



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

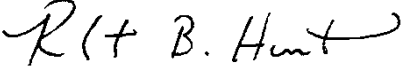
No. 768

H.P. 521

House of Representatives, March 5, 2015

An Act To Create a Public Option Pension System

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.


ROBERT B. HUNT
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 §3503</u>
5 <u>Retirement Savings Investment</u>		
6 <u>Board</u>		

7 This subsection is repealed December 31, 2017.

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

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

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

22 **Sec. 3. 26 MRSA c. 43** is enacted to read:

23 **CHAPTER 43**

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

25 **§3501. Definitions**

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

28 **1. Board.** "Board" means the Maine Secure Choice Retirement Savings Investment
29 Board under section 3503.

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

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

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

1 **3. Eligible employer.** "Eligible employer" means a person or entity engaged in a
2 business, industry, profession, trade or other enterprise in the State, whether or not for
3 profit, excluding the Federal Government, the State, any county, any municipal
4 corporation or any of the State's units or instrumentalities, that has 5 or more employees
5 and that satisfies the requirements of this chapter to establish or participate in a payroll
6 deposit retirement savings arrangement.

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

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

11 **6. Participating employer.** "Participating employer" means an eligible employer
12 that provides a payroll deposit retirement savings arrangement under this chapter for
13 eligible employees.

14 **7. Payroll deposit retirement savings arrangement.** "Payroll deposit retirement
15 savings arrangement" means an arrangement by which an employer allows employees to
16 remit payroll deduction contributions to a retirement savings program.

17 **8. Program.** "Program" means the Maine Secure Choice Retirement Savings
18 Program offered by the trust pursuant to section 3502.

19 **9. Stated interest rate.** "Stated interest rate" means the rate of interest allocated to
20 program accounts as determined by the board pursuant to section 3507, subsection 1.

21 **10. Trust.** "Trust" means the Maine Secure Choice Retirement Savings Trust
22 established by section 3502.

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

30 **§3502. Maine Secure Choice Retirement Savings Trust**

31 The Maine Secure Choice Retirement Savings Trust is established within the
32 Department of Labor and administered by the board for the purpose of offering the Maine
33 Secure Choice Retirement Savings Program to promote greater retirement savings for
34 private employees in a convenient, voluntary, low-cost and portable manner.

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

1 **2. Program fund.** Funds in the program fund may be invested or reinvested by the
2 Treasurer of State or may be invested in whole or in part under contract with the Board of
3 Trustees of the Maine Public Employees Retirement System or investment managers, or
4 both, as determined by the board. The cost of contracting with investment managers must
5 be paid out of the program fund.

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

13 **4. Employee and employer contributions.** Contributions paid by an eligible
14 employee and an eligible employer into the trust must be used exclusively for the purpose
15 of paying benefits to the participants of the program, for the administration of the
16 program and for investments made for the benefit of the program.

17 **§3503. Maine Secure Choice Retirement Savings Investment Board**

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

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

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

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

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

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

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

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

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

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

36 **3. Board restrictions.** A board member or the program administrator or other staff
37 of the board employed pursuant to section 3505 may not:

1 A. Directly or indirectly have an interest in the making of any investment made for
2 the program or in the gains or profits accruing from any investment made for the
3 program;

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

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

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

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

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

16 **5. Investment policy.** The board shall annually prepare and adopt a written
17 statement of investment policy that includes a risk management and oversight program.
18 The board shall consider the statement of investment policy and any changes in the
19 investment policy at a public hearing. The investment policy must adhere to the
20 following guiding principles.

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

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

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

28 A. Borrowing for investment purposes or for leverage;

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

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

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

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

37 A. Domestic equities and international equities;

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

- 1 C. United States government and government-sponsored entity debt obligations;
- 2 D. Real estate commingled funds that invest in publicly traded real estate securities;
- 3 E. Money market instruments, cash and money market mutual funds that are
4 registered in the United States and denominated in United States dollars;
- 5 F. Investments in mutual funds limited to existing, rated mutual funds that are
6 registered in the United States and denominated in United States dollars;
- 7 G. Insurance agreements; and
- 8 H. Bank products insured by the Federal Deposit Insurance Corporation.

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

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

19 **§3504. Board-approved investment managers; report to the board**

20 The board shall approve and contract with one or more investment managers, the
21 costs of which must be paid out of the program fund described under section 3502.

