

**HOUSE . . . . . No. 1138**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Meghan Kilcoyne*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to secure choice retirement savings plan.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Meghan Kilcoyne</i>	<i>12th Worcester</i>	<i>2/19/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/26/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/12/2021</i>

**HOUSE . . . . . No. 1138**

By Ms. Kilcoyne of Northborough, a petition (accompanied by bill, House, No. 1138) of Meghan Kilcoyne and others for legislation to establish secure choice retirement savings plans. Financial Services.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act relative to secure choice retirement savings plan.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 29 of the General Laws, as appearing in the 2016 Official Edition,  
2 is hereby amended by inserting after section 64E the following new sections:-

3 Section 64F. Definitions

4 For the purposes of this section, the following definitions shall apply:

5 “Board” means the Secure Choice Retirement Savings Board

6 “Eligible employee”, a person who is employed by an eligible employer and who for any  
7 calendar year has provided (or is expected to provide) 750 or more hours of service to the  
8 eligible employer, with eligibility continuing even if service in later years is less than 750 hours.

9 The term does not include: (i) any employee who is an “active participant: as described in IRC  
10 Section 219(g)(5), without regard to the exclusions for plans described in IRC Section 457(b);

11 (ii) any employee who is enrolled in a payroll deduction IRA maintained or offered by the

12 employee’s employer; (iii) Any employee who is covered by a collective bargaining agreement  
13 that does not provide for participation in the IRAP; (iv) Any employee who has not attained the  
14 age of 18 before the beginning of the calendar year.

15 “Eligible employer”, a person or entity engaged in a specific business, industry,  
16 profession, trade, or other enterprise in the Commonwealth, whether for profit or not for profit  
17 excluding the federal government, the Commonwealth, any county, any municipality, or any of  
18 the Commonwealth’s units or instrumentalities, with the exception that the Commonwealth is  
19 deemed an eligible employer with regard to Personal Care Attendants, Family Child Care  
20 Providers, and other direct or indirect employees of the Commonwealth, including a joint  
21 relationship, who are not eligible to participate in a public employee pension fund within the  
22 Commonwealth. The term does not include any employer that has not been in business at all  
23 during the preceding calendar year.

24 “Participating employer”, an eligible employer that provides a payroll deposit retirement  
25 savings arrangement provided for by this title for eligible employees.

26 “Payroll deduction IRA”, an arrangement by which an employer makes contributions on  
27 behalf of participating employees by remitting a specified portion of the employee’s pay to an  
28 IRA at the same time and manner as other payroll deductions.

29 “IRAP”, the Secure Choice Individual Retirement Account Program.

30 “MERP”, the Secure Choice Multiple-Employer Retirement Account Program.

31 “ERISA”, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.  
32 § 1001 et seq.

33 “Code” or “IRC”, the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1 et seq.

34 “PRIM Board”, the Massachusetts Pension Reserves Investment Management Board.

35 “Qualified Plan”, any plan described in IRC Sections 401(a), 403(a), 403(b), or 457(b).

36 “IRA”, any account of annuity described in IRC Section 408(a) or 408 (b).

37 Section 64G. Responsibilities of Eligible Employers and Exemptions

38 (a) Each eligible employer is required to automatically enroll its eligible employees in the  
39 IRAP.

40 (b) An eligible employer is exempted from subsection a to the extent that it offers each of  
41 its eligible employees the opportunity to participate in a qualified plan or a payroll deduction  
42 IRA.

43 Section 64H. IRAP

44 (a) The Board is responsible for developing and establishing the IRAP.

45 (b) The IRAP shall:

46 (i) Allow eligible individuals employed for compensation in this state to contribute to an  
47 individual account established under the program through payroll deductions

48 (ii) Provide for automatic enrollment of employees and allow employees to opt out of the  
49 plan.

50 (iii) Have a default contribution rate set by the Board by rule.

51 (iv) Offer default escalation and contribution levels that can be increased or decreased  
52 within the limits allowed by the IRC.

53 (v) Pool accounts established under the plan for investment purposes.

54 (vi) Be professionally managed.

