

**HOUSE . . . . . No. 1076**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***James J. O'Day***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to secure choice retirement savings plan.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>

<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>

**HOUSE . . . . . No. 1076**

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 1076) of James J. O'Day and others for legislation to establish secure choice retirement savings plans. Financial Services.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

An Act relative to secure choice retirement savings plan.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 29 of the General Laws, as appearing in the 2016 Official Edition,  
2 is hereby amended by inserting after section 64E the following new sections:-

3 Section 64F. Definitions

4 For the purposes of this section, the following definitions shall apply:

5 “Board” means the Secure Choice Retirement Savings Board

6 “Eligible employee”, a person who is employed by an eligible employer and who for any  
7 calendar year has provided (or is expected to provide) 750 or more hours of service to the  
8 eligible employer, with eligibility continuing even if service in later years is less than 750 hours.

9 The term does not include: (i) any employee who is an “active participant: as described in IRC  
10 Section 219(g)(5), without regard to the exclusions for plans described in IRC Section 457(b);

11 (ii) any employee who is enrolled in a payroll deduction IRA maintained or offered by the

12 employee’s employer; (iii) Any employee who is covered by a collective bargaining agreement  
13 that does not provide for participation in the IRAP; (iv) Any employee who has not attained the  
14 age of 18 before the beginning of the calendar year.

15 “Eligible employer”, a person or entity engaged in a specific business, industry,  
16 profession, trade, or other enterprise in the Commonwealth, whether for profit or not for profit  
17 excluding the federal government, the Commonwealth, any county, any municipality, or any of  
18 the Commonwealth’s units or instrumentalities, with the exception that the Commonwealth is  
19 deemed an eligible employer with regard to Personal Care Attendants, Family Child Care  
20 Providers, and other direct or indirect employees of the Commonwealth, including a joint  
21 relationship, who are not eligible to participate in a public employee pension fund within the  
22 Commonwealth. The term does not include any employer that has not been in business at all  
23 during the preceding calendar year.

24 “Participating employer”, an eligible employer that provides a payroll deposit retirement  
25 savings arrangement provided for by this title for eligible employees.

26 “Payroll deduction IRA”, an arrangement by which an employer makes contributions on  
27 behalf of participating employees by remitting a specified portion of the employee’s pay to an  
28 IRA at the same time and manner as other payroll deductions.

29 “IRAP”, the Secure Choice Individual Retirement Account Program.

30 “MERP”, the Secure Choice Multiple-Employer Retirement Account Program.

31 “ERISA”, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.  
32 § 1001 et seq.

33 “Code” or “IRC”, the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1 et seq.

34 “PRIM Board”, the Massachusetts Pension Reserves Investment Management Board.

35 “Qualified Plan”, any plan described in IRC Sections 401(a), 403(a), 403(b), or 457(b).

36 “IRA”, any account of annuity described in IRC Section 408(a) or 408 (b).

37 Section 64G. Responsibilities of Eligible Employers and Exemptions

38 (a) Each eligible employer is required to automatically enroll its eligible employees in the  
39 IRAP.

40 (b) An eligible employer is exempted from subsection a to the extent that it offers each of  
41 its eligible employees the opportunity to participate in a qualified plan or a payroll deduction  
42 IRA.

43 Section 64H. IRAP

44 (a) The Board is responsible for developing and establishing the IRAP.

45 (b) The IRAP shall:

46 (i) Allow eligible individuals employed for compensation in this state to contribute  
47 to an individual account established under the program through payroll deductions

48 (ii) Provide for automatic enrollment of employees and allow employees to opt out of  
49 the plan.

50 (iii) Have a default contribution rate set by the Board by rule.

51 (iv) Offer default escalation and contribution levels that can be increased or decreased  
52 within the limits allowed by the IRC.

53 (v) Pool accounts established under the plan for investment purposes.

54 (vi) Be professionally managed.

55 (vii) Allow the use of private sector partnerships to administer and invest the  
56 contributions to the plan under the supervision and guidance of the Board. Monies in the IRAP  
57 may be invested or reinvested by the Treasurer or may be invested in whole or in part under  
58 contract with the PRIM Board or private money managers, or both, as determined by the Board.

