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I N A S S E M B L Y

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Introduced by M. of A. RODRIGUEZ, COOK, MONTESANO, SEPULVEDA, RICHARDSON, MAYER, ROBINSON, SOLAGES, DILAN, PRETLOW, PICHARDO, RIVERA, BLAKE, O'DONNELL, NOLAN, BENEDETTO, ROZIC, ARROYO, TITONE, DAVILA, JOYNER, FARRELL, DenDEKKER, HOOPER, LINARES, WALKER, GOTTFRIED, AUBRY, SANTABARBARA, GUNTHER, PERRY, LUPARDO, HUNTER, BICHOTTE, CRESPO, HARRIS, JEAN-PIERRE, BRAUNSTEIN, LAVINE, HEVESI, DINOWITZ, RUSSELL, BRINDISI, BARRON, MOSLEY, STIRPE, FAHY, CASTORINA, RAIA, ROSENTHAL, SKOUFIS, LIFTON, WRIGHT, WEPRIN, RAMOS, ORTIZ, QUART, CANCEL, SEAWRIGHT, SCHIMEL, GALEF, SIMOTAS, RYAN, BRONSON, PEOPLES-STOKES, TITUS -- Multi-Sponsored by -- M. of A. BRENNAN, BUCHWALD, CERETTO, CROUCH, CURRAN, ENGLEBRIGHT, GLICK, HYNDMAN, KEARNS, LENTOL, LOPEZ, LUPINACCI, MARKEY, McDONOUGH, McLAUGHLIN, RA, SIMANOWITZ, SKARTADOS, STECK, THIELE -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law and the state finance law, in relation to enacting the New York state secure choice savings program act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11645-17-6

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state secure choice savings program act".

3 S 2. The retirement and social security law is amended by adding a new
4 article 14-C to read as follows:

5 ARTICLE 14-C

6 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM

7 SECTION 570. DEFINITIONS.

8 571. PROGRAM ESTABLISHED.

9 572. COMPOSITION OF THE BOARD.

10 573. FIDUCIARY DUTY.

11 574. DUTIES OF THE BOARD.

12 575. RISK MANAGEMENT.

13 576. INVESTMENT FIRMS.

14 577. INVESTMENT OPTIONS.

15 578. BENEFITS.

16 579. EMPLOYER AND EMPLOYEE INFORMATION PACKETS AND DISCLOSURE
17 FORMS.

18 580. PROGRAM IMPLEMENTATION AND ENROLLMENT.

19 581. PAYMENTS.

20 582. DUTY AND LIABILITY OF THE STATE.

21 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS.

22 584. AUDIT AND REPORTS.

23 585. PENALTIES.

24 586. DELAYED IMPLEMENTATION.

25 S 570. DEFINITIONS. ALL TERMS SHALL HAVE THE SAME MEANING AS WHEN USED
26 IN A COMPARABLE CONTEXT IN THE INTERNAL REVENUE CODE. AS USED IN THIS
27 ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

28 1. "BOARD" SHALL MEAN THE NEW YORK SECURE CHOICE SAVINGS BOARD ESTAB-
29 LISHED UNDER THIS ARTICLE.

30 2. "SUPERINTENDENT" SHALL MEAN THE SUPERINTENDENT OF THE DEPARTMENT OF
31 FINANCIAL SERVICES.

32 2-A. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE.

33 3. "EMPLOYEE" SHALL MEAN ANY INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE
34 OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER, AND WHO EARNED WAGES WORKING
35 FOR AN EMPLOYER IN NEW YORK STATE DURING A CALENDAR YEAR.

36 4. "EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSINESS,
37 INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK STATE,
38 WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) HAS AT ALL TIMES DURING
39 THE PREVIOUS CALENDAR YEAR EMPLOYED AT LEAST TWENTY-FIVE EMPLOYEES IN
40 THE STATE, (II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS, AND (III) HAS
41 NOT OFFERED A QUALIFIED RETIREMENT PLAN, INCLUDING, BUT NOT LIMITED TO,
42 A PLAN QUALIFIED UNDER SECTIONS 401(A), 401(K), 403(A), 403(B), 408(K),
43 408(P) OR 457(B) OF THE INTERNAL REVENUE CODE OF 1986 IN THE PRECEDING
44 TWO YEARS.

45 5. "ENROLLEE" SHALL MEAN ANY EMPLOYEE WHO IS ENROLLED IN THE PROGRAM.

46 6. "FUND" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM
47 FUND.

48 7. "INTERNAL REVENUE CODE" SHALL MEAN THE INTERNAL REVENUE CODE OF
49 1986, OR ANY SUCCESSOR LAW, IN EFFECT FOR THE CALENDAR YEAR.

50 8. "IRA" SHALL MEAN A ROTH IRA (INDIVIDUAL RETIREMENT ACCOUNT).

51 9. "PARTICIPATING EMPLOYER" SHALL MEAN AN EMPLOYER OR SMALL EMPLOYER
52 THAT PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS
53 PROVIDED FOR BY THIS ARTICLE FOR ITS EMPLOYEES WHO ARE ENROLLEES IN THE
54 PROGRAM.

1 10. "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" SHALL MEAN AN
2 ARRANGEMENT BY WHICH A PARTICIPATING EMPLOYER ALLOWS ENROLLEES TO REMIT
3 PAYROLL DEDUCTION CONTRIBUTIONS TO THE PROGRAM.

4 11. "PROGRAM" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS
5 PROGRAM.

6 12. "SMALL EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSI-
7 NESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK
8 STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) EMPLOYED LESS THAN
9 TWENTY-FIVE EMPLOYEES AT ANY ONE TIME IN THE STATE THROUGHOUT THE PREVI-
10 OUS CALENDAR YEAR, OR (II) HAS BEEN IN BUSINESS LESS THAN TWO YEARS, OR
11 BOTH ITEMS (I) AND (II), BUT THAT NOTIFIES THE COMPTROLLER THAT IT IS
12 INTERESTED IN BEING A PARTICIPATING EMPLOYER.