55 (vii) Allow the use of private sector partnerships to administer and invest the contributions  
56 to the plan under the supervision and guidance of the Board. Monies in the IRAP may be  
57 invested or reinvested by the Treasurer or may be invested in whole or in part under contract  
58 with the PRIM Board or private money managers, or both, as determined by the Board.

59 (viii) Maintain a separate trust.

60 (ix) Provide for the program's administration in an efficient and cost-effective manner.

61 (x) Be structured so that it is not governed by ERISA.

62 (xi) Provide the Board with the authority to establish such rules and regulations as it  
63 considers appropriate for the administration of the IRAP, including with regard to the selection  
64 of investment options, the manner of safeguarding contributions and other plan assets, the  
65 payment of administrative expenses, and the purchase of insurance.

66 (xii) Provide for the manner of the payment of benefits, which may include annuities  
67 and/or lump sums.

68 Section 64I. MERP

69 (a) The Board is responsible for developing and establishing the MERP.

- 70 (b) The MERP shall:
- 71 (i) Be qualified under IRC Section 401(a).
- 72 (ii) Be a profit sharing plan as described in IRC Section 401(a)(27)(B).
- 73 (iii) Be a defined contribution plan as described in IRC Section 414(i).
- 74 (iv) Be governed by ERISA.
- 75 (v) Be a multiple employer plan permitting the voluntary participation of employers with  
76 employees working in the Commonwealth.
- 77 (vi) Permit employee contributions, as provided in IRC Section 401(k), through payroll  
78 deductions.
- 79 (vii) Allow for employer contributions as matching contributions, fixed contributions, or a  
80 combination of the two.
- 81 (viii) Have a default, automatic contribution rate for both employees and employers.
- 82 (ix) Offer default escalation of contribution levels that can be increased or decreased  
83 within the limits allowed by the IRC.
- 84 (x) Pool accounts established under the plan for investment.
- 85 (xi) Be professionally managed.
- 86 (xii) Allow the use of private sector partnerships to administer and invest the contributions  
87 to the plan under the supervision and guidance of the Board. Monies in the IRAP may be

88 invested or reinvested by the Treasurer or may be invested in whole or in part under contract  
89 with the PRIM Board of private money managers, or both, as determined by the Board.

90 (xiii) Maintain a separate trust.

91 (xiv) Provide for the Plan's administration in an efficient and cost-effective manner.

92 (xv) Designate the Board as the named fiduciary, within the meaning of ERISA Section  
93 402(a), and provide that the Board may delegate fiduciary authority as permitted under ERISA.

94 (xvi) Designate the Board as the plan sponsor and administrator, as defined under ERISA  
95 Section (3)(16).

96 (xvii) Provide the Board with the authority to establish such rules and regulations as it  
97 considers appropriate for the administration of the MERP, including with regard to the selection  
98 of investment options, the manner of safeguarding contributions and other plan assets, the  
99 payment of the administrative expenses, and the purchase of insurance.

100 (xviii) Provide for the manner of the payment of benefits, which may include annuities  
101 and/or lump sums.

#### 102 Section 64J. Composition of the Board

103 (a) There is hereby created within the government of the Commonwealth the Secure  
104 Choice Retirement Savings Board, which shall initially consist of seven members, with the  
105 Treasurer serving as chair, as follows:

106 i. The Treasurer, or his or her designee

107 ii. The Secretary of Administration and Finance, or his or her designee

108           iii.An individual with retirement savings or investment expertise appointed by the Senate  
109 President

110           iv.A small business representative appointed by the governor

111           v.Two public members appointed by the Treasurer

112           vi.An employee representative appointed by the Speaker of the House

113           (b) Within one year of the date the Board opens the IRAP and MERP for participation,  
114 the Treasurer will remain as Board member and will conduct elections to elect Representative  
115 Board members to represent the interest of participating employers and employees. The  
116 Treasurer will conduct an election among participating employees to elect four of their number  
117 to be Representative Board members from among themselves to represent the interests of  
118 participating employers solely with respect to the MERP. These additional Board members shall  
119 be designated as Representative Board Members, and must continue to participate in the Plan in  
120 order to serve on the Board. If any such Representative Board members ceases to participate in  
121 the Plan, his or her eligibility to continue as a Representative Board member shall cease as well,  
122 and the Board shall make arrangements to hold an election to elect a replacement. The terms of  
123 Representative Board members shall be for three years.

