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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1258

02/18/2021 Authored by Becker-Finn and Schultz
The bill was read for the first time and referred to the Committee on State Government Finance and Elections

1.1 A bill for an act
1.2 relating to retirement; establishing the Minnesota Secure Choice retirement
1.3 program; 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 known as the
1.11 "Minnesota Secure Choice Retirement Program" for privately employed workers to save
1.12 for retirement for the following reasons:

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

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

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

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

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

2.6 Sec. 3. [187.03] DEFINITIONS.

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

2.9 Subd. 2. **Board.** "Board" means the Secure Choice retirement program board of directors.

2.10 Subd. 3. **Compensation.** "Compensation" means compensation within the meaning of
2.11 Section 219(f)(1) of the Internal Revenue Code that is received by an eligible employee
2.12 from an eligible employer.

2.13 Subd. 4. **Contribution rate.** "Contribution rate" means the percentage of an eligible
2.14 employee's compensation that is withheld from the employee's compensation and deposited,
2.15 as applicable (i) in the account in the IRAP established for the eligible employee or (ii) in
2.16 the account in the MERP established for the eligible employee pursuant to the plan document
2.17 adopted by the employee's eligible employer under the MERP.

2.18 Subd. 5. **Eligible employee.** "Eligible employee" means a person who is employed by
2.19 an eligible employer and who, for the immediately preceding calendar year, worked 500 or
2.20 more hours of service for the eligible employer and whose primary work location is in the
2.21 state. Once a person has 500 or more hours of service in a calendar year, the person continues
2.22 to be an eligible employee for as long as the person is employed by an eligible employer,
2.23 even if the person has fewer than 500 hours of service in a subsequent calendar year. Eligible
2.24 employee does not include a person who, on December 31 of the preceding calendar year,
2.25 was less than 18 years of age.

2.26 Subd. 6. **Eligible employer.** (a) "Eligible employer" means a person or entity:

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

2.29 (2) that employs one or more eligible employees or is a sole proprietor; and

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

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

3.4 (c) Eligible employer does not include the state or federal government or any political
3.5 subdivision thereof.

3.6 Subd. 7. **ERISA.** "ERISA" means the Employee Retirement Income Security Act of
3.7 1974, as amended, United States Code, title 29, section 1001, et seq.

3.8 Subd. 8. **Executive director.** "Executive director" means the chief executive and
3.9 administrative head of the program.

3.10 Subd. 9. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue
3.11 Code of 1986, as amended, United States Code, title 26, section 1, et seq.

3.12 Subd. 10. **Participating employee.** "Participating employee" means an eligible employee
3.13 who is contributing to the Secure Choice retirement program.

3.14 Subd. 11. **Participating employer.** "Participating employer" means an eligible employer
3.15 that participates in a payroll deposit retirement savings arrangement for eligible employees
3.16 as provided for in this chapter.

3.17 Subd. 12. **Payroll deposit retirement savings arrangement.** "Payroll deposit retirement
3.18 savings arrangement" means an arrangement by which an employer makes contributions
3.19 on behalf of participating employees by deducting a specified portion of the employee's pay
3.20 and transmitting the deducted amount to the Secure Choice retirement program at the same
3.21 time and manner as payroll deductions for federal and state tax withholding.

3.22 Subd. 13. **Program.** "Program" means the Minnesota Secure Choice retirement program,
3.23 which consists of the Secure Choice individual retirement account plan (IRAP) and the
3.24 Secure Choice multiple employer retirement plan (MERP).

3.25 Subd. 14. **Retirement savings plan.** "Retirement savings plan" means a plan or program
3.26 that permits contributions to be set aside for retirement; provides for the deferral of income
3.27 tax on the contributions, unless the employee elects to contribute after-tax amounts; and
3.28 permits all employees to participate except those employees who have not satisfied
3.29 participation eligibility requirements that are no more restrictive than the eligibility
3.30 requirements permitted under section 410(b) of the Internal Revenue Code. Retirement
3.31 savings plan includes but is not limited to any plan that satisfies the applicable requirements
3.32 of section 401(a) of the Internal Revenue Code, a plan listed in section 219(g)(5) of the
3.33 Internal Revenue Code, a plan within the meaning of section 457(b) of the Internal Revenue

4.1 Code, a simplified employee pension (SEP) plan, a savings incentive match plan for
 4.2 employees (SIMPLE) plan, an automatic enrollment payroll deduction individual retirement
 4.3 account, and a multiemployer pension plan described in section 414(f) of the Internal
 4.4 Revenue Code.