13 13. "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING OF SECTION
14 219(F)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED BY AN ENROLLEE
15 FROM A PARTICIPATING EMPLOYER DURING THE CALENDAR YEAR.

16 S 571. PROGRAM ESTABLISHED. A RETIREMENT SAVINGS PROGRAM IN THE FORM
17 OF AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA, KNOWN AS THE NEW YORK
18 STATE SECURE CHOICE SAVINGS PROGRAM, IS HEREBY ESTABLISHED AND SHALL BE
19 ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING GREATER RETIRE-
20 MENT SAVINGS FOR PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND
21 PORTABLE MANNER.

22 S 572. COMPOSITION OF THE BOARD. THERE IS HEREBY CREATED THE NEW YORK
23 STATE SECURE CHOICE SAVINGS BOARD.

24 1. THE BOARD SHALL CONSIST OF THE FOLLOWING EIGHT MEMBERS:

25 (A) THE STATE COMPTROLLER, OR HIS OR HER DESIGNEE, WHO SHALL SERVE AS
26 CHAIR;

27 (B) THE SUPERINTENDENT, OR HIS OR HER DESIGNEE;

28 (C) TWO PUBLIC REPRESENTATIVES WITH EXPERTISE IN RETIREMENT SAVINGS
29 PLAN ADMINISTRATION OR INVESTMENT, OR BOTH, ONE OF WHOM SHALL BE
30 APPOINTED BY THE SPEAKER OF THE ASSEMBLY AND ONE OF WHOM SHALL BE
31 APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE;

32 (D) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS, APPOINTED BY THE
33 GOVERNOR;

34 (E) A REPRESENTATIVE OF ENROLLEES, APPOINTED BY THE GOVERNOR;

35 (F) THE CHAIR OF THE ASSEMBLY GOVERNMENTAL EMPLOYEES COMMITTEE; AND

36 (G) THE CHAIR OF THE SENATE CIVIL SERVICE AND PENSION COMMITTEE.

37 2. MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION BUT MAY BE
38 REIMBURSED FOR NECESSARY TRAVEL EXPENSES INCURRED IN CONNECTION WITH
39 THEIR BOARD DUTIES FROM FUNDS APPROPRIATED FOR THE PURPOSE.

40 3. THE INITIAL APPOINTMENTS SHALL BE AS FOLLOWS: ONE PUBLIC REPRESENTATIVE FOR FOUR YEARS; THE REPRESENTATIVE OF PARTICIPATING EMPLOYERS FOR THREE YEARS; AND THE REPRESENTATIVE OF ENROLLEES FOR THREE YEARS. THEREAFTER, ALL THE GOVERNOR'S APPOINTEES SHALL BE FOR TERMS OF FOUR YEARS.

44 4. A VACANCY IN THE TERM OF AN APPOINTED BOARD MEMBER SHALL BE FILLED
45 FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL
46 APPOINTMENT.

47 5. EACH APPOINTMENT BY THE GOVERNOR SHALL BE SUBJECT TO APPROVAL BY
48 THE COMPTROLLER, WHO, UPON APPROVAL, SHALL CERTIFY HIS OR HER APPROVAL
49 TO THE SECRETARY OF STATE.

50 S 573. FIDUCIARY DUTY. THE BOARD, THE INDIVIDUAL MEMBERS OF THE BOARD,
51 THE TRUSTEES, ANY OTHER AGENTS APPOINTED OR ENGAGED BY THE BOARD, AND
52 ALL PERSONS SERVING AS PROGRAM STAFF SHALL DISCHARGE THEIR DUTIES WITH
53 RESPECT TO THE PROGRAM SOLELY IN THE INTEREST OF THE PROGRAM'S ENROLLEES
54 AND BENEFICIARIES AS FOLLOWS:

1 1. FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO ENROLLEES AND
2 BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE
3 PROGRAM;

4 2. BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER
5 THE PREVAILING CIRCUMSTANCES THAT A PRUDENT PERSON ACTING IN A LIKE
6 CAPACITY AND FAMILIAR WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF AN
7 ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS; AND

8 3. BY USING ANY CONTRIBUTIONS PAID BY EMPLOYEES AND EMPLOYERS REMIT-
9 TING EMPLOYEES' OWN CONTRIBUTIONS INTO THE TRUST EXCLUSIVELY FOR THE
10 PURPOSE OF PAYING BENEFITS TO THE ENROLLEES OF THE PROGRAM, FOR THE COST
11 OF ADMINISTRATION OF THE PROGRAM, AND FOR INVESTMENTS MADE FOR THE BENE-
12 FIT OF THE PROGRAM.

13 S 574. DUTIES OF THE BOARD. IN ADDITION TO THE OTHER DUTIES AND
14 RESPONSIBILITIES STATED IN THIS ARTICLE, THE BOARD SHALL:

15 1. CAUSE THE PROGRAM TO BE DESIGNED, ESTABLISHED AND OPERATED IN A
16 MANNER THAT:

17 (A) ACCORDS WITH BEST PRACTICES FOR RETIREMENT SAVINGS VEHICLES;

18 (B) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND INVESTMENT PRACTICES;

19 (C) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION FOR PARTIC-
20 IPATING EMPLOYERS AND ENROLLEES;

21 (D) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING INVESTMENT
22 FUNDS;

23 (E) ENSURES THE PORTABILITY OF BENEFITS; AND

24 (F) PROVIDES FOR THE DEACCUMULATION OF ENROLLEE ASSETS IN A MANNER
25 THAT MAXIMIZES FINANCIAL SECURITY IN RETIREMENT.

26 2. APPOINT A TRUSTEE TO THE IRA FUND IN COMPLIANCE WITH SECTION 408 OF
27 THE INTERNAL REVENUE CODE.

28 3. EXPLORE AND ESTABLISH INVESTMENT OPTIONS, SUBJECT TO THIS ARTICLE,
29 THAT OFFER ENROLLEES RETURNS ON CONTRIBUTIONS AND THE CONVERSION OF
30 INDIVIDUAL RETIREMENT SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT
31 INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE.

