

MAINE STATE LEGISLATURE

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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.

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 GRAMLICH of Old Orchard Beach and
Senators: SANBORN of Cumberland, STEWART of Aroostook, Representatives: BROOKS
of Lewiston, FAY of Raymond, TEPLER of Topsham.

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 under section 172.

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

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

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

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

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

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

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

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

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

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

1 5. ERISA. "ERISA" means the federal Employee Retirement Income Security Act of
2 1974, as amended, 29 United States Code, Section 1001 et seq.

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

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

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

7 9. Payroll deduction IRA or payroll deduction IRA arrangement. "Payroll
8 deduction IRA" or "payroll deduction IRA arrangement" means an arrangement by which
9 an employer allows employees to contribute to an IRA by means of payroll deduction.

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

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

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

16 13. Specified tax-favored retirement plan. "Specified tax-favored retirement plan"
17 means a plan, program or arrangement that is tax-qualified under or described in, and
18 satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section
19 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code,
20 without regard to whether it constitutes an employee benefit plan under ERISA.

21 14. Traditional IRA. "Traditional IRA" means a traditional individual retirement
22 account or traditional individual retirement annuity described in Section 408(a) or Section
23 408(b) of the Internal Revenue Code.

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

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

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

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

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

33 B. Eight members appointed by the Governor:

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

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

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

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

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

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

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

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

14 **2. Confirmation of members.** The 8 members of the board appointed by the
15 Governor are subject to approval by the joint standing committee of the Legislature having
16 jurisdiction over financial services matters and confirmation by the Senate.

17 **3. Terms; vacancy.** The term of office of each member of the board appointed by the
18 Governor is 4 years. A member is eligible for reappointment. If there is a vacancy for any
19 cause for a member appointed by the Governor, the Governor shall make an appointment
20 to become immediately effective for the unexpired term.

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

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

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

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

31 **8. Meetings.** The board shall meet monthly beginning no later than May 2022 and
32 may also meet at other times at the call of the chair. All meetings of the board are public
33 proceedings within the meaning of Title 1, chapter 13, subchapter 1.

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

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

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

38 B. Adopt rules the board considers necessary or advisable for the implementation and
39 general administration and operation of the program as provided in section 174,
40 consistent with the Internal Revenue Code and regulations under that Code, including

1 to ensure that the program satisfies all criteria for favorable federal tax treatment and
2 complies, to the extent necessary, with any other applicable federal or state law;

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

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

7 E. Develop and implement an investment policy that defines the program's investment
8 objectives consistent with the objectives of the program and that provides for policies
9 and procedures consistent with those investment objectives. The board shall strive to
10 select and offer investment options available to participants and other program features
11 that are intended to achieve maximum possible income replacement balanced with an
12 appropriate level of risk in an IRA-based environment consistent with the investment
13 objectives under the policy. The investment options may encompass a range of risk and
14 return opportunities and allow for a rate of return commensurate with an appropriate
15 level of risk in view of the investment objectives under the policy. The menu of
16 investment options must be determined by considering the nature and objectives of the
17 program, the desirability based on behavioral research findings of limiting investment
18 options under the program to a reasonable number and the extensive investment options
19 available to participants in the event that they roll over funds in an IRA established
20 under the program to an IRA outside the program. In accordance with paragraphs K
21 and O, the board, in carrying out its responsibilities and exercising its powers under
22 this chapter, shall employ or retain appropriate entities or personnel to assist or advise
23 it and to whom to delegate the carrying out of such responsibilities and exercise of such
24 powers;

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

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

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

32 (2) To encourage participation and saving and to make it simple, easy and
33 convenient for participants to contribute and manage their savings;

34 (3) To promote sound investment practices and appropriate investment menus and
35 default investments;

36 (4) To maximize simplicity and ease of administration for covered employers;

37 (5) To minimize costs, including by collective investment and economies of scale;

38 (6) To promote portability of benefits; and

39 (7) To avoid preemption of the program by federal law;

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

1 and financial literacy, including through partnerships with organizations based in the
2 State specializing in financial literacy education;

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

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

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

31 L. Discharge its duties and ensure that the members of the board discharge their duties
32 with respect to the program solely in the interest of the participants as follows:

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

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

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

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

5 O. Make and enter into contracts, agreements or arrangements for and collaborate and
6 cooperate with and retain, employ and contract with or for any of the following to the
7 extent the board considers necessary or advisable for the effective and efficient design,
8 implementation and administration of the program consistent with the purposes set
9 forth in this chapter and to maximize outreach to covered employers and covered
10 employees:

11 (1) Services of private and public financial institutions, depositories, consultants,
12 actuaries, counsel, auditors, investment advisors, investment administrators,
13 investment management firms, other investment firms, 3rd-party administrators,
14 other professionals and service providers, the retirement system, the Office of the
15 Treasurer of State, other state treasurers and other state public retirement systems;