#### 124           Section 64K. Risk Management

125           The Board shall annually prepare and adopt a written statement of investment policy that  
126 includes a risk management and oversight program. The investment policy or policies shall  
127 mitigate risk by maintaining a balanced investment portfolio that provides assurance that no  
128 single investment or class of investments will have a disproportionate impact on the total



129 portfolio. The policy and policies shall also address hedging against longevity risk through the  
130 purchase of annuities or other longevity hedging products. The risk management system is in  
131 place to monitor the risk levels of the Secure Choice Retirement Savings Plan investment  
132 portfolios and ensure that the risks taken are prudent and properly managed. The Board shall be  
133 allowed to decide investment policy for each program while making different investment  
134 decisions with each program within these guidelines. The Board shall decide whether to offer a  
135 choice of investment vehicles to participants.

136 Section 64L. Benefit Amount

137 Interest, earnings, and/or losses, and administrative expenses shall be allocated to  
138 program accounts as prescribed by the Board. An individual's retirement savings benefit under  
139 the program shall be an amount equal to the balance in the individual's program account on the  
140 date the retirement savings benefit becomes payable. The Commonwealth shall have no liability  
141 for the payment of any benefit to any participant in either the IRAP or the MERP.

142 Section 64M. Board Duties

143 (a) In addition to any duties described above, the Board shall have the power and the  
144 authority to do all of the following:

145 (1) Establish one or more payroll deposit retirement savings arrangements for use by  
146 participating employers.

147 (2) Employ staff and/or appoint record keeper, investment managers, custodians, trustees,  
148 consultants, attorneys, and such other advice and assistance as may necessary or desirable to  
149 administer the Plan, and determine the duties of the Plan administrator and other staff as necessary

150 and set their compensation. The Board shall have the authority to make rules and regulations not  
151 inconsistent with this Act.

152 (3) Make provisions for the payment of costs of administration and operation of the  
153 trusts.

154 (4) Evaluate and establish the process by which an eligible employee may contribute a  
155 portion of his or her salary or wages to the Plan for automatic deposit of those contributions. This  
156 may include, but is not limited to, existing processes and arrangements used for the deposit and  
157 administration of tax required to be deducted and withheld relating to the collection of income  
158 tax at source on wages or for the deposit of tax required to be paid under the unemployment  
159 insurance system. This also may include, but is not limited to, financial services companies and  
160 their-party administrators with the capability to receive and process employee information and  
161 contributions for payroll deposit retirement savings arrangements or other arrangements  
162 authorized by this title.

163 (5) Evaluate and establish the process by which a participating employee is able to  
164 contributions for the benefit of its employees to the MERP.

165 (6) Design and establish the process for the enrollment of Plan participants.

166 (7) Procure insurance in connection with the property, assets, or activities of the trust,  
167 including private underwriting and/or reinsurance, to manage risk and insure the retirement  
168 savings rate of return.

169 (8) The Commonwealth shall procure insurance indemnifying each member of the Board  
170 from personal loss or liability resulting from a member's actions or inaction as a member of the  
171 Board, to the extent permitted by ERISA and other governing law.

172 (9) Set default, minimum and maximum contribution levels as well as auto-escalation  
173 policies whereby participating employees' contributions automatically escalate from year to year  
174 until they reach a maximum contribution rate unless the employee changes his or her contribution  
175 rate. Participants will be immediately vested in their account balances.

176 (10) Accept contributions from participating employers for the benefit of their  
177 employees. These contributions shall be in cash or cash equivalents only; securities shall not be  
178 accepted as contributions.

179 (11) Design and establish the process for the enrollment of those self-employed  
180 individuals and employers who do not qualify as eligible employers who choose to voluntarily  
181 participate in the MERP.

182 (12) Arrange for collective, common, and pooled investment of assets of the Plan,  
183 including investments in conjunction with other funds with which those assets are permitted to  
184 be collectively invested, with a view to savings costs through efficiencies and economies of  
185 scale.

186 (13) Allocate administrative fees to each participating employee's account balance on a  
187 pro rata basis, or such other basis as the Board determines to be fair and equitable. The Board  
188 shall keep annual administrative expenses low, but in no event shall they exceed one percent of  
189 the total trust balance.

