



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Susan Lenczewski, Executive Director
RE: S.F. 2303 (Pappas); H.F. 2570 (Becker-Finn): Minnesota Secure Choice Retirement Program
DATE: April 4, 2017

Introduction

S.F. 2303 (Pappas); H.F. 2570 (Becker-Finn) establishes the Minnesota Secure Choice Retirement Program, which is intended to benefit employees who have no opportunity to save for retirement through a 401(k) or other retirement plan offered by their employer. Specifically, the Program would provide two options through which employees would be able to contribute to their own retirement account maintained by the State. The Program would require employers to transmit employee contributions to a state-sponsored IRA plan ("IRAP"), unless the employer sponsors its own retirement plan for employees or joins the state-sponsored multiple employer retirement plan ("MERP"), the second option offered by the legislation. Employees would be able to direct the investment of their accounts into a diversified array of investment funds selected by the State Board of Investment.

The program's structure would consist of a board of directors, an executive director and staff. Recordkeeping and administration would be handled by outside vendors. Accounts would be held in trust by corporate trustees or corporate custodians.

Significant differences between the IRAP and the MERP are the following:

- Participation in the IRAP is mandatory for employers who neither sponsor their own workforce retirement savings plan, such as a 401(k) plan, or adopt the MERP as a participating employer and thereby offer that retirement savings plan to their employees. Participation in the MERP is voluntary.
- Employers are not permitted to make contributions to the IRAP, but are permitted to make contributions to the MERP on behalf of their employees.
- The IRAP is governed by state law and provisions of the federal Internal Revenue Code relating to IRAs. The MERP is governed by ERISA and provisions of the federal Internal Revenue Code relating to qualified defined contribution plans.
- The limit on contributions to an account under the IRAP is \$5,500 (\$6,500 at age 50+) versus the limit on contributions to an account under the MERP is \$56,000 (employer and employee), of which no more than \$18,000 may be employee (\$24,000 at age 50+).

Similarities between the IRAP and the MERP are the following:

- Employees under both the IRAP and the MERP will be able to direct the investment of their accounts into an array of investment funds selected by the State Board of Investment (similar to

employee investment of accounts in the Minnesota Deferred Compensation Plan, a defined contribution plan for public employees).

- Contributions can be contributed on a pre-tax basis and, depending on investment earnings, will grow tax-free in an employee's retirement account, until distributed.
- Upon leaving employment, an employee will be able to leave his or her account with the State for distribution at a later date, elect a direct rollover of his or her account to another retirement plan or IRA, or elect a distribution of his or her account in the form of an annuity.
- Auto enrollment of employees is required under the IRAP and permitted under the MERP.
- Both programs are governed by the same board of directors.

Section-by-Section Summary

Section 1. "Minnesota Secure Choice Retirement Program; Citation":

This section states that the new chapter 187 to be added to the Minnesota Statutes shall be known as the "Minnesota Secure Choice Retirement Program Act of 2017."

Section 2. "Statement of Purpose":

This section is a summary of statistics regarding the inadequacy of retirement savings nationally and statewide and the impact of inadequate savings on the state's taxpayers.

Section 3. "Definitions":

This section provides definitions for terms unique to this statute.

Section 4. "Secure Choice Multiple Employer Retirement Plan":

This section authorizes the board of directors of the secure choice retirement program to design, establish and maintain a multiple employer retirement plan. This will require the preparation of a basic plan document and an adoption agreement, which will allow adopting employers to elect plan features tailored to the employer's workforce.

Subdivision 2 requires the board to ensure the plan documents and plan administration comply with both the Internal Revenue Code and ERISA.

Subdivisions 3 and 4 authorize the executive director to enter into participation agreements with employers and require participating employers to transmit contributions to the MERP trust.

Section 5. "Secure Choice Individual Retirement Account Plan":

This section authorizes the board of directors to design, establish and maintain a payroll deduction arrangement by which employee contributions will be transmitted to an IRA established by the State for the employee from whose paycheck the contributions were deducted.

Subdivision 2 requires the board to ensure the IRAs comply with the Internal Revenue Code.

Subdivision 3 directs the board to establish the employee contribution rate and requirements to automatically increase the employee contribution rate from year to year until a board-established maximum contribution rate is reached. Employees shall be permitted to change the contribution rate or cease contributions altogether.