59 (viii) Maintain a separate trust.

60 (ix) Provide for the program's administration in an efficient and cost-effective  
61 manner.

62 (x) Be structured so that it is not governed by ERISA.

63 (xi) Provide the Board with the authority to establish such rules and regulations as it  
64 considers appropriate for the administration of the IRAP, including with regard to the selection  
65 of investment options, the manner of safeguarding contributions and other plan assets, the  
66 payment of administrative expenses, and the purchase of insurance.

67 (xii) Provide for the manner of the payment of benefits, which may include annuities  
68 and/or lump sums.

69 Section 64I. MERP

70 (a) The Board is responsible for developing and establishing the MERP.

- 71 (b) The MERP shall:
- 72 (i) Be qualified under IRC Section 401(a).
- 73 (ii) Be a profit sharing plan as described in IRC Section 401(a)(27)(B).
- 74 (iii) Be a defined contribution plan as described in IRC Section 414(i).
- 75 (iv) Be governed by ERISA.
- 76 (v) Be a multiple employer plan permitting the voluntary participation of employers with  
77 employees working in the Commonwealth.
- 78 (vi) Permit employee contributions, as provided in IRC Section 401(k), through payroll  
79 deductions.
- 80 (vii) Allow for employer contributions as matching contributions, fixed contributions,  
81 or a combination of the two.
- 82 (viii) Have a default, automatic contribution rate for both employees and employers.
- 83 (ix) Offer default escalation of contribution levels that can be increased or decreased  
84 within the limits allowed by the IRC.
- 85 (x) Pool accounts established under the plan for investment.
- 86 (xi) Be professionally managed.
- 87 (xii) Allow the use of private sector partnerships to administer and invest the  
88 contributions to the plan under the supervision and guidance of the Board. Monies in the IRAP

89 may be invested or reinvested by the Treasurer or may be invested in whole or in part under  
90 contract with the PRIM Board of private money managers, or both, as determined by the Board.

91 (xiii) Maintain a separate trust.

92 (xiv) Provide for the Plan's administration in an efficient and cost-effective manner.

93 (xv) Designate the Board as the named fiduciary, within the meaning of ERISA  
94 Section 402(a), and provide that the Board may delegate fiduciary authority as permitted under  
95 ERISA.

96 (xvi) Designate the Board as the plan sponsor and administrator, as defined under  
97 ERISA Section (3)(16).

98 (xvii) Provide the Board with the authority to establish such rules and regulations as it  
99 considers appropriate for the administration of the MERP, including with regard to the selection  
100 of investment options, the manner of safeguarding contributions and other plan assets, the  
101 payment of the administrative expenses, and the purchase of insurance.

102 (xviii) Provide for the manner of the payment of benefits, which may include annuities  
103 and/or lump sums.

#### 104 Section 64J. Composition of the Board

105 (a) There is hereby created within the government of the Commonwealth the Secure  
106 Choice Retirement Savings Board, which shall initially consist of seven members, with the  
107 Treasurer serving as chair, as follows:

108 i. The Treasurer, or his or her designee



- 109           ii.     The Secretary of Administration and Finance, or his or her designee
- 110           iii.     An individual with retirement savings or investment expertise appointed by the
- 111 Senate President
- 112           iv.     A small business representative appointed by the governor
- 113           v.     Two public members appointed by the Treasurer
- 114           vi.     An employee representative appointed by the Speaker of the House

115           (b) Within one year of the date the Board opens the IRAP and MERP for participation,  
116 the Treasurer will remain as Board member and will conduct elections to elect Representative  
117 Board members to represent the interest of participating employers and employees. The  
118 Treasurer will conduct an election among participating employees to elect four of their number  
119 to be Representative Board members from among themselves to represent the interests of  
120 participating employers solely with respect to the MERP. These additional Board members shall  
121 be designated as Representative Board Members, and must continue to participate in the Plan in  
122 order to serve on the Board. If any such Representative Board members ceases to participate in  
123 the Plan, his or her eligibility to continue as a Representative Board member shall cease as well,  
124 and the Board shall make arrangements to hold an election to elect a replacement. The terms of  
125 Representative Board members shall be for three years.

