

**SENATE
STATE OF MINNESOTA
THIRD SPECIAL SESSION**

S.F. No. 9

(SENATE AUTHORS: PAPPAS)

DATE
08/12/2020

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Introduction and first reading
Referred to Rules and Administration

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to retirement; establishing the Minnesota secure choice retirement program;
1.3 proposing coding for new law as Minnesota Statutes, chapter 187.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[187.01] MINNESOTA SECURE CHOICE RETIREMENT PROGRAM;**
1.6 **CITATION.**

1.7 This chapter shall be known as and may be cited as the "Minnesota Secure Choice
1.8 Retirement Program Act."

1.9 Sec. 2. **[187.02] STATEMENT OF PURPOSE.**

1.10 The state creates and establishes a public-private partnership model for privately
1.11 employed workers to save for retirement for the following reasons:

1.12 (1) for millions of Americans, including hundreds of thousands of Minnesotans, a secure
1.13 retirement is not attainable, with nearly half of working-age households having no more
1.14 than approximately \$40,000 in retirement savings;

1.15 (2) Americans who do not have access to a retirement savings plan through their
1.16 workplace are more likely to rely on Social Security as their only source of retirement
1.17 income;

1.18 (3) in Minnesota, the average monthly Social Security benefit is \$1,200, with nearly 30
1.19 percent of seniors relying on Social Security as their sole source of income;

1.20 (4) increased retirement savings can save Minnesota taxpayers an estimated \$124,500,000
1.21 over a span of ten years in Medicaid savings alone; and

2.1 (5) research has shown that offering workers a way to save through their job increases
2.2 their ability to save dramatically and promotes individual responsibility and financial
2.3 freedom.

2.4 Sec. 3. [187.03] DEFINITIONS.

2.5 Subdivision 1. **Applicability.** For purposes of this chapter, the terms defined in this
2.6 section have the meanings given them.

2.7 Subd. 2. **Board.** "Board" means the secure choice retirement program board of directors.

2.8 Subd. 3. **Eligible employee.** "Eligible employee" means a person who is employed by
2.9 an eligible employer and who, for the immediately preceding calendar year, worked 500 or
2.10 more hours of service for the eligible employer. Once a person has 500 or more hours of
2.11 service in a calendar year, the person continues to be an eligible employee for as long as
2.12 the person is employed by an eligible employer, even if the person has fewer than 500 hours
2.13 of service in a subsequent calendar year. Eligible employee does not include a person who,
2.14 on December 31 of the preceding calendar year, was less than 18 years of age.

2.15 Subd. 4. **Eligible employer.** (a) "Eligible employer" means a person or entity:

2.16 (1) engaged in a business, industry, profession, trade, or other enterprise in the state,
2.17 whether for profit or not for profit; and

2.18 (2) that does not sponsor or contribute to a retirement savings plan for its employees or,
2.19 in the case of a sole proprietorship, for the sole proprietor.

2.20 (b) Eligible employer does not include an employer that has not engaged in a business,
2.21 industry, profession, trade, or other enterprise in the state, whether for profit or not for profit,
2.22 at any time during the immediately preceding calendar year.

2.23 (c) Eligible employer does not include the state or its subdivisions.

2.24 Subd. 5. **ERISA.** "ERISA" means the Employee Retirement Income Security Act of
2.25 1974, as amended, United States Code, title 29, section 1001, et seq.

2.26 Subd. 6. **Executive director.** "Executive director" means the chief executive and
2.27 administrative head of the program.

2.28 Subd. 7. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue
2.29 Code of 1986, as amended, United States Code, title 26, section 1, et seq.

2.30 Subd. 8. **Participating employee.** "Participating employee" means an eligible employee
2.31 who is contributing to the secure choice retirement program.

3.1 Subd. 9. **Participating employer.** "Participating employer" means an eligible employer
3.2 that participates in a payroll deposit retirement savings arrangement for eligible employees
3.3 as provided for in this chapter.