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

26 **2. Content of report.** The investment manager or managers shall report the
27 following information in reference to the program fund described in section 3502 to the
28 board within 20 days following the end of the each month:

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

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

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

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

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

1 F. A description of compliance with the board's investment policy established under
2 section 3503.

3 **§3505. Authority of the board as trustee**

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

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

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

7 C. Cause money in the program fund as described under section 3502 to be held and
8 invested and reinvested;

9 D. Accept grants, gifts, legislative appropriations and other money from the State,
10 any unit of federal, state or local government or any other person, firm, partnership or
11 corporation for deposit to the administrative fund or the program fund as described
12 under section 3502;

13 E. Appoint a program administrator, the costs of which must be paid out of funds
14 held in the trust and may not be attributed to the administrative costs of the board in
15 operating the trust, and determine the duties of the program administrator and other
16 staff as necessary and set their compensation;

17 F. Make provisions for the payment of costs of administration and operation of the
18 trust;

19 G. Employ staff;

20 H. Contract with the Board of Trustees of the Maine Public Employees Retirement
21 System, private financial institutions, other financial and service providers,
22 consultants, actuaries, counsel, auditors, 3rd-party administrators and other
23 professionals as necessary;

24 I. Procure insurance against any loss in connection with the property, assets or
25 activities of the trust and secure private underwriting and reinsurance to manage risk
26 and insure the retirement savings rate of return;

27 J. Procure insurance indemnifying each member of the board from personal loss or
28 liability resulting from a member's action or inaction as a member of the board;

29 K. Set minimum and maximum investment levels in accordance with contribution
30 limits set for IRAs by the Internal Revenue Code;

31 L. Collaborate and cooperate with the Board of Trustees of the Maine Public
32 Employees Retirement System, private financial institutions, service providers and
33 business, financial, trade, membership and other organizations to the extent necessary
34 or desirable for the effective and efficient design, implementation and administration
35 of the program and to maximize outreach to eligible employers and eligible
36 employees;

37 M. Cause expenses incurred to initiate, implement, maintain and administer the
38 program to be paid from contributions to, or investment returns or assets of, the
39 program or arrangements established under the program to the extent permitted under
40 state and federal law;

1 N. Facilitate compliance by the program or arrangements established under the
2 program with all applicable requirements for the program under the Internal Revenue
3 Code, including, but not limited to, tax qualification requirements or any other
4 applicable law and accounting requirements, including providing or arranging for
5 assistance to program sponsors and individuals in complying with applicable law and
6 tax qualification requirements in a cost-effective manner; and

7 O. Carry out the duties and obligations of the trust pursuant to this chapter and
8 exercise all other powers as may be reasonably necessary for the effectuation of the
9 purposes, objectives and provisions of this chapter pertaining to the trust.

10 **2. Rules.** The board may adopt rules it considers necessary to implement this
11 chapter, consistent with the Internal Revenue Code and regulations issued pursuant to the
12 Internal Revenue Code to ensure that the program meets all criteria for federal tax-
13 deferral or tax-exempt benefits, or both. Rules adopted pursuant to this subsection are
14 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

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

20 B. Arrange for collective, common and pooled investment of assets of the program
21 or arrangements established under the program, including, but not limited to,
22 investments in conjunction with other funds with which those assets are permitted to
23 be collectively invested to effectuate cost savings through efficiencies and economies
24 of scale;

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

28 D. Disseminate educational information concerning saving and planning for
29 retirement;

30 E. Disseminate information concerning the tax credits available to small business
31 owners for establishing new retirement plans and a federal retirement savings
32 contribution tax credit pursuant to the Internal Revenue Code available to low-
33 income and moderate-income households for qualified savings contributions;

34 F. Submit progress and status reports to participating employers and eligible
35 employees;

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

38 H. Establish and evaluate the process by which an eligible employee of an eligible
39 employer is able to contribute a portion of the employee's salary or wages to the
40 program and the employer, through a payroll deposit retirement savings arrangement,
41 forwards that employee contribution and related information to the program or its
42 agents. This process may include, but is not limited to, financial services companies

1 and 3rd-party administrators with the capability to receive and process employee
2 information and contributions for payroll deposit retirement savings arrangements or
3 other arrangements authorized by this chapter;

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

5 J. Allow a participating employer to use the program to remit eligible employee
6 contributions to an employee's IRA;

7 K. Allow a participating employer to make that employer's own contributions to an
8 eligible employee's IRA, as long as the contribution is permitted under the Internal
9 Revenue Code and does not cause the program to be treated as an employee benefit
10 plan under the federal Employee Retirement Income Security Act of 1974, 29 United
11 States Code, Section 1001, et seq. (Supplement V 2006); and

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

14 **§3506. Gain and loss reserve account**

15 The board may establish a segregated gain and loss reserve account within the
16 program fund. If established, the board has sole authority over the gain and loss reserve
17 account.

