the opt-out  
15 form.

16           **5. Open enrollment period.** Following initial implementation of the program  
17 pursuant to this section and at least once every 2 years, participating employers must  
18 designate an open enrollment period during which eligible employees that previously  
19 opted out of the program must be enrolled in the program unless the eligible employee  
20 again elects to opt out as provided in this section.

21           **6. Employer-sponsored retirement plan.** In accordance with rules adopted by the  
22 board pursuant to section 3305, subsection 2, an eligible employer may retain the option  
23 to set up any type of employer-sponsored retirement plan or offer an automatic  
24 enrollment payroll deduction IRA instead of having a payroll deduction retirement  
25 savings arrangement to allow employee participation in the program.

26           **7. Employee contribution.** Unless otherwise specified by the employee, an  
27 employee participating in the program must contribute 3% of the employee's annual  
28 salary or wages to the program. The board may, by rules adopted pursuant to section  
29 3305, subsection 2, adjust the contribution amount to no less than 2% and no more than  
30 4% of the employee's annual salary or wages and may vary that amount within that 2% to  
31 4% range for employees according to the length of time the employee has contributed to  
32 the program.

33           **8. Opt-out forms to be used by an employer; requirement.** An eligible employer  
34 must use the opt-out form in the employee information packet disseminated by the bureau  
35 pursuant to section 3309 to create an option for an eligible employee to note that  
36 employee's decision to opt out of utilizing the program.

37           **§3318. Employer liability**

38           **1. Employee's decisions.** An employer may not be held liable for an employee's  
39 decision to participate in or opt out of the program, or for the investment decisions of an  
40 employee whose assets are deposited in the program.

1           **2. Employer fiduciary liability.** An employer is not a fiduciary of the trust or the  
2 program and has no legal responsibility for and incurs no liability arising from the  
3 administration, investment or investment performance of the program, program design or  
4 benefits paid to employees participating in the program.

5 An employer's voluntary contribution under section 3305, subsection 3, paragraph J does  
6 not change the employer's relationship to the program, including as specified in this  
7 subsection, or an employer's obligations to employees.

8           **§3319. State liability**

9           The State is not liable for the payment of the retirement savings benefit earned by  
10 program participants pursuant to this subchapter. Financial liability for the payment of  
11 benefits in excess of funds available under the program are borne by the entities with  
12 whom the board contracts to provide an insurance, annuity or other funding mechanism to  
13 protect the value of individuals' accounts pursuant to section 3308. The State, and any of  
14 the funds of the State, has no obligation for payment of the benefits arising from this  
15 chapter.

16           **§3320. Audited financial report**

17           **1. Audit of the trust.** The board shall submit an annual audited financial report,  
18 prepared in accordance with generally accepted accounting principles, on the operations  
19 of the trust no later than July 1st to the Governor, the State Controller, the State Auditor  
20 and the Legislature. The annual audit must be made by an independent certified public  
21 accountant and must include, but is not limited to, direct and indirect costs attributable to  
22 the use of outside consultants, independent contractors and any other persons employed  
23 by the trust who are not state employees.

24           **2. Supplemental information.** The board must prepare the following supplemental  
25 information for the annual audit:

26           A. Any studies or evaluations prepared in the preceding year;

27           B. A summary of the benefits provided by the trust including the number of  
28 participants in the trust; and

29           C. Any other information that is relevant in order to make a full, fair and effective  
30 disclosure of the operations of the trust.

31           **§3321. Construction**

32           This chapter must be liberally construed and broadly interpreted to effectuate its  
33 purposes and intent and not as to any limitation of powers.

34           **§3322. Bureau of Labor Standards; administration and enforcement**

35           **1. Authorization.** The bureau shall enforce employer compliance with this chapter.

36           **2. Employer compliance; violation.** An eligible employer that, without good cause,  
37 fails to allow its eligible employee to participate in the program within 90 days after  
38 service of notice by the bureau of the employer's failure to comply with this chapter

1 commits a civil violation for which a fine of not less than \$250 per eligible employee may  
2 be adjudged. If the employer remains in noncompliance for 180 days or more, the court  
3 may impose an additional penalty of \$500 per eligible employee.

4 Penalties collected pursuant to this subsection must be deposited in the program fund  
5 established by the board pursuant to section 3302, subsection 2.

6 **3. Reimbursement of costs.** If the bureau participates in the implementation and  
7 administration of the program, it may charge the board a reasonable fee for costs it incurs  
8 for implementing and administering the program.

9 **§3323. Repeal**

10 This chapter is repealed December 31, 2015.

11 **Sec. 4. Market analysis.**

12 **1. Initial market analysis.** The Maine Secure Choice Retirement Savings  
13 Investment Board, referred to in this section as "the board," shall conduct an initial  
14 market analysis to determine whether the necessary conditions for implementation of the  
15 Maine Revised Statutes, Title 26, chapter 39 can be met, including, but not limited to,  
16 likely participation rates, participants' comfort with various investment vehicles and  
17 degree of risk, contribution levels and the rate of account closures and rollovers. The  
18 board shall conduct this analysis only if sufficient funds to initiate and complete the  
19 required market analysis are made available through a nonprofit or private entity, federal  
20 funding or an annual appropriation.