3.4 Subd. 10. **Payroll deposit retirement savings arrangement.** "Payroll deposit retirement
3.5 savings arrangement" means an arrangement by which an employer makes contributions
3.6 on behalf of participating employees by deducting a specified portion of the employee's pay
3.7 and transmitting the deducted amount to the secure choice retirement program at the same
3.8 time and manner as payroll deductions for federal and state tax withholding.

3.9 Subd. 11. **Program.** "Program" means the secure choice retirement program, which
3.10 consists of the secure choice individual retirement account plan (IRAP) and the secure
3.11 choice multiple employer retirement plan (MERP).

3.12 Subd. 12. **Retirement savings plan.** "Retirement savings plan" means a plan or program
3.13 that permits contributions to be set aside for retirement; provides for the deferral of income
3.14 tax on the contributions, unless the employee elects to contribute after-tax amounts; and
3.15 permits all employees to participate except those employees who have not satisfied
3.16 participation eligibility requirements that are no more restrictive than the eligibility
3.17 requirements permitted under section 410(b) of the Internal Revenue Code. Retirement
3.18 savings plan includes but is not limited to any plan that satisfies the applicable requirements
3.19 of section 401(a) of the Internal Revenue Code, a plan listed in section 219(g)(5) of the
3.20 Internal Revenue Code, a plan within the meaning of section 457(b) of the Internal Revenue
3.21 Code, a simplified employee pension (SEP) plan, a savings incentive match plan for
3.22 employees (SIMPLE) plan, an automatic enrollment payroll deduction individual retirement
3.23 account, and a multiemployer pension plan described in section 414(f) of the Internal
3.24 Revenue Code.

3.25 Subd. 13. **Secure choice individual retirement account plan or IRAP.** "Secure choice
3.26 individual retirement account plan" or "IRAP" means the plan established under section
3.27 187.05.

3.28 Subd. 14. **Secure choice multiple employer retirement plan or MERP.** "Secure choice
3.29 multiple employer retirement plan" or "MERP" means the plan established under section
3.30 187.04.

3.31 Subd. 15. **Secure choice retirement savings trust.** "Secure choice retirement savings
3.32 trust" is a trust established to hold contributions and investment earnings on funds contributed
3.33 under the IRAP or the MERP. A separate trust may be established for the IRAP and the
3.34 MERP.

4.1 Sec. 4. **[187.04] SECURE CHOICE MULTIPLE EMPLOYER RETIREMENT**
4.2 **PLAN.**

4.3 Subdivision 1. **MERP established.** The board shall design, establish, and maintain, as
4.4 plan sponsor, a qualified defined contribution plan within the meaning of section 414(i) of
4.5 the Internal Revenue Code that satisfies the requirements of section 413(c) of the Internal
4.6 Revenue Code as a multiple employer plan. The plan documents for the MERP shall:

4.7 (1) include an adoption agreement in which an eligible employer can select terms and
4.8 conditions to allow the plan to meet the needs of the employer's particular workforce;

4.9 (2) provide eligible employers with the option to make employer contributions or
4.10 employee contributions by payroll deduction or a combination of employer and payroll
4.11 deduction employee contributions; and

4.12 (3) preclude the employer from electing a contribution rate for employee or employer
4.13 contributions that is lower than the entry-level contribution rate for the IRAP.

4.14 Subd. 2. **Compliance with Internal Revenue Code and ERISA.** The board shall:

4.15 (1) submit the MERP plan documents to the Internal Revenue Service for a determination
4.16 that the MERP satisfies the applicable requirements of sections 401(a) and 413(c) of the
4.17 Internal Revenue Code; and

4.18 (2) shall administer the MERP in compliance with sections 401(a) and 413(c) of the
4.19 Internal Revenue Code and all other applicable federal and state laws, including ERISA.

4.20 Subd. 3. **Eligible employer participation.** The executive director shall enter into a
4.21 participation agreement with each eligible employer that submits an application to participate
4.22 as a participating employer in the MERP and satisfies the eligibility conditions established
4.23 by the board.