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

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

24 **3. Allocation of earnings and gains.** The board may allocate excess earnings of the
25 program with respect to assets attributable to the program to the gain and loss reserve
26 account. In addition, the board may allocate any liability gains and losses to the gain and
27 loss reserve account. Based on an actuarial valuation following each program year, the
28 board shall determine annually the amount, if any, that is to be allocated to the gain and
29 loss reserve account for that program year. In determining whether to allocate excess
30 earnings to the gain and loss reserve account, the board shall consider all of the
31 following:

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

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

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

36 D. The amount required for making allocations to eligible employees' accounts at the
37 stated interest rate.

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

1 **§3507. IRA arrangements**

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

4 **1. Program amendment.** Prior to July 1st of the initial program year, and prior to
5 the beginning of each program year thereafter, the board shall adopt a program
6 amendment in coordination with its investment manager with respect to the program to
7 declare the stated rate at which interest must be allocated to program accounts for the
8 following program year. Interest must be allocated to program accounts and must be
9 computed at the stated interest rate on the balance of an individual's account compounded
10 daily.

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

14 **§3508. Indemnity**

15 The board shall ensure that an insurance, annuity or other funding mechanism is in
16 place at all times that protects the value of individuals' accounts. The costs of the funding
17 mechanism must be paid out of the program funds held in the trust and may not be
18 attributed to the administrative costs of the board in operating the trust. In accordance
19 with section 3519, the State is not liable for payment of any benefit pursuant to this
20 chapter.

21 **§3509. Employee information**

22 Prior to opening the program for enrollment, the board shall design and disseminate
23 to eligible employers through the bureau an employee information packet. The packet
24 must include background information on the program and appropriate disclosures for
25 employees.

26 **1. Disclosure form.** The employee information packet must contain a disclosure
27 form that:

28 A. Includes, but is not limited to:

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

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

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

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

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

34 B. Clearly articulates the following:

35 (1) That employees seeking financial advice should contact financial advisors,
36 that employers are not in a position to provide financial advice and that
37 employers are not liable for decisions employees make pursuant to section 3518;

- 1 (2) That the program is not an employer-sponsored retirement plan; and
2 (3) That the program fund is privately insured and is not guaranteed by the State;
3 and

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

6 **2. Opt-out option.** The employee information packet must also include an opt-out
7 form for an eligible employee to note the employee's decision to opt out of participation
8 in the program. The opt-out form must be simple and concise and drafted in a manner
9 that the board determines necessary to appropriately evidence the employee's
10 understanding that the employee is choosing not to automatically deduct earnings to save
11 for retirement.

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

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

19 B. The packet must be supplied to existing employees when the program is initially
20 launched for that participating employer pursuant to section 3517, and those
21 employees shall review and sign the disclosure form described in subsection 1 at that
22 time.

23 **§3510. Retirement investments clearinghouse**

24 **1. Retirement investments clearinghouse established by the board.** The board
25 shall maintain a retirement investments clearinghouse containing the information required
26 in section 3517 about the retirement investment products offered by each vendor and
27 objective comparisons of vendors and types of products. The clearinghouse must include
28 information on investment performance based upon the investment's average annual total
29 return as measured by a nationally recognized rating service selected by the board for
30 standard periods of time of not less than one year.

31 **2. Retirement investments clearinghouse publicly accessible website.** The board
32 shall establish a publicly accessible website for the clearinghouse under subsection 1,
33 which must include a table showing, for each investment option, the total fee cost in
34 dollars incurred by a shareholder who initially invested \$5,000 and earned a 5% rate of
35 return for one-year, 5-year, 10-year, 15-year and 20-year time periods. This table must be
36 accompanied by a disclaimer that the rate of return is for purposes of illustrating the
37 respective impacts of different fee amounts on each investment and is not to predict
38 future investment returns.

39 **3. Notice of retirement investments clearinghouse.** The board shall include a
40 notice of the existence of, and the Internet address for, the retirement investments

1 clearinghouse's publicly accessible website under subsection 2 in a notice disseminated to
2 eligible employers through the bureau.