32 4. ESTABLISH THE PROCESS BY WHICH INTEREST, INVESTMENT EARNINGS, AND
33 INVESTMENT LOSSES ARE ALLOCATED TO INDIVIDUAL PROGRAM ACCOUNTS ON A PRO
34 RATA BASIS AND ARE COMPUTED AT THE INTEREST RATE ON THE BALANCE OF AN
35 INDIVIDUAL'S ACCOUNT.

36 5. MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE ADMINISTRATION OF
37 THE PROGRAM AND FUND, INCLUDING, BUT NOT LIMITED TO, RETAINING AND
38 CONTRACTING WITH INVESTMENT MANAGERS, PRIVATE FINANCIAL INSTITUTIONS,
39 OTHER FINANCIAL AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES, COUNSEL,
40 AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECES-
41 SARY.

42 6. CONDUCT A REVIEW OF THE PERFORMANCE OF ANY INVESTMENT VENDORS EVERY
43 FOUR YEARS, INCLUDING, BUT NOT LIMITED TO, A REVIEW OF RETURNS, FEES,
44 AND CUSTOMER SERVICE. A COPY OF REVIEWS SHALL BE POSTED TO THE BOARD'S
45 INTERNET WEBSITE.

46 7. DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS NEEDED TO ADMINIS-
47 TER THE PROGRAM AND ASSEMBLE SUCH A STAFF, INCLUDING, AS NEEDED, EMPLOY-
48 ING STAFF, AND APPOINTING A PROGRAM ADMINISTRATOR.

49 8. CAUSE MONEYS IN THE FUND TO BE HELD AND INVESTED AS POOLED INVEST-
50 MENTS DESCRIBED IN THIS ARTICLE, WITH A VIEW TO ACHIEVING COST SAVINGS
51 THROUGH EFFICIENCIES AND ECONOMIES OF SCALE.

52 9. EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN ENROLLEE IS ABLE TO
53 CONTRIBUTE A PORTION OF HIS OR HER WAGES TO THE PROGRAM FOR AUTOMATIC
54 DEPOSIT OF THOSE CONTRIBUTIONS AND THE PROCESS BY WHICH THE PARTICIPAT-
55 ING EMPLOYER PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT
56 TO FORWARD THOSE CONTRIBUTIONS AND RELATED INFORMATION TO THE PROGRAM,

1 INCLUDING, BUT NOT LIMITED TO, CONTRACTING WITH FINANCIAL SERVICE COMPA-
2 NIES AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE AND
3 PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR PAYROLL DEPOSIT
4 RETIREMENT SAVINGS ARRANGEMENTS OR SIMILAR ARRANGEMENTS.

5 10. DESIGN AND ESTABLISH THE PROCESS FOR ENROLLMENT INCLUDING THE
6 PROCESS BY WHICH AN EMPLOYEE CAN OPT NOT TO PARTICIPATE IN THE PROGRAM,
7 SELECT A CONTRIBUTION LEVEL, SELECT AN INVESTMENT OPTION, AND TERMINATE
8 PARTICIPATION IN THE PROGRAM.

9 11. EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN EMPLOYEE MAY VOLUN-
10 TARILY ENROLL IN AND MAKE CONTRIBUTIONS TO THE PROGRAM.

11 12. ACCEPT ANY GRANTS, APPROPRIATIONS, OR OTHER MONEYS FROM THE STATE,
12 ANY UNIT OF FEDERAL, STATE, OR LOCAL GOVERNMENT, OR ANY OTHER PERSON,
13 FIRM, PARTNERSHIP, OR CORPORATION SOLELY FOR DEPOSIT INTO THE FUND,
14 WHETHER FOR INVESTMENT OR ADMINISTRATIVE PURPOSES.

15 13. EVALUATE THE NEED FOR, AND PROCURE AS NEEDED, INSURANCE AGAINST
16 ANY AND ALL LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES
17 OF THE PROGRAM, AND INDEMNIFY AS NEEDED EACH MEMBER OF THE BOARD FROM
18 PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION
19 AS A MEMBER OF THE BOARD.

20 14. MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE COSTS AND
21 EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION OF THE PROGRAM.
22 SUBJECT TO APPROPRIATION, THE STATE MAY PAY ADMINISTRATIVE COSTS ASSOCI-
23 ATED WITH THE CREATION AND MANAGEMENT OF THE PROGRAM UNTIL SUFFICIENT
24 ASSETS ARE AVAILABLE IN THE FUND FOR THAT PURPOSE. THEREAFTER, ALL
25 ADMINISTRATIVE COSTS OF THE FUND, INCLUDING REPAYMENT OF ANY START-UP
26 FUNDS PROVIDED BY THE STATE, SHALL BE PAID ONLY OUT OF MONEYS ON DEPOSIT
27 THEREIN. HOWEVER, PRIVATE FUNDS OR FEDERAL FUNDING RECEIVED IN ORDER TO
28 IMPLEMENT THE PROGRAM UNTIL THE FUND IS SELF-SUSTAINING SHALL NOT BE
29 REPAYED UNLESS THOSE FUNDS WERE OFFERED CONTINGENT UPON THE PROMISE OF
30 SUCH REPAYMENT. THE BOARD SHALL KEEP ANNUAL ADMINISTRATIVE EXPENSES AS
31 LOW AS POSSIBLE, BUT IN NO EVENT SHALL THEY EXCEED 0.75% OF THE TOTAL
32 TRUST BALANCE.

33 15. ALLOCATE ADMINISTRATIVE FEES TO INDIVIDUAL RETIREMENT ACCOUNTS IN
34 THE PROGRAM ON A PRO RATA BASIS.

35 16. SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN ACCORDANCE WITH
36 LIMITS ESTABLISHED FOR IRAS BY THE INTERNAL REVENUE CODE.

37 17. FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND EMPLOYEES.

38 18. FACILITATE COMPLIANCE BY THE PROGRAM WITH ALL APPLICABLE REQUIRE-
39 MENTS FOR THE PROGRAM UNDER THE INTERNAL REVENUE CODE, INCLUDING TAX
40 QUALIFICATION REQUIREMENTS OR ANY OTHER APPLICABLE LAW AND ACCOUNTING
41 REQUIREMENTS.