4.24 Subd. 4. **Contributions held in trust.** Each eligible employer that becomes a participating
4.25 employer shall transmit employer contributions and employee payroll deduction
4.26 contributions, as applicable, to the MERP trust in the manner and according to the schedule
4.27 specified and established by the board.

4.28 Sec. 5. **[187.05] SECURE CHOICE INDIVIDUAL RETIREMENT ACCOUNT**
4.29 **PLAN.**

4.30 Subdivision 1. **IRAP established.** The board shall design, establish, and maintain a
4.31 payroll deduction arrangement whereby employee payroll deduction contributions are
4.32 transmitted by the employee's eligible employer to an individual retirement account

5.1 established for the employee. The board shall establish procedures for opening an individual
5.2 retirement account for each employee whose eligible employer transmits employee payroll
5.3 deduction contributions under the IRAP.

5.4 Subd. 2. **Compliance with Internal Revenue Code.** Each individual retirement account
5.5 opened under the IRAP shall be established and administered in compliance with section
5.6 408(a) of the Internal Revenue Code for the benefit of the employee for whom the account
5.7 was opened.

5.8 Subd. 3. **Contributions held in custodial account or trust.** Employee payroll deduction
5.9 contributions shall be transmitted by the employer to an account established for the benefit
5.10 of the employee that is a custodial account or, if a trust is established to hold contributions
5.11 under the IRAP, under the trust in the manner and according to the schedule specified and
5.12 established by the board.

5.13 Subd. 4. **Contribution rate.** The board shall establish default, minimum, and maximum
5.14 contribution levels as well as autoescalation requirements whereby employees' contributions
5.15 automatically escalate from year to year until they reach a maximum contribution rate,
5.16 subject to the employee's election to change the contribution rate or cease contributions.

5.17 Subd. 5. **Vesting.** Employees shall at all times be 100 percent vested in their accounts.

5.18 Subd. 6. **Distributions.** The board shall establish alternatives for taking a distribution
5.19 of an account following termination of employment, including the option to elect a direct
5.20 rollover within the meaning of section 402(c) of the Internal Revenue Code. Distribution
5.21 alternatives shall include the option to transfer all or any portion of the account toward the
5.22 purchase of an annuity.

5.23 Sec. 6. **[187.06] ESTABLISHMENT OF TRUST OR CUSTODIAL ACCOUNTS;**
5.24 **INVESTMENTS.**

5.25 Subdivision 1. **Trust or custodial accounts established.** The board shall establish and
5.26 administer a trust for the MERP to hold and invest contributions under the MERP. The
5.27 board shall establish and maintain custodial accounts or a trust for the IRAP to hold and
5.28 invest contributions under the IRAP.

5.29 Subd. 2. **Individual accounts established.** The trustee or custodian, as applicable, shall
5.30 maintain accounts for employer and employee contributions with respect to each employee
5.31 under the MERP and for each employee contributing under the IRAP. Interest, earnings,
5.32 and losses shall be allocated to accounts as prescribed by the board. An individual's retirement

6.1 savings benefit under the program shall be an amount equal to the balance in the individual's
6.2 program account on the date the retirement savings benefit becomes payable.

6.3 Subd. 3. **Investments.** Each employee or former employee is entitled to direct the
6.4 investment of the contributions credited to the employee's account in the trust or custodial
6.5 account, as applicable. The board shall make available for investment a diversified array
6.6 of investment funds selected by the State Board of Investment under section 356.645 and
6.7 shall otherwise comply with the requirements of section 404(c) of ERISA and related
6.8 regulations. Members of the board, the executive director of the State Board of Investment,
6.9 and all other fiduciaries are relieved of fiduciary responsibility for investment losses resulting
6.10 from the employee's investment directions.

