

SF 976 (Pappas); HF 1258 (Becker-Finn): Minnesota Secure Choice Retirement Program

Prepared by: Susan Lenczewski, Executive Director

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Introduction

- New Program:** Minnesota Secure Choice Retirement Program
- New Law:** Minnesota Statutes, Chapter 187
- Brief Description:** The bill establishes the Minnesota Secure Choice Retirement Program, a state-sponsored program allowing private sector employees to save for retirement.

Overview

SF 976 (Pappas); HF 1258 (Becker-Finn) establishes the Minnesota Secure Choice Retirement Program, which is intended to benefit employees in the private sector who have no opportunity to save for retirement through a 401(k) or other retirement plan offered by their employer. Specifically, the program offers two options through which employees would be able to contribute to their own retirement account maintained by the State. The program requires employers to transmit employee contributions to a state-sponsored Individual Retirement Account 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. Employers may prefer the MERP to the IRAP because it will allow the employer to elect plan features tailored to the employer's own workforce and make employer contributions to employee accounts.

Employees will be able to direct the investment of their accounts into a diversified array of investment funds selected by the State Board of Investment (SBI).

All employers in the state, whether for-profit or non-profit, of any size, including sole proprietors, are required to participate, if they do not sponsor a retirement plan for their employees. There is no charge to employers, except for any incidental costs to modify their payroll systems to deduct contributions and send them to employee accounts at the SBI.

The program's governing structure would consist of a board of directors, an executive director, and staff. Recordkeeping and administration would be handled by outside administrators. Accounts would be held in trust by the SBI's corporate trustee.

The IRAP is required to be up and running by January 1, 2023, and the MERP is required to be established by January 1, 2025.

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 Employee Retirement Income Security Act (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 \$6,000 (\$7,000 at age 50+) versus the limit on contributions to an account under the MERP is \$58,000 (employer and employee), of which no more than \$19,500 may be employee (\$26,000 at age 50+) (dollar amounts are for 2021 and are subject to annual adjustment for inflation).

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).
- 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 one 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."

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. Notable definitions include the following:

- "Eligible employer" includes virtually all employers that have been engaged in business in the state for at least one year, including non-profits. If an employer has one employee or is a sole proprietor and does not sponsor a retirement plan, the employer must enroll all eligible employees. Governmental employers are not "eligible employers."
- "Eligible employee" means any employee who works in the state, is at least 18 years old, and worked at least 500 hours in the immediately preceding calendar year.

Section 4. Secure Choice Multiple Employer Retirement Plan.

Subdivision 1 requires the board of directors of the Secure Choice Retirement Program to design, establish, and maintain a Multiple Employer Retirement Plan (MERP). 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. The plan document must provide that all employee and employer contributions are 100 percent vested at all times and that employees, following termination of employment, be permitted to elect a distribution of their accounts in the form of a lump sum, in a direct rollover, or as an annuity. The MERP is required to be established no later than January 1, 2025.

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.

Subdivision 5 allows employers to terminate membership in the MERP and transfer employee accounts to a retirement plan sponsored by the employer or to IRAs.

Section 5. Secure Choice Individual Retirement Account Plan.

Subdivision 1 requires the board of directors to design, establish, and maintain a payroll deduction arrangement by which employee contributions will be transmitted to an Individual Retirement Account Plan (IRAP) established by the State for the employee from whose paycheck the contributions were deducted. The IRAP is required to be established no later than January 1, 2023.

Subdivisions 2 and 3 require the board to ensure the individual retirement accounts comply with the Internal Revenue Code and that contributions to the IRAP are made to an account established in the name of each employee, and held in a custodial account or trust.

Subdivision 4 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.

Subdivision 5 requires that all employees be 100 percent vested in their accounts at all times.

Subdivision 6 requires the board to offer distribution of accounts following termination of employment and give former employees the ability to elect distribution in a direct rollover or as an annuity.

Subdivision 7 permits the board to offer participation in the IRAP to individuals who are not in an employment relationship with an eligible employer.

Section 6. Establishment of Administrative Fund, Trusts, and Custodial Accounts; Investments.

Subdivision 1 establishes the "Secure Choice administrative fund" in the state treasury to hold appropriations, loans, gifts, and other monies that are to be used to pay administrative expenses of the Secure Choice program, including start-up costs. The administrative fund is separate from the trusts that will hold employee and employer contributions. If the legislature were to appropriate funds to pay the start-up costs of the program, such funds would be deposited in the administrative fund.

Subdivision 2 requires 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 3 requires an account to be maintained for each employee, which will hold contributions, earnings and losses, and which constitutes the employee's benefit.

Subdivision 4 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 5 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 6 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).

Subdivision 7 states that the assets of the Secure Choice trusts may not be commingled with other state funds nor used by the state or any employer for any purpose other than the purposes of the Secure Choice trusts.

Section 7. Responsibilities of Eligible Employers.

Subdivision 1 requires eligible employers to participate either in the MERP or enroll their employees in the IRAP. 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, but for the responsibilities set forth in subdivisions 1 to 3, participating employers have no obligations to employees, including no fiduciary duty, and are not liable to employees related to participation in the program.

Subdivision 6 gives the attorney general the power to enforce the provisions of the act and impose penalties, as established by the board. Any penalties collected must be deposited in the administrative fund.

Section 8. Secure Choice Retirement Savings Board of Directors.

Subdivision 1 establishes a seven-member board of directors consisting of the following:

- MSRS executive director;
- SBI executive director or the director's designee;
- Three members 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;
- Two members 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 2, 3, 4, 5, 6, and 7 specify members' terms, removal, and compensation, method for making the governor's appointments, and provides that the Legislative Commission on Pensions and Retirement (LCPR or "Commission") 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;
- preparing a budget;
- leasing office space and equipment;
- procuring insurance;
- limiting annual expenses to no more than one percent of total trust balance;
- determining eligibility and claims for benefits;
- publishing annual financial and statistical reports and delivering them to specified legislators, directors of the Commission and SBI, and the Legislative Reference Library;
- filing all required reports with the federal government;
- entering into partnerships with other state programs to administer or operate the program;
- retaining service providers and advisors; and
- adopting rules and interpreting the governing statutes and plan documents.

The board also has the duty to prepare employee information that explains the program, risks and benefits, how to enroll and opt out, and the federal and state income tax consequences of participation in the program. The employee information must include a number of disclaimers, such as 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.

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 Minnesota Statutes, Chapter 356A, 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. Other State Agencies to Provide Assistance.

This section authorizes the board to enter into agreements with other state agencies to provide outreach, technical assistance, or compliance services and requires other state agencies to provide information and data on employees, employers, and corporations doing business in the state, if requested by the board or the executive director.

Section 12. Severability.

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

Section 13. Effective Date.

All sections, except Section 7, are effective the day following final enactment. Section 7, which imposes requirements on employers, is effective the day after the board opens the program for enrollment of eligible employees in the IRAP.

Legislative Commission on Pensions and Retirement

55 State Office Building
Phone: 651-296-2750

100 Rev. Dr. Martin Luther King Jr. Blvd.
TDD: 651-296-9896; Fax: 651-297-3697

St. Paul, MN 55155-1201
www.lcpr.leg.mn