42 19. CARRY OUT THE DUTIES AND OBLIGATIONS OF THE PROGRAM IN AN EFFEC-
43 TIVE, EFFICIENT, AND LOW-COST MANNER.

44 20. EXERCISE ANY AND ALL OTHER POWERS REASONABLY NECESSARY FOR THE
45 EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND PROVISIONS OF THIS ARTICLE
46 PERTAINING TO THE PROGRAM.

47 21. DEPOSIT INTO THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND
48 ALL GRANTS, GIFTS, DONATIONS, FEES, AND EARNINGS FROM INVESTMENTS FROM
49 THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND THAT ARE USED TO
50 RECOVER ADMINISTRATIVE COSTS. ALL EXPENSES OF THE BOARD SHALL BE PAID
51 FROM THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND.

52 22. DETERMINE WITHDRAWAL PROVISIONS, SUCH AS ECONOMIC HARDSHIPS,
53 PORTABILITY AND LEAKAGE.

54 23. DETERMINE EMPLOYEE RIGHTS AND ENFORCEMENT OF PENALTIES.

55 S 575. RISK MANAGEMENT. THE BOARD SHALL ANNUALLY PREPARE AND ADOPT A
56 WRITTEN STATEMENT OF INVESTMENT POLICY THAT INCLUDES A RISK MANAGEMENT

1 AND OVERSIGHT PROGRAM. THIS INVESTMENT POLICY SHALL PROHIBIT THE BOARD,
2 PROGRAM, AND FUND FROM BORROWING FOR INVESTMENT PURPOSES. THE RISK
3 MANAGEMENT AND OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN
4 EFFECTIVE RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS
5 OF THE PROGRAM AND FUND PORTFOLIO, TO ENSURE THAT THE RISKS TAKEN ARE
6 PRUDENT AND PROPERLY MANAGED, TO PROVIDE AN INTEGRATED PROCESS FOR OVER-
7 ALL RISK MANAGEMENT, AND TO ASSESS INVESTMENT RETURNS AS WELL AS RISK TO
8 DETERMINE IF THE RISKS TAKEN ARE ADEQUATELY COMPENSATED COMPARED TO
9 APPLICABLE PERFORMANCE BENCHMARKS AND STANDARDS. THE BOARD SHALL CONSID-
10 ER THE STATEMENT OF INVESTMENT POLICY AND ANY CHANGES IN THE INVESTMENT
11 POLICY AT A PUBLIC HEARING.

12 S 576. INVESTMENT FIRMS. 1. THE BOARD SHALL ENGAGE, AFTER AN OPEN BID
13 PROCESS, AN INVESTMENT MANAGER OR MANAGERS TO INVEST THE FUND AND ANY
14 OTHER ASSETS OF THE PROGRAM. MONEYS IN THE FUND MAY BE INVESTED OR REIN-
15 VESTED BY THE COMPTROLLER OR MAY BE INVESTED IN WHOLE OR IN PART. IN
16 SELECTING THE INVESTMENT MANAGER OR MANAGERS, THE BOARD SHALL TAKE INTO
17 CONSIDERATION AND GIVE WEIGHT TO THE INVESTMENT MANAGER'S FEES AND
18 CHARGES IN ORDER TO REDUCE THE PROGRAM'S ADMINISTRATIVE EXPENSES.

19 2. THE INVESTMENT MANAGER OR MANAGERS SHALL COMPLY WITH ANY AND ALL
20 APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS WELL AS
21 ANY AND ALL RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE BOARD
22 WITH RESPECT TO THE PROGRAM AND THE INVESTMENT OF THE FUND, INCLUDING,
23 BUT NOT LIMITED TO, THE INVESTMENT POLICY.

24 3. THE INVESTMENT MANAGER OR MANAGERS SHALL PROVIDE SUCH REPORTS AS
25 THE BOARD DEEMS NECESSARY FOR THE BOARD TO OVERSEE EACH INVESTMENT
26 MANAGER'S PERFORMANCE AND THE PERFORMANCE OF THE FUND.

27 S 577. INVESTMENT OPTIONS. 1. THE BOARD SHALL ESTABLISH AS AN INVEST-
28 MENT OPTION A LIFE-CYCLE FUND WITH A TARGET DATE BASED UPON THE AGE OF
29 THE ENROLLEE. THIS SHALL BE THE DEFAULT INVESTMENT OPTION FOR ENROLLEES
30 WHO FAIL TO ELECT AN INVESTMENT OPTION UNLESS AND UNTIL THE BOARD DESIG-
31 NATES BY RULE A NEW INVESTMENT OPTION AS THE DEFAULT.

32 2. THE BOARD MAY ALSO ESTABLISH ANY OR ALL OF THE FOLLOWING ADDITIONAL
33 INVESTMENT OPTIONS:

34 (A) A CONSERVATIVE PRINCIPAL PROTECTION FUND;

35 (B) A GROWTH FUND;

36 (C) A SECURE RETURN FUND WHOSE PRIMARY OBJECTIVE IS THE PRESERVATION
37 OF THE SAFETY OF PRINCIPAL AND THE PROVISION OF A STABLE AND LOW-RISK
38 RATE OF RETURN; IF THE BOARD ELECTS TO ESTABLISH A SECURE RETURN FUND,
39 THE BOARD MAY PROCURE ANY INSURANCE, ANNUITY, OR OTHER PRODUCT TO INSURE
40 THE VALUE OF ENROLLEES' ACCOUNTS AND GUARANTEE A RATE OF RETURN; THE
41 COST OF SUCH FUNDING MECHANISM SHALL BE PAID OUT OF THE FUND; UNDER NO
42 CIRCUMSTANCES SHALL THE BOARD, PROGRAM, FUND, THE STATE, OR ANY PARTIC-
43 IPATING EMPLOYER ASSUME ANY LIABILITY FOR INVESTMENT OR ACTUARIAL RISK;
44 THE BOARD SHALL DETERMINE WHETHER TO ESTABLISH SUCH INVESTMENT OPTIONS
45 BASED UPON AN ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL,
46 FEASIBILITY, AND EASE OF IMPLEMENTATION; OR

47 (D) AN ANNUITY FUND.