4.5 Subd. 15. **Secure Choice administrative fund.** "Secure Choice administrative fund"
 4.6 or "administrative fund" means the fund established under section 187.06, subdivision 1.

4.7 Subd. 16. **Secure Choice individual retirement account plan or IRAP.** "Secure Choice
 4.8 individual retirement account plan" or "IRAP" means the plan established under section
 4.9 187.05.

4.10 Subd. 17. **Secure Choice multiple employer retirement plan or MERP.** "Secure
 4.11 Choice multiple employer retirement plan" or "MERP" means the plan established under
 4.12 section 187.04.

4.13 Subd. 18. **Secure Choice retirement savings trust or Secure Choice trust.** "Secure
 4.14 Choice retirement savings trust" or "Secure Choice trust" is a trust established to hold
 4.15 contributions and investment earnings on funds contributed under the IRAP or the MERP.
 4.16 A separate trust may be established for the IRAP, called the "IRAP trust", and the MERP,
 4.17 called the "MERP trust".

4.18 Sec. 4. **[187.04] SECURE CHOICE MULTIPLE EMPLOYER RETIREMENT**
 4.19 **PLAN.**

4.20 Subdivision 1. **MERP established.** No later than January 1, 2025, the board shall design,
 4.21 establish, and maintain, as plan sponsor, a qualified defined contribution plan under section
 4.22 401(a) of the Internal Revenue Code that includes a cash or deferred arrangement under
 4.23 section 401(k) of the Internal Revenue Code and satisfies the requirements of section 413(c)
 4.24 of the Internal Revenue Code as a multiple employer plan. The plan documents for the
 4.25 MERP shall:

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

4.28 (2) provide eligible employers with the option to make employer matching or
 4.29 nonmatching contributions or employee contributions by payroll deduction on a pre-tax or
 4.30 after-tax basis or a combination of such employer and employee contributions;

4.31 (3) preclude eligible employers from electing a contribution rate for employee or employer
 4.32 contributions that is lower than the entry-level contribution rate for the IRAP;

5.1 (4) provide that all employee and employer contributions shall at all times be 100 percent
 5.2 vested; and

5.3 (5) provide that accounts are distributable following termination of employment in the
 5.4 form of a lump sum, installments, or in a direct rollover within the meaning of section 402(c)
 5.5 of the Internal Revenue Code and that all or any portion of an account may be applied toward
 5.6 the purchase of an immediate or deferred annuity from an insurance company licensed to
 5.7 do business in the state.

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

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

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

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

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

5.22 Subd. 5. **Eligible employer spin-off.** An eligible employer may elect to terminate
 5.23 membership in the MERP as an eligible employer and request the transfer of the accounts
 5.24 attributable to its employees or former employees to another retirement savings plan
 5.25 sponsored or maintained by the eligible employer or to individual retirement accounts in
 5.26 the name of each employee or former employee in accordance with the Internal Revenue
 5.27 Code and ERISA. The board shall establish procedures and notice requirements to allow
 5.28 such membership termination and account transfers.

5.29 Sec. 5. **[187.05] SECURE CHOICE INDIVIDUAL RETIREMENT ACCOUNT**
 5.30 **PLAN.**

5.31 Subdivision 1. **IRAP established.** No later than January 1, 2023, the board shall design,
 5.32 establish, and maintain a payroll deduction arrangement whereby employee payroll deduction
 5.33 contributions are transmitted by the employee's eligible employer to an individual retirement

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

6.4 Subd. 2. **Compliance with Internal Revenue Code.** Each individual retirement account
 6.5 opened under the IRAP shall be established and administered in compliance with section
 6.6 408(a) of the Internal Revenue Code for the benefit of the employee for whom the account
 6.7 was opened.