126           Section 64K. Risk Management

127           The Board shall annually prepare and adopt a written statement of investment policy that  
128 includes a risk management and oversight program. The investment policy or policies shall  
129 mitigate risk by maintaining a balanced investment portfolio that provides assurance that no

130 single investment or class of investments will have a disproportionate impact on the total  
131 portfolio. The policy and policies shall also address hedging against longevity risk through the  
132 purchase of annuities or other longevity hedging products. The risk management system is in  
133 place to monitor the risk levels of the Secure Choice Retirement Savings Plan investment  
134 portfolios and ensure that the risks taken are prudent and properly managed. The Board shall be  
135 allowed to decide investment policy for each program while making different investment  
136 decisions with each program within these guidelines. The Board shall decide whether to offer a  
137 choice of investment vehicles to participants.

138 Section 64L. Benefit Amount

139 Interest, earnings, and/or losses, and administrative expenses shall be allocated to  
140 program accounts as prescribed by the Board. An individual's retirement savings benefit under  
141 the program shall be an amount equal to the balance in the individual's program account on the  
142 date the retirement savings benefit becomes payable. The Commonwealth shall have no liability  
143 for the payment of any benefit to any participant in either the IRAP or the MERP.

144 Section 64M. Board Duties

145 (a) In addition to any duties described above, the Board shall have the power and the  
146 authority to do all of the following:

147 (1) Establish one or more payroll deposit retirement savings arrangements for use by  
148 participating employers.

149 (2) Employ staff and/or appoint record keeper, investment managers, custodians,  
150 trustees, consultants, attorneys, and such other advice and assistance as may necessary or

151 desirable to administer the Plan, and determine the duties of the Plan administrator and other staff  
152 as necessary and set their compensation. The Board shall have the authority to make rules and  
153 regulations not inconsistent with this Act.

154 (3) Make provisions for the payment of costs of administration and operation of the  
155 trusts.

156 (4) Evaluate and establish the process by which an eligible employee may contribute a  
157 portion of his or her salary or wages to the Plan for automatic deposit of those contributions. This  
158 may include, but is not limited to, existing processes and arrangements used for the deposit and  
159 administration of tax required to be deducted and withheld relating to the collection of income  
160 tax at source on wages or for the deposit of tax required to be paid under the unemployment  
161 insurance system. This also may include, but is not limited to, financial services companies and  
162 their-party administrators with the capability to receive and process employee information and  
163 contributions for payroll deposit retirement savings arrangements or other arrangements  
164 authorized by this title.

165 (5) Evaluate and establish the process by which a participating employee is able to  
166 contribute for the benefit of its employees to the MERP.

167 (6) Design and establish the process for the enrollment of Plan participants.

168 (7) Procure insurance in connection with the property, assets, or activities of the trust,  
169 including private underwriting and/or reinsurance, to manage risk and insure the retirement  
170 savings rate of return.

171 (8) The Commonwealth shall procure insurance indemnifying each member of the Board  
172 from personal loss or liability resulting from a member's actions or inaction as a member of the  
173 Board, to the extent permitted by ERISA and other governing law.

174 (9) Set default, minimum and maximum contribution levels as well as auto-escalation  
175 policies whereby participating employees' contributions automatically escalate from year to year  
176 until they reach a maximum contribution rate unless the employee changes his or her contribution  
177 rate. Participants will be immediately vested in their account balances.

178 (10) Accept contributions from participating employers for the benefit of their  
179 employees. These contributions shall be in cash or cash equivalents only; securities shall not be  
180 accepted as contributions.

181 (11) Design and establish the process for the enrollment of those self-employed  
182 individuals and employers who do not qualify as eligible employers who choose to voluntarily  
183 participate in the MERP.

184 (12) Arrange for collective, common, and pooled investment of assets of the Plan,  
185 including investments in conjunction with other funds with which those assets are permitted to  
186 be collectively invested, with a view to savings costs through efficiencies and economies of  
187 scale.

188 (13) Allocate administrative fees to each participating employee's account balance on a  
189 pro rata basis, or such other basis as the Board determines to be fair and equitable. The Board  
190 shall keep annual administrative expenses low, but in no event shall they exceed one percent of  
191 the total trust balance.