48 3. IF THE BOARD ELECTS TO ESTABLISH A SECURE RETURN FUND, THE BOARD
49 SHALL THEN DETERMINE WHETHER SUCH OPTION SHALL REPLACE THE TARGET DATE
50 OR LIFE-CYCLE FUND AS THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO DO
51 NOT ELECT AN INVESTMENT OPTION. IN MAKING SUCH DETERMINATION, THE BOARD
52 SHALL CONSIDER THE COST, RISK PROFILE, BENEFIT LEVEL, AND EASE OF
53 ENROLLMENT IN THE SECURE RETURN FUND. THE BOARD MAY AT ANY TIME THERE-
54 AFTER REVISIT THIS QUESTION AND, BASED UPON AN ANALYSIS OF THESE CRITE-
55 RIA, ESTABLISH EITHER THE SECURE RETURN FUND OR THE LIFE-CYCLE FUND AS
56 THE DEFAULT FOR ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION.

1 S 578. BENEFITS. INTEREST, INVESTMENT EARNINGS, AND INVESTMENT LOSSES
2 SHALL BE ALLOCATED TO INDIVIDUAL PROGRAM ACCOUNTS AS ESTABLISHED BY THE
3 BOARD PURSUANT TO THIS ARTICLE. AN INDIVIDUAL'S RETIREMENT SAVINGS BENE-
4 FIT UNDER THE PROGRAM SHALL BE AN AMOUNT EQUAL TO THE BALANCE IN THE
5 INDIVIDUAL'S PROGRAM ACCOUNT ON THE DATE THE RETIREMENT SAVINGS BENEFIT
6 BECOMES PAYABLE. THE STATE SHALL HAVE NO LIABILITY FOR THE PAYMENT OF
7 ANY BENEFIT TO ANY ENROLLEE IN THE PROGRAM.

8 S 579. EMPLOYER AND EMPLOYEE INFORMATION PACKETS AND DISCLOSURE FORMS.

9 1. PRIOR TO THE OPENING OF THE PROGRAM FOR ENROLLMENT, THE BOARD SHALL
10 DESIGN AND DISSEMINATE TO ALL EMPLOYERS AN EMPLOYER INFORMATION PACKET
11 AND AN EMPLOYEE INFORMATION PACKET, WHICH SHALL INCLUDE BACKGROUND
12 INFORMATION ON THE PROGRAM, APPROPRIATE DISCLOSURES FOR EMPLOYEES, AND
13 INFORMATION REGARDING THE VENDOR INTERNET WEBSITE DESCRIBED.

14 2. THE BOARD SHALL PROVIDE FOR THE CONTENTS OF BOTH THE EMPLOYEE
15 INFORMATION PACKET AND THE EMPLOYER INFORMATION PACKET. THE EMPLOYEE
16 INFORMATION PACKET SHALL BE MADE AVAILABLE IN ENGLISH, SPANISH, HAITIAN
17 CREOLE, CHINESE, KOREAN, RUSSIAN, ARABIC, AND ANY OTHER LANGUAGE THE
18 COMPTROLLER DEEMS NECESSARY.

19 3. THE EMPLOYEE INFORMATION PACKET SHALL INCLUDE A DISCLOSURE FORM.
20 THE DISCLOSURE FORM SHALL EXPLAIN, BUT NOT BE LIMITED TO, ALL OF THE
21 FOLLOWING:

22 (A) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING CONTRIBUTIONS TO THE
23 PROGRAM;

24 (B) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE PROGRAM;

25 (C) HOW TO OPT OUT OF THE PROGRAM;

26 (D) HOW TO PARTICIPATE IN THE PROGRAM WITH A LEVEL OF EMPLOYEE
27 CONTRIBUTIONS OTHER THAN THREE PERCENT;

28 (E) THAT THEY ARE NOT REQUIRED TO PARTICIPATE OR CONTRIBUTE MORE THAN
29 THREE PERCENT;

30 (F) THAT THEY CAN OPT OUT AFTER THEY HAVE ENROLLED;

31 (G) THE PROCESS FOR WITHDRAWAL OF RETIREMENT SAVINGS;

32 (H) HOW TO OBTAIN ADDITIONAL INFORMATION ABOUT THE PROGRAM;

33 (I) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD CONTACT FINANCIAL
34 ADVISORS, THAT PARTICIPATING EMPLOYERS ARE NOT IN A POSITION TO PROVIDE
35 FINANCIAL ADVICE, AND THAT PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR
36 DECISIONS EMPLOYEES MAKE PURSUANT TO THIS ARTICLE;

37 (J) INFORMATION ON HOW TO ACCESS ANY FINANCIAL LITERACY PROGRAMS
38 IMPLEMENTED BY THE COMPTROLLER;

39 (K) THAT THE PROGRAM IS NOT AN EMPLOYER-SPONSORED RETIREMENT PLAN; AND

40 (L) THAT THE PROGRAM FUND IS NOT GUARANTEED BY THE STATE.

41 4. THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE A FORM FOR AN
42 EMPLOYEE TO NOTE HIS OR HER DECISION TO OPT OUT OF PARTICIPATION IN THE
43 PROGRAM OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS
44 OTHER THAN THREE PERCENT.

45 5. PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION PACK-
46 ET TO EMPLOYEES UPON LAUNCH OF THE PROGRAM. PARTICIPATING EMPLOYERS
47 SHALL SUPPLY THE EMPLOYEE INFORMATION PACKET TO NEW EMPLOYEES AT THE
48 TIME OF HIRING, AND NEW EMPLOYEES MAY OPT OUT OF PARTICIPATION IN THE
49 PROGRAM OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS
50 OTHER THAN THREE PERCENT AT THAT TIME.