3 **§3511. Retirement investments clearinghouse vendors**

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

6 A. A retirement investments clearinghouse in accordance with section 3510; and

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

10 **2. Vendor registration.** In order to be registered by the board and listed on the
11 board's publicly accessible website pursuant to section 3510, vendors must provide the
12 following information to the board:

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

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

16 C. A disclosure of all expenses paid directly or indirectly by retirement plan
17 participants, including, but not limited to, penalties for early withdrawals, declining
18 or fixed withdrawal charges, surrender or deposit charges, management fees and
19 annual fees, supported by documentation as required for prospectus disclosure by a
20 national association of securities dealers and the United States Securities and
21 Exchange Commission. Vendors must provide information regarding the impact of
22 product fees upon a hypothetical investment, as described in section 3510;

23 D. The types of products, product features and services offered to participants and
24 information about how to obtain product prospectuses or other relevant product
25 information;

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

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

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

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

39 I. To the extent applicable, the demonstrated ability of the vendor to offer an
40 appropriate array of accumulation funding options, including, but not limited to,

1 investment options that offer guaranteed returns on contributions and the conversion
2 of retirement savings account balances to secure retirement income, a diversified mix
3 of value, growth, growth and income, hybrid and index funds or accounts across
4 large, medium and small capitalization asset classes, both domestic and international;

5 J. A description of the range of administrative and customer services provided,
6 including asset allocation, accounting and administration of benefits for individual
7 participants, record keeping for individual participants, asset purchase, control and
8 safekeeping, execution of a participant's instructions as to asset and contribution
9 allocation, calculation of daily net asset values, direct access for participants to their
10 account information, periodic reporting that is not less than quarterly to active
11 participants on their account balances and transactions and compliance with the
12 standard of care required by applicable law to the provision of investment services;
13 and

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

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

18 **§3512. Vendor registration and renewal**

19 The board shall open registration to vendors under section 3511 annually and shall
20 require renewal of registration at least once every 5 years. The board shall provide prior
21 public notice of each annual registration and of the required registration renewal period.

22 **§3513. Removal of a vendor**

23 **1. Discretionary removal.** The board may remove a vendor registered under section
24 3511, subsection 2 if the vendor submits materially inaccurate information to the board,
25 does not remit assessed fees within 60 days or fails to submit notice of material changes
26 to its registered investment products. Vendors found to have submitted materially
27 inaccurate information to the board have 60 days to correct the information.

28 **2. Mandatory removal.** The board shall revoke a vendor's registration and remove
29 the vendor from the publicly accessible website if investments offered by the vendor are
30 products of a regulated investment company or insurance company that is not licensed or
31 has had its license revoked by an industry regulatory authority or the Department of
32 Professional and Financial Regulation, Bureau of Insurance for engaging in conduct
33 prohibited by those entities.

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

36 **§3514. Fees charged by vendors**

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

1 **§3515. Funding sources; vendor fees**

2 **1. Cost of establishing the vendor registration system and the retirement**
3 **investments clearinghouse.** The cost of establishing the vendor registration system and
4 the retirement investments clearinghouse must be borne equally by registered vendors,
5 based on the total number of registered vendors. Each registered vendor shall pay a one-
6 time establishment fee equal to a pro rata share of the establishment costs charged to
7 vendors that register with the board prior to the close of the initial registration period, as
8 determined by the board. The one-time establishment fee charged to vendors that register
9 with the board after the completion of the initial registration period must be distributed
10 equally among registered vendors that have paid the establishment fee and credited
11 toward subsequent maintenance and administrative fees charged to each vendor.

12 **2. Cost of maintaining the vendor registration system and the retirement**
13 **investments clearinghouse.** The cost of maintaining the vendor registration system and
14 the retirement investments clearinghouse, and the costs associated with publicizing the
15 availability of the clearinghouse to eligible employers, must be borne equally by
16 registered vendors, based on the total number of registered vendors. Each registered
17 vendor shall pay a renewal fee equal to a pro rata share of the maintenance costs, as
18 determined by the board.

19 **3. Administrative fee.** Each registered vendor shall pay an administrative fee for
20 each retirement investment product it offers to employers. The administrative fee must
21 represent the actual costs associated with processing the information related to the
22 investment option and presenting it on the retirement investments clearinghouse, as
23 determined by the board.

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

26 **§3516. Board liability**

27 The board and the program, and its officers and employees, are not responsible for,
28 and may not be held liable for, the adequacy of the information provided by the
29 participating vendors and contained in the clearinghouse. The clearinghouse maintained
30 by the board serves only to provide information supplied by the participating vendors for
31 the consideration of the selection of retirement investment products. The board and the
32 program may not be held liable for the actions of registered vendors.