6.11 Subd. 4. **Default investment fund.** The board shall designate a default investment fund
6.12 that satisfies the requirements of section 404(c)(5) of ERISA and related regulations.
6.13 Accounts for which no investment direction has been given by the employee or former
6.14 employee shall be invested in the default investment fund. Members of the board, the
6.15 executive director of the State Board of Investment, and all other fiduciaries are relieved
6.16 of fiduciary duty under section 404 of ERISA and section 356A.06, subdivision 10, with
6.17 regard to investment of assets in the default investment fund.

6.18 Subd. 5. **Inalienability of accounts.** No account under the program is subject to
6.19 assignment or alienation, either voluntarily or involuntarily, or to the claims of creditors,
6.20 except for a domestic relations order that assigns all or a portion of an account in the MERP
6.21 to an alternate payee and satisfies the requirements to be considered a qualified domestic
6.22 relations order under section 206(d) of ERISA and section 414(p) of the Internal Revenue
6.23 Code.

6.24 Sec. 7. **[187.07] RESPONSIBILITIES OF ELIGIBLE EMPLOYERS.**

6.25 Subdivision 1. **Requirement to offer retirement savings plan.** If an eligible employer
6.26 does not execute a participation agreement to become a participating employer in the secure
6.27 choice multiple employer retirement plan under section 187.04, the eligible employer shall
6.28 enroll eligible employees in the secure choice individual retirement account plan. If an
6.29 eligible employer offered a retirement savings plan within the last two years, the eligible
6.30 employer may not become a participating employer in the MERP, but shall automatically
6.31 enroll eligible employees in the IRAP. An eligible employer may become a participating
6.32 employer in the MERP no earlier than two years after the date as of which all assets in any
6.33 retirement savings plan sponsored by the eligible employer were distributed or otherwise

7.1 transferred to employees, former employees, or any eligible retirement plan, within the
7.2 meaning of section 402(c)(8) of the Internal Revenue Code.

7.3 Subd. 2. **Remitting contributions.** A participating employer must timely remit
7.4 contributions as required by the board. The board may establish penalties for employers for
7.5 failing to timely remit contributions.

7.6 Subd. 3. **Distribution of plan information.** Participating employers shall provide
7.7 information packets prepared by the board to all employees regarding the MERP or IRAP,
7.8 as applicable:

7.9 (1) for participating employers in the MERP, the information must be provided to an
7.10 employee no later than 30 days before the date the employee first begins participation in
7.11 the plan; or

7.12 (2) for employees contributing to an IRAP, the information must be provided to an
7.13 employee no later than 30 days before the date of the first payroll from which employee
7.14 contributions are deducted for transmittal to the IRAP.

7.15 Subd. 4. **No fiduciary responsibility.** Except for the responsibilities described in
7.16 subdivisions 1 to 3, a participating employer has no obligations to employees and is not a
7.17 fiduciary or considered to be a fiduciary regarding the secure choice retirement savings trust
7.18 or the program. Participating employers do not bear responsibility for the administration,
7.19 investment performance, plan design, or benefits paid to plan participants.

7.20 Subd. 5. **Employer liability.** An employer is not liable to an employee or former
7.21 employee for alleged damages resulting from an employee's participation in or failure to
7.22 participate in the program.

7.23 Subd. 6. **Enforcement.** The Minnesota attorney general has the power to enforce the
7.24 provisions of this chapter. The attorney general may impose, after due process, monthly or
7.25 quarterly penalties against any eligible employer that fails to comply with this section, in
7.26 an amount or amounts determined by the board. Proceeds of such penalties, after deducting
7.27 enforcement expenses, shall be deposited in a special revenue account and are appropriated
7.28 to the program.