192 (14) Explore and establish investment options that offer employees ways to secure  
193 retirement income without incurring debt or liabilities to the state.

194 (15) Exercise discretionary authority with regard to:

195 i. If necessary, making determinations of the eligibility of an employer, employee, or  
196 other individual to participate in the Plan;

197 ii. Making factual determinations regarding the Plan;

198 iii. Interpreting the Plan's governing documents; and

199 iv. Such other matters as are necessary for the administration of the Plan.

200 (b) The Board shall publish separate annual audited financial reports, prepared in  
201 accordance with generally accepted accounting principles, on the operations of the IRAP and the  
202 MERP. The annual audit shall be made by an independent certified public accountant and shall  
203 include, but not be limited to, direct and indirect costs attributable to the use of outside  
204 consultants, independent contractors, and any other persons who are not state employees.

205 (c) The Board shall ensure that all reports required under the Code and ERISA are  
206 properly filed for the IRAP and MERP.

207 Section 64N. Employee Information Packet

208 Prior to opening either the IRAP or the MERP for enrollment, the Board shall design and  
209 disseminate to employers an employee information packet for such program. The packet shall  
210 include background information on the programs and appropriate disclosures for employees.

211 Section 64O. Disclosure Form

212 The disclosures shall include, but not be limited to, all of the following:

213 (1) The benefits and risks associated with participating in the relevant program.

214 (2) The mechanics of how to join the respective program.

215 (3) How to opt out of the program.

216 (4) The process for applying for payment of retirement benefits.

217 (5) How to obtain additional information.

218 In addition, the disclosure form shall clearly articulate the following:

219 (1) Employers are not liable for decision employees make pursuant to this bill.

220 (2) The Plan fund is not guaranteed by the Commonwealth.

221 Section 64P. Enforcement

222 (a) The Massachusetts Attorney General shall have the power to enforce the provisions of  
223 this Act.

224 (b) The Attorney General may impose, after due process, penalties against eligible  
225 employers for failure to comply with section 64g of Section 12 of up to \$250 per eligible  
226 employee. Proceeds for such penalties, after deducting enforcing expenses, shall be deposited for  
227 the benefit of the IRAP.

228 (c) The Attorney General shall impose, after due process, penalties against employers  
229 equal to lost earnings and interest on contributions made alter than the deadlines prescribed by  
230 the Board. The Attorney General shall prescribe a methodology for calculating such lost earnings

231 and interest. Proceeds for such penalties shall be deposited for the benefit of the Trust and  
232 credited to the accounts of the affected employee(s) on a pro rata basis.

233 Section 64Q. Liability

234 (a) Employers shall not have any liability for an employee's decision to participate in, or  
235 opt out of, the Secure Choice Retirement Savings Plan.

236 (b) A participating employer shall not be a fiduciary, or considered a fiduciary, with  
237 regard to the operation of the MERP, except with respect to contribution amounts for remitted in  
238 a timely fashion. Participating employers shall not bear responsibility for the administration,  
239 investment, or investment performance of the IRAP or the MERP. Such employers shall not be  
240 liable with regard to investment returns, Plan design, and benefits paid to Plan participants.

241 Section 64R. Savings Clause

242 The provision of this Act are severable. In the event that portions of this Act are declared  
243 invalid or unenforceable, the remaining terms and provisions that are not affected thereby shall  
244 remain in force and effect.

245 Section 64S. Taxes

246 The IRAP and MERP are exempt from Massachusetts securities law and are tax exempt  
247 under the law of the Commonwealth.

248 SECTION 2. (a) The effective date of this act shall be January 1, 2020.

249 (b) Notwithstanding the forgoing, Section 64G shall be effective as follows:

250           i.       For each eligible employer with 100 or more eligible employees, three months  
251 after the Board opens the Plan for enrollment.

252           ii.       For each eligible employer with 50 or more but fewer than 100 eligible  
253 employees, six months after the Board opens the Plan for enrollment.

254           iii.       For each eligible employer with fewer than 50 eligible employees, nine months  
255 after the Board opens the Plan for enrollment.

256           iv.       The Board may delay these effective dates in its discretion for no more than 12  
257 additional months.