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

37 **§3517. Schedule to allow employee participation in the program**

38 After the board opens the program for enrollment, an eligible employer may choose
39 to have a payroll deposit retirement savings arrangement to allow eligible employee
40 participation in the program.

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

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

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

16 **4. Employee opt-out option.** An eligible employee must be enrolled in the program
17 unless the employee elects not to participate in the program. An eligible employee may
18 elect to opt out of the program by submitting the opt-out form in the employee
19 information packet distributed by employers pursuant to section 3509.

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

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

26 **5. Open enrollment period.** Following initial implementation of the program
27 pursuant to this section and at least once every 2 years, participating employers shall
28 designate an open enrollment period during which an eligible employee who previously
29 opted out of the program must be enrolled in the program unless the eligible employee
30 again elects to opt out as provided in this section.

31 **6. Employer-sponsored retirement plan.** In accordance with rules adopted by the
32 board pursuant to section 3505, subsection 2, an eligible employer may retain the option
33 to set up any type of employer-sponsored retirement plan or offer an automatic
34 enrollment payroll deduction IRA instead of having a payroll deposit retirement savings
35 arrangement to allow eligible employee participation in the program.

36 **7. Employee contribution.** Unless otherwise specified by the employee, an
37 employee participating in the program shall contribute 3% of the employee's annual
38 salary or wages to the program. The board may, by rules adopted pursuant to section
39 3505, subsection 2, adjust the contribution amount to no less than 2% and no more than
40 4% of the employee's annual salary or wages and may vary that amount within that 2% to
41 4% range for employees according to the length of time the employee has contributed to
42 the program.

1 **8. Opt-out forms to be used by an employer; requirement.** An eligible employer
2 shall use the opt-out form in the employee information packet disseminated by the bureau
3 pursuant to section 3509 as the means for providing an eligible employee an opportunity
4 to opt out of the program.

5 **§3518. Employer liability**

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

9 **2. Employer fiduciary liability.** A participating employer is not a fiduciary of the
10 trust or the program and has no legal responsibility for and incurs no liability arising from
11 the administration, investment or investment performance of the program, program
12 design or benefits paid to employees participating in the program.

13 An eligible employer's voluntary contribution under section 3505, subsection 3,
14 paragraph K does not change the employer's relationship to the program, including as
15 specified in this subsection, or an employer's obligations to employees.

16 **§3519. State liability**

17 The State is not liable for the payment of the retirement savings benefit earned by
18 program participants pursuant to this chapter. Financial liability for the payment of
19 benefits in excess of funds available under the program are borne by the entities with
20 whom the board contracts to provide an insurance, annuity or other funding mechanism to
21 protect the value of individuals' accounts pursuant to section 3508. The State, and any of
22 the funds of the State, has no obligation for payment of the benefits arising from this
23 chapter.

24 **§3520. Audited financial report**

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

32 **2. Supplemental information.** The board shall prepare the following supplemental
33 information for the annual audit:

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

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

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

1 **§3521. Construction**

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

4 **§3522. Bureau of Labor Standards; administration and enforcement**

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

6 **2. Employer compliance; violation.** An eligible employer that, without good cause,
7 fails to allow its eligible employees to participate in the program within 90 days after
8 service of notice by the bureau of the employer's failure to comply with this chapter
9 commits a civil violation for which a fine of not less than \$250 per eligible employee may
10 be adjudged. If the employer remains in noncompliance for 180 days or more, the court
11 may impose an additional penalty of \$500 per eligible employee.

12 Penalties collected pursuant to this subsection must be deposited in the program fund
13 established by the board pursuant to section 3502, subsection 2.

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

17 **§3523. Repeal**

18 This chapter is repealed December 31, 2017.

19 **Sec. 4. Market analysis**

20 **1. Initial market analysis.** The Maine Secure Choice Retirement Savings
21 Investment Board, as established in the Maine Revised Statutes, Title 5, section 12004-F,
22 subsection 19 and referred to in this section as "the board," shall conduct an initial market
23 analysis to determine whether the necessary conditions for implementation of Title 26,
24 chapter 43 can be met, including, but not limited to, likely participation rates, participants'
25 comfort with various investment vehicles and degree of risk, contribution levels and the
26 rate of account closures and rollovers. The board shall conduct this analysis only if
27 sufficient funds to initiate and complete the required market analysis are made available
28 through a nonprofit or private entity, federal funding or an annual appropriation.