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

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

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

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

34 Q. Consider whether procedures should be adopted to allow employers that are not
35 covered employers because they are exempt from covered employer status to
36 voluntarily participate in the program by automatically enrolling their employees,
37 considering, among other factors, the potential legal consequences and the degree of
38 employer demand to participate or facilitate participation by employees;

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

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

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

3 U. Along with its members, the program administrator and other staff of the board,
4 comply with any applicable state ethics and gift laws, procurement codes and
5 restrictions and restrictions on honoraria and may not:

6 (1) Directly or indirectly have any interest in the making of any investment under
7 the program or in gains or profits accruing from any such investment;

8 (2) Borrow any program-related funds or deposits, or use any such funds or
9 deposits in any manner, for the benefit of the board or any member or as an agent
10 or partner of others; or

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

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

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

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

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

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

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

42 E. Provide on a uniform basis, if and when the board so determines in its discretion,
43 for an annual increase of each participant's contribution rate, by not more than 1% of

- 1 salary or wages per year up to a maximum of 8%. Any such increases must apply to
2 participants, as determined by the board in its discretion, either by default or only if
3 initiated by affirmative participant election and are in either case subject to the IRA
4 contribution and income eligibility limits applicable under the Internal Revenue Code;
- 5 F. Provide for direct deposit of contributions into investments under the program,
6 including, but not limited to, a default investment such as a series of target date funds
7 and a limited number of investment alternatives including a principal preservation
8 option determined by the board. In addition, the board may provide that each
9 participant's initial contributions, up to a specified dollar amount or for a specified
10 period of time, are required to be invested in a principal preservation investment or, in
11 the board's discretion, must be defaulted into such an investment unless the participant
12 affirmatively opts for a different investment for those contributions. The board shall
13 determine how often participants will have the opportunity to change their selections
14 of investments for future contributions or existing balances or both;
- 15 G. Provide that employer contributions by a covered employer are not required or
16 permitted;
- 17 H. Be professionally managed;
- 18 I. When possible and practicable, use existing employer and public infrastructure to
19 facilitate contributions, record keeping and outreach and use pooled or collective
20 investment arrangements for amounts contributed to the program;
- 21 J. Require the maintenance of separate records and accounting for each account under
22 the program and allow for participants to maintain their accounts regardless of place of
23 employment and to roll over funds into other IRAs or other retirement accounts;
- 24 K. Provide for reports on the status of each participant's account to be provided to each
25 participant at least annually and make best efforts to provide each participant frequent
26 or continual online access to information on the status of that participant's account;
- 27 L. Provide that each participant owns the contributions to and earnings on amounts
28 contributed to the participant's account under the program and that the State and
29 covered employers have no proprietary interest in those contributions or earnings;
- 30 M. Be designed and implemented in a manner consistent with federal law to the extent
31 that it applies and consistent with the program not being preempted by, and the payroll
32 deduction IRAs and covered employers not being subject to, ERISA;
- 33 N. Promote expanded retirement saving by encouraging employers in the State that
34 would otherwise be covered employers to instead adopt a specified tax-favored
35 retirement plan;
- 36 O. Make provision for participation in the program by individuals who are not
37 employees, such as self-employed individuals and independent contractors, as
38 provided in rules adopted pursuant to section 174, subsection 2;
- 39 P. Seek to keep fees, costs and expenses of the program as low as practicable, except
40 that any administrative fee imposed on a covered employee for participating in the
41 program may not exceed a reasonable amount relative to fees charged by similar
42 established programs in other states. The fee may be an asset-based or investment

1 return fee, flat fee or hybrid of the permissible fee structures identified in this
2 paragraph:

3 Q. Adopt rules and establish procedures governing the distribution of funds from the
4 program, including such distributions as may be permitted or required by the program
5 and any applicable provisions of tax laws, with the objectives of maximizing financial
6 security in retirement, helping to protect spousal rights and assisting participants with
7 the challenges of decumulation of savings. The board has the authority to provide for
8 one or more reasonably priced distribution options to provide a source of regular
9 retirement income, including income for life or for the participant's life expectancy or
10 for joint lives and life expectancies, as applicable;

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

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

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

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

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

26 A. Beginning April 1, 2023, the board shall require a covered employer with 25 or
27 more covered employees to offer the program to its covered employees.

28 B. Beginning October 1, 2023, the board shall require a covered employer with 15 to
29 24 covered employees to offer the program to its covered employees.