51 S 580. PROGRAM IMPLEMENTATION AND ENROLLMENT. EXCEPT AS OTHERWISE
52 PROVIDED IN THIS ARTICLE, THE PROGRAM SHALL BE IMPLEMENTED, AND ENROLL-
53 MENT OF EMPLOYEES SHALL BEGIN, WITHIN TWENTY-FOUR MONTHS AFTER THE
54 EFFECTIVE DATE OF THIS ARTICLE. THE PROVISIONS OF THIS SECTION SHALL BE
55 IN FORCE AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT.

1 1. EACH PARTICIPATING EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT
2 RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EACH EMPLOYEE TO PARTICIPATE IN
3 THE PROGRAM AT MOST NINE MONTHS AFTER THE BOARD OPENS THE PROGRAM FOR
4 ENROLLMENT.

5 2. PARTICIPATING EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PROGRAM
6 EACH OF THEIR EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION IN THE
7 PROGRAM USING THE FORM DESCRIBED IN THIS ARTICLE AND SHALL PROVIDE
8 PAYROLL DEDUCTION RETIREMENT SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND
9 DEPOSIT, ON BEHALF OF SUCH EMPLOYEES, THESE FUNDS INTO THE PROGRAM.
10 SMALL EMPLOYERS WITH LESS THAN TWENTY-FIVE EMPLOYEES MAY, BUT ARE NOT
11 REQUIRED TO, OPT INTO THE PROGRAM, BUT ONLY IF THEIR EMPLOYEES OPT IN TO
12 PROVIDE PAYROLL DEDUCTION RETIREMENT SAVINGS ARRANGEMENTS FOR EACH
13 EMPLOYEE WHO ELECTS TO PARTICIPATE IN THE PROGRAM.

14 3. ENROLLEES SHALL HAVE THE ABILITY TO SELECT A CONTRIBUTION LEVEL
15 INTO THE FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR
16 AS A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S TAXA-
17 BLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL REVENUE CODE. ENROL-
18 LEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY TIME, SUBJECT TO RULES
19 PROMULGATED BY THE BOARD. IF AN ENROLLEE FAILS TO SELECT A CONTRIBUTION
20 LEVEL USING THE FORM DESCRIBED IN THIS ARTICLE, THEN HE OR SHE SHALL
21 CONTRIBUTE THREE PERCENT OF HIS OR HER WAGES TO THE PROGRAM, PROVIDED
22 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL CONTRIB-
23 UTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE AMOUNT FOR THE
24 ENROLLEE'S TAXABLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL
25 REVENUE CODE.

26 4. ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE PERMITTED
27 INVESTMENT OPTIONS LISTED IN THIS ARTICLE. ENROLLEES MAY CHANGE THEIR
28 INVESTMENT OPTION AT ANY TIME, SUBJECT TO RULES PROMULGATED BY THE
29 BOARD. IN THE EVENT THAT AN ENROLLEE FAILS TO SELECT AN INVESTMENT
30 OPTION, THAT ENROLLEE SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED
31 BY THE BOARD AS THE DEFAULT UNDER THIS ARTICLE. IF THE BOARD HAS NOT
32 SELECTED A DEFAULT INVESTMENT OPTION UNDER THIS ARTICLE, THEN AN ENROL-
33 LEE WHO FAILS TO SELECT AN INVESTMENT OPTION SHALL BE PLACED IN THE
34 LIFE-CYCLE FUND INVESTMENT OPTION.

35 5. FOLLOWING INITIAL IMPLEMENTATION OF THE PROGRAM PURSUANT TO THIS
36 SECTION, AT LEAST ONCE EVERY YEAR, PARTICIPATING EMPLOYERS SHALL DESIG-
37 NATE AN OPEN ENROLLMENT PERIOD DURING WHICH EMPLOYEES WHO PREVIOUSLY
38 OPTED OUT OF THE PROGRAM MAY ENROLL IN THE PROGRAM.

39 6. AN EMPLOYEE WHO OPTS OUT OF THE PROGRAM WHO SUBSEQUENTLY WANTS TO
40 PARTICIPATE THROUGH THE PARTICIPATING EMPLOYER'S PAYROLL DEPOSIT RETIRE-
41 MENT SAVINGS ARRANGEMENT MAY ONLY ENROLL DURING THE PARTICIPATING
42 EMPLOYER'S DESIGNATED OPEN ENROLLMENT PERIOD OR IF PERMITTED BY THE
43 PARTICIPATING EMPLOYER AT AN EARLIER TIME.

44 7. EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY TYPE
45 OF EMPLOYER-SPONSORED RETIREMENT PLAN INSTEAD OF HAVING A PAYROLL DEPOS-
46 IT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE
47 PROGRAM.

48 8. AN ENROLLEE MAY TERMINATE HIS OR HER PARTICIPATION IN THE PROGRAM
49 AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD.

50 9. (A) THE STATE COMPTROLLER SHALL ESTABLISH A WEBSITE REGARDING THE
51 SECURE CHOICE SAVINGS PROGRAM WHICH SHALL BE ACCESSIBLE THROUGH THE
52 STATE COMPTROLLER'S OWN WEBSITE.

53 (B) THE BOARD SHALL, IN CONJUNCTION WITH THE OFFICE OF THE STATE COMP-
54 TROLLER, ESTABLISH AND MAINTAIN A SECURE WEBSITE WHEREIN ENROLLEES MAY
55 LOG IN AND ACQUIRE INFORMATION REGARDING CONTRIBUTIONS AND INVESTMENT
56 INCOME ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PROGRAM

1 ACCOUNTS FOR THE REPORTING PERIOD. SUCH WEBSITE MUST ALSO INCLUDE INFOR-
2 MATION FOR THE ENROLLEES REGARDING OTHER OPTIONS AVAILABLE TO THE
3 EMPLOYEE AND HOW THEY CAN TRANSFER THEIR ACCOUNTS TO OTHER PROGRAMS
4 SHOULD THEY WISH TO DO SO. SUCH WEBSITE MAY INCLUDE ANY OTHER INFORMA-
5 TION REGARDING THE PROGRAM AS THE BOARD MAY DETERMINE.