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

6.13 Subd. 4. **Contribution rate.** The board shall establish default, minimum, and maximum
 6.14 contribution rates and autoescalation requirements whereby each employee's contribution
 6.15 rate automatically increases from year to year until it reaches a maximum contribution rate,
 6.16 subject to the employee's election to change the contribution rate or cease contributions.

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

6.18 Subd. 6. **Distributions.** The board shall establish alternatives for taking a distribution
 6.19 of an account following termination of employment, including the option to elect a direct
 6.20 rollover within the meaning of section 402(c) of the Internal Revenue Code. Distribution
 6.21 alternatives shall include the option to transfer all or any portion of the account toward the
 6.22 purchase of an immediate or deferred annuity from an insurance company licensed to do
 6.23 business in the state.

6.24 Subd. 7. **Individuals not employed by an eligible employer.** The board may allow
 6.25 individuals to open and contribute to an account in the IRAP outside of an employment
 6.26 relationship with an eligible employer, in which case the individual shall be considered an
 6.27 eligible employee.

6.28 Sec. 6. **[187.06] ESTABLISHMENT OF ADMINISTRATIVE FUND, TRUSTS, AND**
 6.29 **CUSTODIAL ACCOUNTS; INVESTMENTS.**

6.30 Subdivision 1. **Secure Choice administrative fund established.** The Secure Choice
 6.31 administrative fund is established in the state treasury as a fund separate and apart from the
 6.32 Secure Choice trust and the IRAP and MERP accounts. The board shall use money in the
 6.33 administrative fund to pay for administrative expenses it incurs in the performance of its

7.1 duties under this chapter. The administrative fund may receive any gifts, grants, donations,
7.2 loans, appropriations, or other moneys designated for the administrative fund from the state,
7.3 any unit of federal or local government, any other entity, or any person. Any interest or
7.4 investment earnings that are attributable to money in the administrative fund must be
7.5 deposited into the administrative fund. The board shall separately account for any amounts
7.6 received with a direction that such amounts are to be used only for the benefit of the IRAP
7.7 or the MERP, and shall apply such amounts as directed.

7.8 Subd. 2. **Trust or custodial accounts established.** The board shall establish and
7.9 administer a trust for the MERP to hold and invest contributions under the MERP. The
7.10 board shall establish and maintain custodial accounts or a trust for the IRAP to hold and
7.11 invest contributions under the IRAP.

7.12 Subd. 3. **Individual accounts established.** The trustee or custodian, as applicable, shall
7.13 maintain accounts for employer and employee contributions with respect to each employee
7.14 under the MERP and for each employee contributing under the IRAP. Interest, earnings,
7.15 and losses shall be allocated to accounts as prescribed by the board. A participating
7.16 employee's retirement savings benefit under the program shall be an amount equal to the
7.17 balance in the participating employee's account on the date the retirement savings benefit
7.18 becomes payable.

7.19 Subd. 4. **Investments.** Each employee or former employee is entitled to direct the
7.20 investment of the contributions credited to the employee's account in the trust or custodial
7.21 account, as applicable. The board shall make available for investment a diversified array
7.22 of investment funds selected by the State Board of Investment under section 356.645 and
7.23 shall otherwise comply with the requirements of section 404(c) of ERISA and related
7.24 regulations. Members of the board, the executive director of the State Board of Investment,
7.25 and all other fiduciaries are relieved of fiduciary responsibility for investment losses resulting
7.26 from the employee's investment directions.

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

8.1 Subd. 6. **Inalienability of accounts.** No account under the program is subject to
8.2 assignment or alienation, either voluntarily or involuntarily, or to the claims of creditors,
8.3 except for a domestic relations order that assigns all or a portion of an account in the MERP
8.4 to an alternate payee and satisfies the requirements to be considered a qualified domestic
8.5 relations order under section 206(d) of ERISA and section 414(p) of the Internal Revenue
8.6 Code.

