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Legislative Document

No. 1082

S.P. 451

In Senate, March 9, 2023

An Act to Advance the Maine Retirement Savings Program

(EMERGENCY)

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 TERRY of Gorham and
Senators: BAILEY of York, DAUGHTRY of Cumberland, STEWART of Aroostook,
Representative: CLUCHEY of Bowdoinham.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** current law requires that by April 1, 2023 a covered employer with 25 or
4 more covered employees must offer the Maine Retirement Savings Program to its covered
5 employees; and

6 **Whereas,** current law requires that by October 1, 2023 a covered employer with 15
7 to 24 covered employees must offer the Maine Retirement Savings Program to its covered
8 employees; and

9 **Whereas,** current law sets forth penalties for covered employers that fail to comply
10 with the law; and

11 **Whereas,** the Maine Retirement Savings Program will not be implemented in time
12 for employers to offer the program on April 1, 2023 or October 1, 2023; and

13 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
14 the meaning of the Constitution of Maine and require the following legislation as
15 immediately necessary for the preservation of the public peace, health and safety; now,
16 therefore,

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

18 **Sec. 1. 5 MRSA §172, first ¶,** as enacted by PL 2021, c. 356, §1, is amended to
19 read:

20 The Maine Retirement Savings Board is established as a body corporate and politic and
21 a public instrumentality of the State pursuant to section 12004-G, subsection 33-G to
22 develop and maintain the Maine Retirement Savings Program for individuals employed or
23 self-employed for wages or other compensation in this State.

24 **Sec. 2. 5 MRSA §172, sub-§8,** as enacted by PL 2021, c. 356, §1, is amended to
25 read:

26 **8. Meetings.** The board shall meet ~~monthly~~ at such times as established by policy of
27 the board, but at least quarterly, beginning no later than May 2022 and may also meet at
28 other times at the call of the chair. All meetings of the board are public proceedings within
29 the meaning of Title 1, chapter 13, subchapter 1.

30 **Sec. 3. 5 MRSA §173, sub-§1, ¶A,** as enacted by PL 2021, c. 356, §1, is amended
31 to read:

32 A. Develop, establish, implement and maintain the program and, to that end, may
33 conduct market, legal and feasibility analyses if the board considers them advisable
34 and may determine a name for the program;

35 **Sec. 4. 5 MRSA §173, sub-§1, ¶E,** as enacted by PL 2021, c. 356, §1, is amended
36 to read:

37 E. Develop and implement an investment policy that defines the program's investment
38 objectives consistent with the objectives of the program and that provides for policies
39 and procedures consistent with those investment objectives. The board shall strive to
40 select and offer investment options available to participants and other program features
41 that are intended to achieve maximum possible income replacement balanced with an

1 appropriate level of risk in an IRA-based environment consistent with the investment
2 objectives under the policy. The investment options may encompass a range of risk and
3 return opportunities and allow for a rate of return commensurate with an appropriate
4 level of risk in view of the investment objectives under the policy. The menu of
5 investment options must be determined by considering the nature and objectives of the
6 program, the desirability ~~based on behavioral research findings~~ of limiting investment
7 options under the program to a reasonable number and the extensive investment options
8 available to participants in the event that they roll over funds in an IRA established
9 under the program to an IRA outside the program. In accordance with paragraphs K
10 and O, the board, in carrying out its responsibilities and exercising its powers under
11 this chapter, shall employ or retain appropriate entities or personnel to assist or advise
12 it and to whom to delegate the carrying out of such responsibilities and exercise of such
13 powers;

14 **Sec. 5. 5 MRSA §173, sub-§2**, as enacted by PL 2021, c. 356, §1, is amended to
15 read:

16 **2. Required elements of program.** In accordance with the implementation ~~dates~~
17 schedule set 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
44 salary or wages per year up to a maximum of ~~8%~~ 10%. Any such increases must apply
45 to participants, as determined by the board in its discretion, either by default or only if

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

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

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

12 S. Establish penalties in accordance with subsection 4 for a covered employer that fails
13 without reasonable cause to enroll a covered employee in the program as required or
14 that fails to transmit a payroll deduction IRA contribution to the program as required.
15 A lack of reasonable cause is established by the failure to enroll after the program
16 communicates with the employer 3 times;

17 T. In accordance with subsection 1, paragraph C, use private sector entities 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 **Sec. 6. 5 MRSA §173, sub-§3**, as enacted by PL 2021, c. 356, §1, is repealed and
25 the following enacted in its place:

26 **3. Implementation.** The board may implement the program in stages, which may
27 include a pilot program and phasing in the program based on the size of employers, or other
28 factors. A covered employer shall offer the program to its covered employees no later than
29 December 31, 2024.