190 (14) Explore and establish investment options that offer employees ways to secure  
191 retirement income without incurring debt or liabilities to the state.

192 (15) Exercise discretionary authority with regard to:

193 i. If necessary, making determinations of the eligibility of an employer, employee, or  
194 other individual to participate in the Plan;

195 ii. Making factual determinations regarding the Plan;

196 iii. Interpreting the Plan's governing documents; and

197 iv. Such other matters as are necessary for the administration of the Plan.

198 (b) The Board shall publish separate annual audited financial reports, prepared in  
199 accordance with generally accepted accounting principles, on the operations of the IRAP and the  
200 MERP. The annual audit shall be made by an independent certified public accountant and shall  
201 include, but not be limited to, direct and indirect costs attributable to the use of outside  
202 consultants, independent contractors, and any other persons who are not state employees.

203 (c) The Board shall ensure that all reports required under the Code and ERISA are  
204 properly filed for the IRAP and MERP.

205 Section 64N. Employee Information Packet

206 Prior to opening either the IRAP or the MERP for enrollment, the Board shall design and  
207 disseminate to employers an employee information packet for such program. The packet shall  
208 include background information on the programs and appropriate disclosures for employees.

209 Section 64O. Disclosure Form

210 The disclosures shall include, but not be limited to, all of the following:

211 (1) The benefits and risks associated with participating in the relevant program.

212 (2) The mechanics of how to join the respective program.

213 (3) How to opt out of the program.

214 (4) The process for applying for payment of retirement benefits.

215 (5) How to obtain additional information.

216 In addition, the disclosure form shall clearly articulate the following:

217 (1) Employers are not liable for decision employees make pursuant to this bill.

218 (2) The Plan fund is not guaranteed by the Commonwealth.

219 Section 64P. Enforcement

220 (a) The Massachusetts Attorney General shall have the power to enforce the provisions of  
221 this Act.

222 (b) The Attorney General may impose, after due process, penalties against eligible  
223 employers for failure to comply with section 64g of Section 12 of up to \$250 per eligible  
224 employee. Proceeds for such penalties, after deducting enforcing expenses, shall be deposited for  
225 the benefit of the IRAP.

226 (c) The Attorney General shall impose, after due process, penalties against employers  
227 equal to lost earnings and interest on contributions made alter than the deadlines prescribed by  
228 the Board. The Attorney General shall prescribe a methodology for calculating such lost earnings

229 and interest. Proceeds for such penalties shall be deposited for the benefit of the Trust and  
230 credited to the accounts of the affected employee(s) on a pro rata basis.

231 Section 64Q. Liability

232 (a) Employers shall not have any liability for an employee's decision to participate in, or  
233 opt out of, the Secure Choice Retirement Savings Plan.

234 (b) A participating employer shall not be a fiduciary, or considered a fiduciary, with  
235 regard to the operation of the MERP, except with respect to contribution amounts for remitted in  
236 a timely fashion. Participating employers shall not bear responsibility for the administration,  
237 investment, or investment performance of the IRAP or the MERP. Such employers shall not be  
238 liable with regard to investment returns, Plan design, and benefits paid to Plan participants.

239 Section 64R. Savings Clause

240 The provision of this Act are severable. In the event that portions of this Act are declared  
241 invalid or unenforceable, the remaining terms and provisions that are not affected thereby shall  
242 remain in force and effect.

243 Section 64S. Taxes

244 The IRAP and MERP are exempt from Massachusetts securities law and are tax exempt  
245 under the law of the Commonwealth.

246 SECTION 2. (a) The effective date of this act shall be January 1, 2020.

247 (b) Notwithstanding the forgoing, Section 64G shall be effective as follows:

248            i. For each eligible employer with 100 or more eligible employees, three months after the  
249 Board opens the Plan for enrollment.

250            ii. For each eligible employer with 50 or more but fewer than 100 eligible employees, six  
251 months after the Board opens the Plan for enrollment.

252            iii. For each eligible employer with fewer than 50 eligible employees, nine months after  
253 the Board opens the Plan for enrollment.

254            iv. The Board may delay these effective dates in its discretion for no more than 12  
255 additional months.