7.29 Sec. 8. **[187.08] SECURE CHOICE RETIREMENT SAVINGS BOARD OF**
7.30 **DIRECTORS.**

7.31 Subdivision 1. **Membership.** The policy-making function of the program is vested in a
7.32 board of directors comprised of seven members as follows:

- 8.1 (1) the executive director of the Minnesota State Retirement System;
- 8.2 (2) the executive director of the State Board of Investment or the executive director's
- 8.3 designee;
- 8.4 (3) three members chosen by the Legislative Commission on Pensions and Retirement,
- 8.5 one from each of the following experience categories:
- 8.6 (i) executive or operations manager with at least ten years' experience in record keeping
- 8.7 for plans under section 401(k) of the Internal Revenue Code;
- 8.8 (ii) executive or operations manager with at least ten years' experience in individual
- 8.9 retirement accounts; and
- 8.10 (iii) executive or other professional with at least ten years' experience in retirement plan
- 8.11 investments;
- 8.12 (4) a human resources or retirement benefits executive from a Fortune 500 corporation
- 8.13 with at least ten years' experience in administering the corporation's 401(k) plan, appointed
- 8.14 by the governor; and
- 8.15 (5) a small business owner or executive appointed by the governor.
- 8.16 Subd. 2. **Appointment.** Public members appointed by the governor shall be appointed
- 8.17 as provided in section 15.0597.
- 8.18 Subd. 3. **Terms of initial appointees and deadline for first appointments.** (a) The
- 8.19 terms of initial appointees are as follows:
- 8.20 (1) the executive directors of the Minnesota State Retirement System and the State Board
- 8.21 of Investment shall serve indefinitely;
- 8.22 (2) the members appointed by the Legislative Commission on Pensions and Retirement
- 8.23 shall initially serve three, four, and five years, respectively; and
- 8.24 (3) the governor's appointees shall serve three-year terms.
- 8.25 (b) The appointing authorities must make their first appointments to the board by January
- 8.26 15, 2021.
- 8.27 Subd. 4. **Membership terms.** Except as provided in subdivision 3 for first appointees,
- 8.28 public members serve a term of four years.
- 8.29 Subd. 5. **Removal; vacancies.** Public members may be removed and vacancies filled,
- 8.30 as provided under section 15.0575, subdivisions 4 and 5.

9.1 Subd. 6. **Compensation.** Public members shall be compensated and expenses reimbursed
9.2 as provided under section 15.0575, subdivision 3.

9.3 Subd. 7. **Chair.** The Legislative Commission on Pensions and Retirement shall appoint
9.4 one of the members of the board of directors as its chair.

9.5 Subd. 8. **Duties.** In addition to the duties set forth in this chapter, the board has the
9.6 following duties:

9.7 (1) appoint an executive director, determine the duties of the executive director, and set
9.8 the compensation of the executive director;

9.9 (2) establish secure processes for enrolling employees in the IRAP and for transmitting
9.10 employee and employer contributions to custodial accounts or accounts within a trust;

9.11 (3) prepare a budget and establish procedures for the payment of costs of administering
9.12 and operating the program;

9.13 (4) lease or otherwise procure office space and equipment necessary to operate the
9.14 program;

9.15 (5) procure insurance in connection with the property of the program and the activities
9.16 of the board, executive director, and other staff;

9.17 (6) accept contributions from employees and from participating employers for the benefit
9.18 of their employees in cash or cash equivalents only;

9.19 (7) keep annual administrative expenses as low as possible, but in no event may they
9.20 exceed one percent of the total trust balance, and allocate administrative expenses to each
9.21 employee's account on a pro rata basis, or such other basis as the board determines to be
9.22 equitable;

9.23 (8) determine the eligibility of an employer, employee, or other individual to participate
9.24 in the program, interpret the program's governing documents and this chapter, and make
9.25 all other decisions necessary to administer the program;

9.26 (9) take all actions required or advisable to ensure that the MERP is treated as a single
9.27 plan for purposes of the Internal Revenue Code and ERISA;

9.28 (10) prepare employee information that provides notice to employees regarding the
9.29 following:

9.30 (i) the benefits and risks associated with participating in the MERP or IRAP, as
9.31 applicable;