6 S 581. PAYMENTS. EMPLOYEE CONTRIBUTIONS DEDUCTED BY THE PARTICIPATING
7 EMPLOYER THROUGH PAYROLL DEDUCTION SHALL BE PAID BY THE PARTICIPATING
8 EMPLOYER TO THE FUND USING ONE OR MORE PAYROLL DEPOSIT RETIREMENT
9 SAVINGS ARRANGEMENTS ESTABLISHED BY THE BOARD UNDER THIS ARTICLE,
10 EITHER:

11 1. ON OR BEFORE THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH
12 THE COMPENSATION OTHERWISE WOULD HAVE BEEN PAYABLE TO THE EMPLOYEE IN
13 CASH; OR

14 2. BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD FOR MAKING SUCH
15 PAYMENTS, BUT NOT LATER THAN THE DUE DATE FOR THE DEPOSIT OF TAX
16 REQUIRED TO BE DEDUCTED AND WITHHELD RELATING TO COLLECTION OF INCOME
17 TAX AT SOURCE ON WAGES OR FOR THE DEPOSIT OF TAX REQUIRED TO BE PAID
18 UNDER THE UNEMPLOYMENT INSURANCE SYSTEM FOR THE PAYROLL PERIOD TO WHICH
19 SUCH PAYMENTS RELATE.

20 S 582. DUTY AND LIABILITY OF THE STATE. 1. THE STATE SHALL HAVE NO
21 DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT SAVINGS
22 BENEFITS ACCRUED BY ANY ENROLLEE UNDER THE PROGRAM. ANY FINANCIAL
23 LIABILITY FOR THE PAYMENT OF RETIREMENT SAVINGS BENEFITS IN EXCESS OF
24 FUNDS AVAILABLE UNDER THE PROGRAM SHALL BE BORNE SOLELY BY THE ENTITIES
25 WITH WHOM THE BOARD CONTRACTS TO PROVIDE INSURANCE TO PROTECT THE VALUE
26 OF THE PROGRAM.

27 2. NO STATE BOARD, COMMISSION, OR AGENCY, OR ANY OFFICER, EMPLOYEE, OR
28 MEMBER THEREOF IS LIABLE FOR ANY LOSS OR DEFICIENCY RESULTING FROM
29 PARTICULAR INVESTMENTS SELECTED UNDER THIS ARTICLE, EXCEPT FOR ANY
30 LIABILITY THAT ARISES OUT OF A BREACH OF FIDUCIARY DUTY.

31 S 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS. 1. PARTICIPAT-
32 ING EMPLOYERS SHALL NOT HAVE ANY LIABILITY FOR AN EMPLOYEE'S DECISION TO
33 PARTICIPATE IN, OR OPT OUT OF, THE PROGRAM OR FOR THE INVESTMENT DECI-
34 SIONS OF THE BOARD OR OF ANY ENROLLEE.

35 2. A PARTICIPATING EMPLOYER SHALL NOT BE A FIDUCIARY, OR CONSIDERED TO
36 BE A FIDUCIARY, OVER THE PROGRAM. A PARTICIPATING EMPLOYER SHALL NOT
37 BEAR RESPONSIBILITY FOR THE ADMINISTRATION, INVESTMENT, OR INVESTMENT
38 PERFORMANCE OF THE PROGRAM. A PARTICIPATING EMPLOYER SHALL NOT BE LIABLE
39 WITH REGARD TO INVESTMENT RETURNS, PROGRAM DESIGN, AND BENEFITS PAID TO
40 PROGRAM PARTICIPANTS.

41 S 584. AUDIT AND REPORTS. 1. THE BOARD SHALL ANNUALLY SUBMIT:

42 (A) AN AUDITED FINANCIAL REPORT, PREPARED IN ACCORDANCE WITH GENERALLY
43 ACCEPTED ACCOUNTING PRINCIPLES, ON THE OPERATIONS OF THE PROGRAM DURING
44 EACH CALENDAR YEAR BY JULY FIRST OF THE FOLLOWING YEAR TO THE GOVERNOR,
45 THE COMPTROLLER, THE SUPERINTENDENT OF FINANCIAL SERVICES AND THE SENATE
46 AND ASSEMBLY; AND

47 (B) A REPORT PREPARED BY THE BOARD, WHICH SHALL INCLUDE, BUT IS NOT
48 LIMITED TO, A SUMMARY OF THE BENEFITS PROVIDED BY THE PROGRAM, INCLUDING
49 THE NUMBER OF ENROLLEES IN THE PROGRAM, THE PERCENTAGE AND AMOUNTS OF
50 INVESTMENT OPTIONS AND RATES OF RETURN, AND SUCH OTHER INFORMATION THAT
51 IS RELEVANT TO MAKE A FULL, FAIR, AND EFFECTIVE DISCLOSURE OF THE OPER-
52 ATIONS OF THE PROGRAM AND THE FUND. THE ANNUAL AUDIT SHALL BE MADE BY AN
53 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND SHALL INCLUDE, BUT IS NOT
54 LIMITED TO, DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF OUTSIDE
55 CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER PERSONS WHO ARE NOT
56 STATE EMPLOYEES FOR THE ADMINISTRATION OF THE PROGRAM.

1 2. IN ADDITION TO ANY OTHER STATEMENTS OR REPORTS REQUIRED BY LAW, THE
2 BOARD SHALL PROVIDE PERIODIC REPORTS AT LEAST ANNUALLY TO ENROLLEES,
3 REPORTING CONTRIBUTIONS AND INVESTMENT INCOME ALLOCATED TO, WITHDRAWALS
4 FROM, AND BALANCES IN THEIR PROGRAM ACCOUNTS FOR THE REPORTING PERIOD.
5 SUCH REPORTS MAY INCLUDE ANY OTHER INFORMATION REGARDING THE PROGRAM AS
6 THE BOARD MAY DETERMINE.