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

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

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

38 A. If a covered employer fails to enroll a covered employee without reasonable cause,
39 the covered employer is subject to a penalty for each covered employee for each
40 calendar year or portion of a calendar year during which the covered employee was not
41 enrolled in the program or had not opted out of participation in the program and, for
42 each calendar year beginning after the date on which a penalty has been assessed with
43 respect to a covered employee, is subject to a penalty for any portion of that calendar

1 year during which the covered employee continues to be unenrolled without opting out
2 of participation in the program. The amount of any penalty imposed on a covered
3 employer for the failure to enroll a covered employee without reasonable cause is
4 determined as follows:

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

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

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

10 (4) On or after October 1, 2026, the maximum penalty per covered employee is
11 \$100.

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

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

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

25 E. If a covered employer fails to remit a payroll deduction contribution to the program
26 on the earliest date the amount withheld from the covered employee's compensation
27 can reasonably be segregated from the covered employer's assets, but not later than the
28 15th day of the month following the month in which the covered employee's
29 contribution amounts are withheld from the covered employee's paycheck, the failure
30 to remit the contribution on a timely basis is subject to the same penalties as apply to
31 employer misappropriation of employee wage withholdings and to the penalties
32 specified in paragraph A.

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

35 **§174. Rules**

36 **1. Authority.** The board may adopt rules as necessary to implement this chapter,
37 except that the board shall adopt rules required pursuant to subsection 2. Rules adopted
38 pursuant to this chapter are routine technical rules as defined in chapter 375, subchapter
39 2-A.

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

41 A. Establish the processes for enrollment and contributions to an IRA under the
42 program, notwithstanding any provision of state law related to payroll deductions to

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

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

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

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

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

18 F. Establish a process for an employer to be determined to be exempt from the program
19 because the employer sponsors a specified tax-favored retirement plan; and

20 G. Conduct outreach to individuals, employers, other stakeholders and the public
21 regarding the program, including specifying the contents, frequency, timing and means
22 of required disclosures from the program to covered employees, participants, other
23 individuals eligible to participate in the program, covered employers and other
24 interested parties. These disclosures must include, but are not limited to, the following:

25 (1) The benefits and risks associated with tax-favored retirement saving under the
26 program;

27 (2) The potential advantages and disadvantages associated with contributing to a
28 Roth IRA and, if applicable, a traditional IRA under the program;

29 (3) The eligibility rules for a Roth IRA and, if applicable, a traditional IRA;

30 (4) That the individual and not the employer, the State, the board, any board
31 member or other state official or the program is solely responsible for determining
32 whether, and, if so, how much, the individual is eligible to contribute on a tax-
33 favored basis to an IRA;

34 (5) The penalty for excess contributions to an IRA and the method of correcting
35 excess contributions;

36 (6) Instructions for enrolling, opting out of participation, making contributions and
37 making withdrawals, including the possibility of contributing to an IRA, whether
38 offered under the program or not, by means other than automatic enrollment in a
39 payroll deduction IRA;

40 (7) Instructions for opting out of each of the Roth IRA, the default contribution
41 rate and the default investment if the covered employee prefers a traditional IRA,
42 including the possibility of contributing to a traditional IRA, if offered as an option

1 under the program, a higher or lower contribution rate or different investment
2 alternatives;

3 (8) The potential availability of a saver's tax credit, including the eligibility
4 conditions for the credit and instructions on how to claim it;

5 (9) That employees seeking tax, investment or other financial advice should
6 contact appropriate professional advisors and that covered employers are not in a
7 position to provide such advice and are not liable for decisions individuals make
8 in relation to the program;

9 (10) That the payroll deduction IRA is intended not to be an employer-sponsored
10 retirement plan and that the program is not an employer-sponsored retirement plan;

11 (11) The potential implications of account balances under the program for the
12 application of asset limits under certain public assistance programs;

13 (12) That the participant is solely responsible for investment performance,
14 including market gains and losses, and that IRAs and rates of return are not
15 guaranteed by any employer, the State, the board, any board member or state
16 official or the program;

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

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

21 **§175. Protection from liability**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 The board may enter into an intergovernmental agreement or memorandum of
43 understanding with the State and any agency or instrumentality of the State to receive

1 outreach, technical assistance, enforcement and compliance services, collection or
2 dissemination of information pertinent to the program, subject to such obligations of
3 confidentiality as may be agreed to or required by law, or other services or assistance. The
4 State and any agencies or instrumentalities of the State that enter into such agreements or
5 memoranda of understanding shall collaborate to provide the outreach, assistance,
6 information and compliance or other services or assistance to the board. The agreements or
7 memoranda of understanding may cover the sharing of costs incurred in gathering and
8 disseminating information and the reimbursement of costs for any enforcement activities
9 or assistance.