29 **2. Maine Secure Choice Retirement Savings Program Market Analysis Fund.**
30 The Maine Secure Choice Retirement Savings Program Market Analysis Fund, referred
31 to in this section as "the fund," is established. Funds available to conduct the market
32 analysis required under subsection 1 must be deposited in the fund. The fund is
33 administered by the board and is nonlapsing. The fund must be used to conduct the
34 analysis required under subsection 1, with any remaining funds to be transferred to the
35 Maine Secure Choice Retirement Savings Trust program fund established by the board
36 pursuant to the Maine Revised Statutes, Title 26, section 3502, subsection 2 in the event
37 of a positive determination by the board pursuant to subsection 3 or to the General Fund
38 in the event of a determination by the board pursuant to subsection 4, in accordance with
39 any restrictions placed on the funds by a funding source. The board shall submit a report

1 on its findings to the joint standing committee of the Legislature having jurisdiction over
2 labor matters and the joint standing committee of the Legislature having jurisdiction over
3 retirement matters.

4 **3. Maine Secure Choice Retirement Savings Investment Board determination.**

5 The board shall determine, based on the market analysis under this section, whether the
6 provisions of the Maine Revised Statutes, Title 26, chapter 43 will be self-sustaining and
7 funds are available through a nonprofit or other private entity, federal funding or an
8 annual appropriation in amounts sufficient to allow the board to implement Title 26,
9 chapter 43 until the trust has sufficient funds to be self-sustaining. The board, no later
10 than January 2, 2017, shall report to the joint standing committee of the Legislature
11 having jurisdiction over retirement matters its determination and any necessary legislation
12 based on the board's determination. The joint standing committee may report out
13 legislation to the First Regular Session of the 128th Legislature in accordance with the
14 report of the board.

15 **4. Implementation prohibited.**

16 Notwithstanding any provision of law to the
17 contrary, the board may not implement the program if the board determines the individual
18 retirement account arrangements offered fail to qualify for the favorable federal income
19 tax treatment ordinarily accorded to individual retirement accounts under the Internal
20 Revenue Code, or if the board determines that the program is an employee benefit plan
21 under the federal Employee Retirement Income Security Act of 1974, 29 United States
Code, Section 1001 et seq.

22 **SUMMARY**

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

25 1. It requires eligible employers to offer a payroll deposit retirement savings
26 arrangement so that eligible employees can contribute a portion of their salary or wages
27 to a retirement savings program account in the Maine Secure Choice Retirement Savings
28 Program, also created by the bill.

29 2. It requires an eligible employee to participate in the Maine Secure Choice
30 Retirement Savings Program, unless the employee specifically opts out of the program.
31 The Bureau of Labor Standards within the department is required to provide forms to
32 employers for employees to opt out of the program.

33 3. It creates the 7-member Maine Secure Choice Retirement Savings Investment
34 Board to administer the trust.

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

37 5. It requires a specific percentage of the annual salary or wages of an eligible
38 employee participating in the program to be deposited in the trust, which is divided into a
39 program fund and an administrative fund. It authorizes the board to establish a gain and
40 loss revenue account within the program fund.

1 6. It requires the board, contingent upon sufficient interest and funding by vendors,
2 to establish a retirement investment clearinghouse on its publicly accessible website and a
3 vendor registration process through which information about employer-sponsored
4 retirement plans and payroll deposit individual retirement accounts and annuities offered
5 by private sector providers is available for consideration by eligible employers.

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

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

10 9. It directs the board to conduct a market analysis to determine whether the
11 necessary conditions needed to implement the provisions of the trust can be achieved.
12 The analysis may be conducted only when sufficient funding from the nonprofit or
13 private sector or from the State or Federal Government is available. The provisions of the
14 bill establishing the Maine Secure Choice Retirement Savings Investment Board and the
15 trust are repealed December 31, 2017 unless the board reports to the Legislature the
16 board's determination, through the market analysis, that those provisions of the trust are
17 self-sustaining and that funds exist to allow the board to implement the program until
18 sufficient funds become available to make it self-sustaining and the Legislature takes
19 action based on the board's determination. It requires the board to ensure that insurance,
20 annuity or other funding mechanisms are in place to protect the value of individuals'
21 accounts.

22 10. It prevents the board from implementing the trust if the individual retirement
23 account arrangements offered fail to qualify for favorable federal income tax treatment
24 ordinarily accorded to individual retirement accounts under the Internal Revenue Code or
25 if the program is determined to be an employee benefit plan under the federal Employee
26 Retirement Income Security Act of 1974.