8.7 Subd. 7. **Accounts not property of the state or eligible employers.** The assets of the
8.8 Secure Choice trust shall at all times be preserved, invested, and expended solely for the
8.9 purposes of the trust and no property rights therein shall exist in favor of the state or any
8.10 eligible employer. The assets of the Secure Choice trust shall not be transferred or used by
8.11 the state for any purpose other than the purposes of the trust, including appropriate
8.12 administrative expenses of the program. Amounts deposited in the trust shall not constitute
8.13 property of the state and shall not be commingled with state funds, and the state shall have
8.14 no claim to or against, or interest in, the assets of the Secure Choice trust.

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

8.16 Subdivision 1. **Requirement to offer retirement savings plan.** If an eligible employer
8.17 does not execute a participation agreement to become a participating employer in the Secure
8.18 Choice multiple employer retirement plan under section 187.04, the eligible employer shall
8.19 enroll eligible employees in the Secure Choice individual retirement account plan. If an
8.20 eligible employer offered a retirement savings plan within the last two years, the eligible
8.21 employer may not become a participating employer in the MERP, but shall automatically
8.22 enroll eligible employees in the IRAP. An eligible employer may become a participating
8.23 employer in the MERP no earlier than two years after the date as of which all assets in any
8.24 retirement savings plan sponsored by the eligible employer were distributed or otherwise
8.25 transferred to employees, former employees, or any eligible retirement plan, within the
8.26 meaning of section 402(c)(8) of the Internal Revenue Code.

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

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

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

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

9.7 Subd. 4. **No fiduciary responsibility.** Except for the responsibilities described in
 9.8 subdivisions 1 to 3, a participating employer has no obligations to employees and is not a
 9.9 fiduciary or considered to be a fiduciary regarding the Secure Choice trust or the program.
 9.10 Participating employers do not bear responsibility for the administration, investment
 9.11 performance, plan design, or benefits paid to plan participants.

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

9.15 Subd. 6. **Enforcement.** The Minnesota attorney general has the power to enforce the
 9.16 provisions of this chapter. The attorney general may impose, after due process, monthly or
 9.17 quarterly penalties against any eligible employer that fails to comply with this section, in
 9.18 an amount or amounts determined by the board. Proceeds of such penalties, after deducting
 9.19 enforcement expenses, shall be deposited in the Secure Choice administrative fund and are
 9.20 appropriated to the program.

9.21 **Sec. 8. [187.08] SECURE CHOICE RETIREMENT SAVINGS BOARD OF**
 9.22 **DIRECTORS.**

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

9.25 (1) the executive director of the Minnesota State Retirement System;

9.26 (2) the executive director of the State Board of Investment or the executive director's
 9.27 designee;

9.28 (3) three members chosen by the Legislative Commission on Pensions and Retirement,
 9.29 one from each of the following experience categories:

9.30 (i) executive or operations manager with at least ten years' experience in record keeping
 9.31 401(k) plans;

10.1 (ii) executive or operations manager with at least ten years' experience in individual
 10.2 retirement accounts; and

10.3 (iii) executive or other professional with at least ten years' experience in retirement plan
 10.4 investments;

10.5 (4) a human resources or retirement benefits executive from a Fortune 500 company
 10.6 with at least ten years' experience in administering the company's 401(k) plan, appointed
 10.7 by the governor; and

10.8 (5) a small business owner or executive appointed by the governor.

10.9 Subd. 2. **Appointment.** Public members appointed by the governor shall be appointed
 10.10 as provided in section 15.0597.

10.11 Subd. 3. **Terms of initial appointees and deadline for first appointments.** (a) The
 10.12 terms of initial appointees are as follows:

10.13 (1) the executive directors of the Minnesota State Retirement System and the State Board
 10.14 of Investment shall serve indefinitely;

10.15 (2) the members appointed by the Legislative Commission on Pensions and Retirement
 10.16 shall initially serve three, four, and five years, respectively; and

10.17 (3) the governor's appointees shall serve three-year terms.

10.18 (b) The appointing authorities must make their first appointments to the board by January
 10.19 15, 2022.

10.20 Subd. 4. **Membership terms.** Except as provided in subdivision 3 for first appointees,
 10.21 public members serve a term of four years.

10.22 Subd. 5. **Removal; vacancies.** Public members may be removed and vacancies filled,
 10.23 as provided under section 15.0575, subdivisions 4 and 5.