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

11 **1. Fund established.** The Maine Retirement Savings Program Enterprise Fund is
12 established as an enterprise fund. The board shall use funds deposited in the enterprise
13 fund in accordance with this section. The enterprise fund may receive grants, gifts,
14 donations, appropriations, loans or other funds designated for administrative expenses or
15 otherwise transferred to the enterprise fund from or deposited in the enterprise fund by the
16 State or a unit of federal, state or local government or any other person, firm, partnership
17 or corporation, including appropriations to the enterprise fund by the Legislature and funds
18 from the payment of application, account, administrative or other fees and the payment of
19 other funds due the board. Interest or other investment earnings or returns that are
20 attributable to funds in the enterprise fund must be deposited into or retained in the
21 enterprise fund. The enterprise fund may not lapse but must be carried forward to carry
22 out the purposes of this chapter. The board shall amortize any amounts appropriated to the
23 enterprise fund by the Legislature to ensure that those amounts are paid back to the funding
24 sources based on an amortization schedule determined by the board, but no later than 5
25 years after the program is fully implemented.

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

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

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

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

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

15 **2. Submission of report.** Beginning February 1, 2024 and annually thereafter, the
16 board shall submit to the Governor, the Treasurer of State and the Legislature an audited
17 financial report, prepared in accordance with generally accepted accounting principles,
18 detailing the activities, operations, receipts and expenditures of the program and board
19 during the preceding calendar year. The report must include the number of participants, the
20 investment options and their rates of return and other information regarding the program
21 and must also include projected activities of the program for the current calendar year.

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

23 **33-G.**

24 <u>Treasurer of</u>	<u>Maine Retirement Savings Board</u>	<u>Legislative Per</u>	<u>5 MRSA §172</u>
25 <u>State</u>		<u>Diem and</u>	
26		<u>Expenses</u>	

27 **Sec. 3. Implementation of Maine Retirement Savings Program.** Except as
28 provided in this section, the Maine Retirement Savings Board shall establish the Maine
29 Retirement Savings Program as required under this Act so that individuals may begin
30 making contributions under the program no later than April 1, 2023. The board shall phase
31 in the program with regard to covered employers and accept contributions from covered
32 employees employed by those covered employers as required under this Act and may in its
33 discretion phase in the program for individuals who are not employees, such as self-
34 employed individuals or independent contractors, except that any implementation schedule
35 set by the board must be such that all individuals may begin making contributions under
36 the program no later than January 1, 2025. The board may not implement the program if
37 and to the extent that the board determines that the program is preempted by the federal
38 Employee Retirement Income Security Act of 1974, as amended, 29 United States Code,
39 Section 1001 et seq. If and to the extent that the board determines that a portion or aspect
40 of the program is preempted by the federal Employee Retirement Income Security Act of
41 1974, the board may not implement that portion or aspect of the program but shall proceed
42 to implement the remainder of the program to the extent practicable. If the board determines
43 that some but not all of the payroll deduction individual retirement account arrangements
44 or other arrangements under the program are or would be employee benefit plans under the
45 federal Employee Retirement Income Security Act of 1974, the board shall implement the

1 program with respect to the other arrangements under the program to the extent practicable
 2 and may not implement the program with respect to plans covered by the federal Employee
 3 Retirement Income Security Act of 1974 or proceed to implement the program with respect
 4 to plans covered by the federal Employee Retirement Income Security Act of 1974 on a
 5 basis reflecting their status or possible status as such, as long as such actions do not create
 6 an undue risk of causing the federal Employee Retirement Income Security Act of 1974 to
 7 preempt state law with respect to other portions of the program or causing other
 8 arrangements under the program to be treated as plans covered by the federal Employee
 9 Retirement Income Security Act of 1974.

10 **Sec. 4. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 5,
 11 section 172, subsection 3, with regard to the original appointments of the members of the
 12 Maine Retirement Savings Board, the Governor shall appoint one member for a one-year
 13 term, 2 members for a 2-year term, 3 members for a 3-year term and any other member for
 14 a 4-year term. The Governor shall appoint the initial members of the board no later than
 15 April 1, 2022.

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

27 **Sec. 6. Appropriations and allocations.** The following appropriations and
 28 allocations are made.

29 **MAINE RETIREMENT SAVINGS BOARD**

30 **Maine Retirement Savings Program N347**

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

33 MAINE RETIREMENT SAVINGS PROGRAM	2021-22	2022-23
34 ENTERPRISE FUND		
35 All Other	\$1,600,000	\$500
36		
37 MAINE RETIREMENT SAVINGS PROGRAM	\$1,600,000	\$500
38 ENTERPRISE FUND TOTAL		

39 **SUMMARY**

40 This bill establishes the Maine Retirement Savings Board to establish and administer
 41 the Maine Retirement Savings Program. The bill designates the Treasurer of State as the
 42 chair of the board and places the program under the oversight of the Office of the Treasurer
 43 of State. The bill requires the board to develop a voluntary program to offer individual

1 defined contribution retirement accounts for persons employed in the State who do not have
2 access to a qualified retirement plan through their employers or who are self-employed.