30 A covered employer with fewer than 5 employees is not required to offer the program to
31 its covered employees but may offer the program to its employees at the option of the
32 employer and in accordance with rules established by the board.

33 **Sec. 7. 5 MRSA §173, sub-§4, ¶A**, as enacted by PL 2021, c. 356, §1, is amended
34 to read:

35 A. If a covered employer fails to enroll a covered employee without reasonable cause,
36 the covered employer is subject to a penalty for each covered employee for each
37 calendar year or portion of a calendar year during which the covered employee was not
38 enrolled in the program or had not opted out of participation in the program and, for
39 each calendar year beginning after the date on which a penalty has been assessed with
40 respect to a covered employee, is subject to a penalty for any portion of that calendar
41 year during which the covered employee continues to be unenrolled without opting out
42 of participation in the program. The amount of any penalty imposed on a covered
43 employer for the failure to enroll a covered employee without reasonable cause is
44 determined as follows:

1 (1) ~~Prior to April 1, 2024~~ From July 1, 2025 to June 30, 2026, the maximum
2 penalty per covered employee is ~~\$10~~ \$20;

3 (2) ~~From April 1, 2024 to March 31, 2025~~ July 1, 2026 to June 30, 2027, the
4 maximum penalty per covered employee is ~~\$20~~ \$50; and

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

7 (4) On or after ~~October 1, 2026~~ July 1, 2027, the maximum penalty per covered
8 employee is \$100.

9 **Sec. 8. 5 MRSA §173, sub-§4, ¶C**, as enacted by PL 2021, c. 356, §1, is amended
10 to read:

11 C. A penalty may not be imposed on a covered employer for any failure to enroll a
12 covered employee if the covered employer exercised reasonable diligence to meet the
13 requirements of this chapter and the covered employer complies with those
14 requirements with respect to each covered employee by the end of the 90-day period
15 beginning on the first date the covered employer knew, or exercising reasonable
16 diligence would have known, that the failure existed. The covered employer is deemed
17 to have known that the failure existed after receiving 3 communications from the
18 program.

19 **Sec. 9. 5 MRSA §174, sub-§2, ¶C**, as enacted by PL 2021, c. 356, §1, is amended
20 to read:

21 C. Establish processes for ~~phasing in enrollment of eligible individuals, including~~
22 ~~phasing in enrollment of covered employees by size or type of covered employer~~
23 implementing the program in accordance with section 173, subsection 3;

24 **Sec. 10. 5 MRSA §177**, as enacted by PL 2021, c. 356, §1, is amended to read:

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

26 The board may enter into an intergovernmental agreement or memorandum of
27 understanding with the State and any agency or instrumentality of the State in order to
28 further the successful implementation and operation of the program through the provision,
29 receipt or other sharing of data, technical assistance, enforcement, compliance, collection
30 and other services or assistance to the program, and all such agencies and instrumentalities
31 shall cooperate with the board in achieving those ends. The board may enter into an
32 intergovernmental agreement or memorandum of understanding with the State and any
33 agency or instrumentality of the State to receive outreach, technical assistance, enforcement
34 and compliance services, collection or dissemination of information pertinent to the
35 program, subject to such obligations of confidentiality as may be agreed to or required by
36 law, or other services or assistance. The State and any agencies or instrumentalities of the
37 State that enter into such agreements or memoranda of understanding shall collaborate to
38 provide the outreach, assistance, information and compliance or other services or assistance
39 to the board. The agreements or memoranda of understanding may cover the sharing of
40 costs incurred in gathering and disseminating information and the reimbursement of costs
41 for any enforcement activities or assistance.

42 **Sec. 11. 5 MRSA §178, sub-§1**, as enacted by PL 2021, c. 356, §1, is amended to
43 read:

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

16 **Sec. 12. 5 MRSA §178, sub-§3**, as enacted by PL 2021, c. 356, §1, is amended to
17 read:

18 **3. Administrative costs.** Subject to appropriation by the Legislature, the State may
19 pay administrative costs associated with the creation, maintenance, operation and
20 management of the program and provide funding for the program until sufficient assets are
21 available in the enterprise fund for that purpose. Thereafter, all administrative costs of the
22 enterprise fund, ~~including any repayment of start-up funds provided by the State,~~ must be
23 repaid only out of money on deposit in the enterprise fund. However, private funds or
24 federal funding received in order to implement the program until the enterprise fund is self-
25 sustaining may not be repaid unless those funds were offered contingent upon the promise
26 of such repayment.