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

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

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

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

- 11.1 (2) establish secure processes for enrolling employees in the IRAP and for transmitting
11.2 employee and employer contributions to custodial accounts or accounts within a trust;
- 11.3 (3) prepare a budget and establish procedures for the payment of costs of administering
11.4 and operating the program;
- 11.5 (4) lease or otherwise procure office space and equipment necessary to operate the
11.6 program;
- 11.7 (5) procure insurance in connection with the property of the program and the activities
11.8 of the board, executive director, and other staff;
- 11.9 (6) accept contributions from employees and from participating employers for the benefit
11.10 of their employees in cash or cash equivalents only;
- 11.11 (7) keep annual administrative expenses as low as possible, but in no event may they
11.12 exceed one percent of the total trust balance, and allocate administrative expenses to each
11.13 employee's account on a pro rata basis, or such other basis as the board determines to be
11.14 equitable;
- 11.15 (8) determine the eligibility of an employer, employee, or other individual to participate
11.16 in the program and review and decide claims for benefits and make factual determinations;
- 11.17 (9) take all actions required or advisable to ensure that the MERP is treated as a single
11.18 plan for purposes of the Internal Revenue Code and ERISA;
- 11.19 (10) prepare information regarding the MERP or IRAP, as applicable, that satisfies the
11.20 requirements for a "summary plan description" under ERISA for dissemination to all
11.21 participating employees and includes the following:
- 11.22 (i) the benefits and risks associated with participating in the MERP or IRAP, as
11.23 applicable;
- 11.24 (ii) procedures for enrolling in the MERP or IRAP, as applicable, electing a different or
11.25 zero percent employee contribution rate, making investment elections, applying for a
11.26 distribution of employee accounts, and making a claim for benefits;
- 11.27 (iii) the federal and state income tax consequences of participating in the IRAP or the
11.28 MERP, as applicable, which may consist of or include the disclosure statement required to
11.29 be distributed by retirement plan trustees or custodians under the Internal Revenue Code
11.30 and the Treasury Regulations thereunder;
- 11.31 (iv) how to obtain additional information on the MERP or IRAP, as applicable; and

12.1 (v) disclaimers of eligible employer and state responsibility, including the following
12.2 statements:

12.3 (A) eligible employees seeking financial, investment, or tax advice should contact their
12.4 own advisors;

12.5 (B) neither eligible employers nor the state is liable for decisions eligible employees
12.6 make regarding their account in the IRAP or MERP, as applicable;

12.7 (C) neither eligible employers nor the state guarantees the accounts in the IRAP or
12.8 MERP, as applicable, or any investment, rate of return, or interest on amounts held in any
12.9 account; and

12.10 (D) neither eligible employers nor the state monitors or has an obligation to monitor any
12.11 eligible employee's eligibility under the Internal Revenue Code to make contributions to an
12.12 account in the IRAP or the MERP, as applicable, or whether the eligible employee's
12.13 contributions to an account in the IRAP or the MERP, as applicable, exceed the maximum
12.14 permissible contribution under the Internal Revenue Code;

12.15 (11) publish an annual audited financial report, prepared according to generally accepted
12.16 accounting principles, on the operations of the program and audited by an independent
12.17 certified public accountant, which shall include but not be limited to direct and indirect
12.18 costs attributable to the use of outside consultants, independent contractors, and other persons
12.19 who are not state employees. The report shall be provided to the chairs and ranking minority
12.20 members of the legislative committees with jurisdiction over jobs and economic development
12.21 and state government finance, the executive directors of the State Board of Investment and
12.22 the Legislative Commission on Pensions and Retirement, and the Legislative Reference
12.23 Library;

12.24 (12) publish an annual report regarding plan outcomes, progress toward savings goals
12.25 established by the board, statistics on eligible employees and participating employers, plan
12.26 expenses, estimated impact of the program on social safety net programs, and penalties and
12.27 violations. The report shall be provided to the chairs and ranking minority members of the
12.28 legislative committees with jurisdiction over jobs and economic development and state
12.29 government finance, the executive directors of the State Board of Investment and the
12.30 Legislative Commission on Pensions and Retirement, and the Legislative Reference Library;

12.31 (13) adopt rules to implement the program;