21 **2. Maine Secure Choice Retirement Savings Program Market Analysis Fund.**  
22 The Maine Secure Choice Retirement Savings Program Market Analysis Fund, referred  
23 to in this section as "the fund," is established. Funds available to conduct the market  
24 analysis required under subsection 1 must be deposited in the fund. The fund is  
25 administered by the board and is nonlapsing. The fund must be used to conduct the  
26 analysis required under subsection 1, with any remaining funds to be transferred to the  
27 Maine Secure Choice Retirement Savings Trust program fund established by the board  
28 pursuant to Title 26, section 3302, subsection 2 in the event of a positive determination  
29 by the board pursuant to subsection 3, or to the General Fund in the event of a negative  
30 determination by the board pursuant to subsection 4, in accordance with any restrictions  
31 placed on the funds by a funding source. The board shall submit a report on its findings  
32 to the joint standing committee of the Legislature having jurisdiction over labor matters  
33 and the joint standing committee of the Legislature having jurisdiction over retirement  
34 matters.

35 **3. Maine Secure Choice Retirement Savings Investment Board determination.**  
36 The board shall determine, based on the market analysis under this section, whether the  
37 provisions of the Maine Revised Statutes, Title 26, chapter 39 will be self-sustaining and  
38 funds are available through a nonprofit or other private entity, federal funding or an  
39 annual appropriation in amounts sufficient to allow the board to implement Title 26,  
40 chapter 39 until the trust has sufficient funds to be self-sustaining. The board, no later  
41 than January 2, 2015, shall report to the joint standing committee of the Legislature

1 having jurisdiction over retirement matters its determination and any necessary legislation  
2 based on the board's determination. The joint standing committee may report out  
3 legislation to the First Regular Session of the 127th Legislature in accordance with the  
4 report of the board.

5 **4. Implementation prohibited.** Notwithstanding any provision of law to the  
6 contrary, the board may not implement the program if the IRA arrangements offered fail  
7 to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs  
8 under the Internal Revenue Code, or if it is determined that the program is an employee  
9 benefit plan under the federal Employee Retirement Income Security Act, 29 United  
10 States Code, Section 1001 et seq.

## 11 SUMMARY

12 This bill establishes the Maine Secure Choice Retirement Savings Trust within the  
13 Department of Labor and does the following.

14 1. It requires eligible employers to offer a payroll deduction retirement savings  
15 arrangement so that eligible employees can contribute a portion of their salary or wages  
16 to a retirement savings program account in the Maine Secure Choice Retirement Savings  
17 Program, also created by the bill.

18 2. It requires an eligible employee to participate in the Maine Secure Choice  
19 Retirement Savings Program, unless the employee specifically opts out of the program.  
20 The Bureau of Labor Standards is required to provide forms to employers for employees  
21 to opt out of the program.

22 3. The bill creates the 7-member Maine Secure Choice Retirement Savings  
23 Investment Board to administer the trust.

24 4. It specifies risk management and investment policies that the board must follow in  
25 administering the program.

26 5. The bill requires a specific percentage of the annual salary or wages of an eligible  
27 employee participating in the program to be deposited in the trust, which is divided into a  
28 program fund and an administrative fund. It authorizes the board to establish a gain and  
29 loss revenue account within the program fund.

30 6. The bill, contingent upon sufficient interest and funding by vendors, requires the  
31 board to establish a retirement investment clearinghouse on the Internet and a vendor  
32 registration process through which information about employer-sponsored retirement  
33 plans and payroll deduction individual retirement accounts and annuities offered by  
34 private sector providers is available for consideration by eligible employers.

35 7. It requires the Bureau of Labor Standards to assess a penalty on an eligible  
36 employer that fails to make the program available to eligible employees.

37 8. It provides that the State has no liability for the payment of benefits under the  
38 program.

1           9. The bill directs the board to conduct a market analysis to determine whether the  
2 necessary conditions needed to implement the provisions of the trust can be achieved.  
3 The analysis may be conducted only when sufficient funding from the nonprofit or  
4 private sector or from state or federal government is available. The provisions of the bill  
5 establishing the Maine Secure Choice Retirement Savings Investment Board and the trust  
6 are repealed December 31, 2015 unless the board reports to the Legislature the board's  
7 determination, through the market analysis, that those provisions of the trust are self-  
8 sustaining and that funds exist to allow the board to implement the program until  
9 sufficient funds become available to make it self-sustaining and the Legislature takes  
10 action based on the board's determination. It requires the board to ensure that insurance,  
11 annuity or other funding mechanisms are in place to protect the value of individuals'  
12 accounts.

13           10. The bill prevents the board from implementing the trust if the IRA arrangements  
14 offered fail to qualify for favorable federal income tax treatment ordinarily accorded to  
15 IRAs under the Internal Revenue Code or if the program is determined to be an employee  
16 benefit plan under the federal Employee Retirement Income Security Act.