27 **Sec. 13. 5 MRSA §179, sub-§2**, as enacted by PL 2021, c. 356, §1, is amended to
28 read:

29 **2. Submission of report.** Beginning February 1, ~~2024~~ 2026 and annually thereafter,
30 the board shall submit to the Governor, the Treasurer of State and the Legislature an audited
31 financial report, prepared in accordance with generally accepted accounting principles,
32 detailing the activities, operations, receipts and expenditures of the program and board
33 during the preceding calendar year. The report must include the number of participants, the
34 investment options and their rates of return and other information regarding the program
35 and must also include projected activities of the program for the current calendar year.

36 **Sec. 14. 5 MRSA §285, sub-§1, ¶F-12** is enacted to read:

37 F-12. Any employee of the Maine Retirement Savings Board;

38 **Sec. 15. 5 MRSA §17103, sub-§12**, as amended by PL 2021, c. 548, §17, is further
39 amended to read:

40 **12. Defined contribution, deferred compensation and tax sheltered annuity plans.**
41 The board shall establish one or more defined contribution, deferred compensation or tax
42 sheltered annuity plans consistent with the applicable requirements of the Internal Revenue
43 Code and may, with employer agreement, offer participation in such plans to employees

1 eligible for membership in a retirement program of the retirement system and to employees
2 of the Maine Retirement Savings Board.

3 **Sec. 16. PL 2021, c. 356, §3, first ¶** is amended to read:

4 **Sec. 3. Implementation of Maine Retirement Savings Program.** Except as
5 provided in this section, the Maine Retirement Savings Board shall establish the Maine
6 Retirement Savings Program as required under this Act so that individuals may begin
7 making contributions under the program no later than ~~April 1, 2023~~ January 1, 2025.

8 **Sec. 17. PL 2021, c. 356, §3, sub-§1** is amended to read:

9 **1. Phase in of program; implementation.** The board shall phase in the program with
10 regard to covered employers and accept contributions from covered employees employed
11 by those covered employers as required under this Act and may in its discretion phase in
12 the program for individuals who are not employees, such as self-employed individuals or
13 independent contractors, except that any implementation schedule set by the board must be
14 such that all individuals may begin making contributions under the program no later than
15 January 1, ~~2025~~ 2026. The board may not implement the program if and to the extent that
16 the board determines that the program is preempted by the federal Employee Retirement
17 Income Security Act of 1974, as amended, 29 United States Code, Section 1001 et seq. If
18 and to the extent that the board determines that a portion or aspect of the program is
19 preempted by the federal Employee Retirement Income Security Act of 1974, the board
20 may not implement that portion or aspect of the program but shall proceed to implement
21 the remainder of the program to the extent practicable.

22 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
23 takes effect when approved.

24 SUMMARY

25 This bill makes the following changes to the Maine Retirement Savings Program.

26 1. It provides that the program may establish a name other than the Maine Retirement
27 Savings Program for the operation of the program.

28 2. It establishes that the Maine Retirement Savings Board must meet as established by
29 policy of the board, but no less than quarterly.

30 3. It increases the maximum amount that employees may contribute to the program
31 from 8% to 10% of salary or wages per year.

32 4. It amends the laws governing the program to postpone the dates by which covered
33 employers are required to participate in the program and similarly postpones the dates when
34 the board may begin assessing penalties to covered employers who fail to participate.

35 5. It identifies the board as a body corporate and politic and a public instrumentality of
36 the State.

37 6. It specifies that covered employers are deemed to have reasonable notice of the need
38 to participate in the program after the program has communicated the need to participate 3
39 times.

1 7. It authorizes the board to enter into an intergovernmental agreement or memorandum
2 of understanding with the State and any agency or instrumentality of the State in order to
3 further the successful implementation and operation of the program.

4 8. It clarifies that the funds transferred from the State in the enabling legislation are not
5 an appropriation subject to repayment.

6 9. It authorizes employees of the board to participate in the state health insurance plan.

7 10. It authorizes employees of the board to participate in the defined contribution plans
8 offered by the Maine Public Employees Retirement System without requiring participation
9 in the defined benefit plan offered by the retirement system.