12.32 (14) properly file all reports required under the Internal Revenue Code and ERISA for
12.33 the MERP and the IRAP;

13.1 (15) at its discretion, seek and accept gifts, grants, and donations to be used for the
 13.2 program, unless such gifts, grants, or donations would result in a conflict of interest relating
 13.3 to the solicitation of service provider for program administration, and deposit such gifts,
 13.4 grants, or donations in the Secure Choice administrative fund;

13.5 (16) at its discretion, seek and accept appropriations from the state or loans from the
 13.6 state or any agency of the state;

13.7 (17) assess the feasibility of multi-state or regional agreements to administer the program
 13.8 through shared administrative resources and, if determined beneficial, enter into contracts,
 13.9 agreements, memorandums of understanding, or other arrangements with any other state
 13.10 or an agency or subdivision of any other state to administer, operate, or manage any part of
 13.11 the program, which may include combining resources, investments, or administrative
 13.12 functions;

13.13 (18) hire, retain, and terminate third-party service providers as the board deems necessary
 13.14 or desirable for the program, including but not limited to the trustees, consultants, investment
 13.15 managers or advisors, custodians, insurance companies, recordkeepers, administrators,
 13.16 consultants, actuaries, legal counsel, auditors, and other professionals, provided that each
 13.17 service provider is authorized to do business in the state; and

13.18 (19) interpret the program's governing documents and this chapter and make all other
 13.19 decisions necessary to administer the program.

13.20 Subd. 9. **Conflict of interest; economic interest statement.** No member of the board
 13.21 may participate in deliberations or vote on any matter before the board that will or is likely
 13.22 to result in direct, measurable economic gain to the member or the member's family. Members
 13.23 of the board shall file with the Campaign Finance and Public Disclosure Board an economic
 13.24 interest statement in a manner as prescribed by section 10A.09, subdivisions 5 and 6.

13.25 Subd. 10. **Liability; indemnification.** A member of the board shall be indemnified and
 13.26 held harmless by the state for the reasonable costs or expenses incurred as a result of any
 13.27 actual or threatened litigation or administrative proceeding arising out of the performance
 13.28 of the member's duties.

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

13.30 Subdivision 1. **Fiduciary duty for MERP.** The members of the board, the State Board
 13.31 of Investment, the executive director, and any person who controls the disposition or
 13.32 investment of any assets of the Secure Choice trust are fiduciaries subject to sections 404
 13.33 to 408 of ERISA, to the extent any of them exercise fiduciary duty.

14.1 Subd. 2. **Fiduciary duty for IRAP.** The members of the board, the State Board of
14.2 Investment, the executive director, and any person who controls the disposition or investment
14.3 of any assets of the Secure Choice trust are fiduciaries subject to chapter 356A and must
14.4 undertake their activities as fiduciaries consistent with chapter 356A.

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

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

14.8 Sec. 11. **[187.11] OTHER STATE AGENCIES TO PROVIDE ASSISTANCE.**

14.9 (a) The board may enter into intergovernmental agreements with the commissioner of
14.10 revenue, the commissioner of labor and industry, and any other state agency that the board
14.11 deems necessary or appropriate to provide outreach, technical assistance, or compliance
14.12 services. Any agency that enters into an intergovernmental agreement with the board pursuant
14.13 to this section shall collaborate and cooperate with the board to provide the outreach,
14.14 technical assistance, or compliance services under any such agreement.

14.15 (b) The commissioner of revenue, the commissioner of labor and industry, and any other
14.16 state agency shall provide information and data on employees, employers, and corporations
14.17 doing business in the state, upon the request of the board or executive director. The state
14.18 agency providing the information or data may require that the board or executive director
14.19 comply with confidentiality requirements as a condition to providing such information or
14.20 data.

14.21 Sec. 12. **[187.12] SEVERABILITY.**

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

14.24 Sec. 13. **EFFECTIVE DATE.**

14.25 Sections 1 to 6 and 8 to 12 are effective the day following final enactment. Section 7 is
14.26 effective the day after the Secure Choice retirement program board of directors opens the
14.27 Secure Choice retirement savings program for enrollment of eligible employees in the IRAP.