- 10.1 (ii) enrolling in the MERP or IRAP, as applicable;
- 10.2 (iii) how to opt out of the IRAP;
- 10.3 (iv) applying for distribution of retirement benefits;
- 10.4 (v) how to obtain additional information on the MERP or IRAP, as applicable; and
- 10.5 (vi) a statement that employers are not liable for decisions employees make and that
- 10.6 benefits and investment returns are not guaranteed by the state and the state has no liability
- 10.7 for investment performance;
- 10.8 (11) publish an annual audited financial report, prepared according to generally accepted
- 10.9 accounting principles, on the operations of the program, performed by an independent
- 10.10 certified public accountant, which shall include but not be limited to direct and indirect
- 10.11 costs attributable to the use of outside consultants, independent contractors, and other persons
- 10.12 who are not state employees. The report shall be provided to the chairs and ranking minority
- 10.13 members of the legislative committees with jurisdiction over jobs and economic development
- 10.14 and state government finance, the executive director of the State Board of Investment, the
- 10.15 chair of the Legislative Commission on Pensions and Retirement, and the Legislative
- 10.16 Reference Library;
- 10.17 (12) publish an annual report regarding plan outcomes, progress toward savings goals
- 10.18 established by the board, statistics on eligible employees and participating employers, plan
- 10.19 expenses, estimated impact of the program on social safety net programs, and penalties and
- 10.20 violations. The report shall be provided to the chairs and ranking minority members of the
- 10.21 legislative committees with jurisdiction over jobs and economic development and state
- 10.22 government finance, the chair of the State Board of Investment, the chair of the Legislative
- 10.23 Commission on Pensions and Retirement, and the Legislative Reference Library;
- 10.24 (13) adopt rules to implement the program; and
- 10.25 (14) properly file all reports required under the Internal Revenue Code and ERISA for
- 10.26 the MERP and the IRAP.
- 10.27 Subd. 9. **Conflict of interest; economic interest statement.** No member of the board
- 10.28 may participate in deliberations or vote on any matter before the board that will or is likely
- 10.29 to result in direct, measurable economic gain to the member or the member's employee.
- 10.30 Members of the board shall file with the Campaign Finance and Public Disclosure Board
- 10.31 an economic interest statement in a manner as prescribed by section 10A.09, subdivisions
- 10.32 5 and 6.

11.1 Subd. 10. **Liability; indemnification.** A member of the board shall be indemnified and
11.2 held harmless by the state for the reasonable costs or expenses incurred as a result of any
11.3 actual or threatened litigation or administrative proceeding arising out of the performance
11.4 of the member's duties, except an action brought by the state or a state agency arising from
11.5 the failure of a board member to perform duties as prescribed in section 187.09.

11.6 Sec. 9. **[187.09] FIDUCIARY DUTY; STANDARD OF CARE.**

11.7 Subdivision 1. **Fiduciary duty for MERP.** The members of the board, the State Board
11.8 of Investment, and the staff of the program are governed by sections 404 to 408 of ERISA,
11.9 to the extent any of them exercise fiduciary duty.

11.10 Subd. 2. **Fiduciary duty for IRAP.** The members of the board, the State Board of
11.11 Investment, and the staff of the program are governed by chapter 356A, to the extent any
11.12 of them exercise fiduciary duty.

11.13 Sec. 10. **[187.10] NO STATE LIABILITY.**

11.14 The state has no liability for the payment of, the amount of, or losses to any benefit to
11.15 any participant in the program.

11.16 Sec. 11. **[187.11] SEVERABILITY.**

11.17 If any provision of this chapter is found to be unconstitutional and void, the remaining
11.18 provisions of this chapter are valid.

11.19 Sec. 12. **EFFECTIVE DATE.**

11.20 Sections 1 to 6 and 8 to 11 are effective the day following final enactment. Section 7 is
11.21 effective the day after the secure choice retirement program board of directors opens the
11.22 secure choice retirement savings program for enrollment of eligible employees in the IRAP
11.23 or August 1, 2023, whichever is earlier.