Subdivisions 3 and 4 require full vesting of accounts and gives employees the ability to elect a direct rollover of a distribution or distribution in the form of an annuity.

Section 6. “Establishment of Trust or Custodial Account; Investments”:

This section authorizes the board to establish a trust to hold and invest contributions to the MERP and custodial accounts or a trust to hold and invest contributions to the IRAP.

Subdivision 2 requires an account to be maintained for each employee, which will hold contributions, earnings and losses, and which constitutes the employee’s benefit.

Subdivision 3 gives employees the authority to direct the investment of their account into a diversified array of investment funds selected by the State Board of Investment. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses to the extent the employee directs the investment of his or her account.

Subdivision 4 directs the board to designate a default investment fund, which complies with the requirements under ERISA for qualified default investment funds, in which contributions will be invested when the employee gives no investment direction. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses due to investment in the default fund.

Subdivision 5 protects accounts from the claims of creditors and prohibits assignment of accounts, except in the case of a qualified domestic relations order (due to divorce).

Section 7. “Responsibilities of Eligible Employers”:

This section imposes on eligible employers the requirement to participate either in the MERP or enroll their employees in the IRAP. An “eligible employer” is an employer that does not sponsor or contribute to a retirement savings plan. If an eligible employer had a retirement savings plan within the last two years, the employer may not join the MERP, but is required to enroll employees in the IRAP. Once two years have expired since the termination of a retirement savings plan, an eligible employer is permitted to join the MERP.

Subdivision 2 requires employers participating in either the MERP or the IRAP to transmit contributions on a timely basis or be subject to penalties, if established by the board.

Subdivision 3 requires participating employers to disseminate information packets to employees within prescribed timeframes.

Subdivisions 4 and 5 state that participating employers have no responsibilities, including fiduciary responsibilities or liability to employees, other than those set forth in the previous subdivisions of this section.

Subdivision 6 gives the attorney general the power to enforce the provisions of the act and impose penalties.

Section 8. “Secure Choice Retirement Savings Board of Directors”:

This section establishes a seven-member board of directors consisting of the following:

- MSRS executive director
- SBI executive director
- As appointed by the Legislative Commission on Pensions and Retirement:
 - An executive with 401(k) recordkeeping experience
 - An executive with experience with IRAs
 - An executive with experience in retirement plan investments
- As appointed by the governor:
 - A human resources executive from a Fortune 500 corporation with experience in administering the corporation’s 401(k) plan
 - A small business owner or executive

Subdivisions 3, 4, 5, 6 and 7 specifies members’ terms, removal, compensation and provides that the LCPR will appoint one of the members as the chair.

Subdivision 8 lists the duties of the board, which include appointing an executive director and determining the director’s duties and compensation, establishing secure enrollment and contribution transmittal procedures, budgeting, leasing office space and equipment, procuring insurance, publishing financial and statistical reports, filing all required reports with the federal government, and limiting annual expenses to no more than one percent of total trust balance. The board also has the duty to prepare employee information that explains the program, risks and benefits, how to enroll and opt out, and states that the State does not guarantee investment performance.

Subdivision 9 governs conflicts of interest and requires board members to file an economic interest statement.

Subdivision 10 provides for indemnification of board members by the State and holds members harmless for reasonable costs of threatened or actual litigation, except for the member’s failure to perform his or her duties.

Section 9. “Fiduciary Duty; Standard of Care”:

This section imposes ERISA fiduciary requirements and standards on board members and staff to the extent any of them exercise fiduciary duty for the MERP and imposes fiduciary requirements and standards under chapter 356A of the Minnesota Statutes on board members and staff to the extent any of them exercise fiduciary duty for the IRAP.

Section 10. “No State Liability”:

This section states that the State has no liability for the payment of or for losses to any benefit to any participant in the program.

Section 11. “Severability”:

This section states that if any provision is found to be unconstitutional, the remaining provisions are valid.

Section 12. “Effective Date”:

This section states that all sections, except section 5, are effective the day following final enactment. Section 5 is effective the day after the board opens the program for enrollment or August 1, 2018, whichever is later.