7 S 585. PENALTIES. 1. AN EMPLOYER WHO FAILS WITHOUT REASONABLE CAUSE TO
8 ENROLL AN EMPLOYEE IN THE PROGRAM WITHIN THE TIME PRESCRIBED UNDER THIS
9 ARTICLE SHALL BE SUBJECT TO A PENALTY EQUAL TO:

10 (A) TWO HUNDRED FIFTY DOLLARS FOR EACH EMPLOYEE FOR EACH CALENDAR YEAR
11 OR PORTION OF A CALENDAR YEAR DURING WHICH THE EMPLOYEE NEITHER WAS
12 ENROLLED IN THE PROGRAM NOR HAD ELECTED OUT OF PARTICIPATION IN THE
13 PROGRAM; OR

14 (B) FOR EACH CALENDAR YEAR BEGINNING AFTER THE DATE A PENALTY HAS BEEN
15 ASSESSED WITH RESPECT TO AN EMPLOYEE, FIVE HUNDRED DOLLARS FOR ANY
16 PORTION OF THAT CALENDAR YEAR DURING WHICH SUCH EMPLOYEE CONTINUES TO BE
17 UNENROLLED WITHOUT ELECTING OUT OF PARTICIPATION IN THE PROGRAM.

18 2. AFTER DETERMINING THAT AN EMPLOYER IS SUBJECT TO PENALTY UNDER THIS
19 SECTION FOR A CALENDAR YEAR, THE COMPTROLLER SHALL ISSUE A NOTICE OF
20 PROPOSED ASSESSMENT TO SUCH EMPLOYER, STATING THE NUMBER OF EMPLOYEES
21 FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION AND THE NUMBER OF
22 EMPLOYEES FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION FOR SUCH
23 CALENDAR YEAR, AND THE TOTAL AMOUNT OF PENALTIES PROPOSED. UPON THE
24 EXPIRATION OF NINETY DAYS AFTER THE DATE ON WHICH A NOTICE OF PROPOSED
25 ASSESSMENT WAS ISSUED, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED
26 ASSESSED, UNLESS THE EMPLOYER HAD FILED A PROTEST WITH THE COMPTROLLER
27 UNDER THIS SECTION. IF, WITHIN NINETY DAYS AFTER THE DATE ON WHICH IT
28 WAS ISSUED, A PROTEST OF A NOTICE OF PROPOSED ASSESSMENT IS FILED UNDER
29 THIS SECTION, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED ASSESSED
30 UPON THE DATE WHEN THE DECISION OF THE COMPTROLLER WITH RESPECT TO THE
31 PROTEST BECOMES FINAL.

32 3. A WRITTEN PROTEST AGAINST THE PROPOSED ASSESSMENT SHALL BE FILED
33 WITH THE COMPTROLLER IN SUCH FORM AS THE COMPTROLLER MAY BY RULE
34 PRESCRIBE, SETTING FORTH THE GROUNDS ON WHICH SUCH PROTEST IS BASED. IF
35 SUCH A PROTEST IS FILED WITHIN NINETY DAYS AFTER THE DATE THE NOTICE OF
36 PROPOSED ASSESSMENT IS ISSUED, THE COMPTROLLER SHALL RECONSIDER THE
37 PROPOSED ASSESSMENT AND SHALL GRANT THE EMPLOYER A HEARING. AS SOON AS
38 PRACTICABLE AFTER SUCH RECONSIDERATION AND HEARING, THE COMPTROLLER
39 SHALL ISSUE A NOTICE OF DECISION TO THE EMPLOYER, SETTING FORTH THE
40 COMPTROLLER'S FINDINGS OF FACT AND THE BASIS OF DECISION. THE DECISION
41 OF THE COMPTROLLER SHALL BECOME FINAL:

42 (A) IF NO ACTION FOR REVIEW OF THE DECISION IS COMMENCED, ON THE DATE
43 ON WHICH THE TIME FOR COMMENCEMENT OF SUCH REVIEW HAS EXPIRED; OR

44 (B) IF A TIMELY ACTION FOR REVIEW OF THE DECISION IS COMMENCED, ON THE
45 DATE ALL PROCEEDINGS IN COURT FOR THE REVIEW OF SUCH ASSESSMENT HAVE
46 TERMINATED OR THE TIME FOR THE TAKING THEREOF HAS EXPIRED WITHOUT SUCH
47 PROCEEDINGS BEING INSTITUTED.

48 4. AS SOON AS PRACTICABLE AFTER THE PENALTIES SPECIFIED IN A NOTICE OF
49 PROPOSED ASSESSMENT ARE DEEMED ASSESSED, THE COMPTROLLER SHALL GIVE
50 NOTICE TO THE EMPLOYER LIABLE FOR ANY UNPAID PORTION OF SUCH ASSESSMENT,
51 STATING THE AMOUNT DUE AND DEMANDING PAYMENT. IF AN EMPLOYER NEGLECTS OR
52 REFUSES TO PAY THE ENTIRE LIABILITY SHOWN ON THE NOTICE AND DEMAND WITH-
53 IN TEN DAYS AFTER THE NOTICE AND DEMAND IS ISSUED, THE UNPAID AMOUNT OF
54 THE LIABILITY SHALL BE A LIEN IN FAVOR OF THE STATE UPON ALL PROPERTY
55 AND RIGHTS TO PROPERTY, WHETHER REAL OR PERSONAL, BELONGING TO THE
56 EMPLOYER.

1 5. AN EMPLOYER WHO HAS OVERPAID A PENALTY ASSESSED UNDER THIS SECTION
2 MAY FILE A CLAIM FOR REFUND WITH THE COMPTROLLER. A CLAIM SHALL BE IN
3 WRITING IN SUCH FORM AS THE COMPTROLLER MAY BY RULE PRESCRIBE AND SHALL
4 STATE THE SPECIFIC GROUNDS UPON WHICH IT IS FOUNDED. AS SOON AS PRACTI-
5 CABLE AFTER A CLAIM FOR REFUND IS FILED, THE COMPTROLLER SHALL EXAMINE
6 IT AND EITHER ISSUE A REFUND OR ISSUE A NOTICE OF DENIAL. IF SUCH A
7 PROTEST IS FILED, THE COMPTROLLER SHALL RECONSIDER THE DENIAL AND GRANT
8 THE EMPLOYER A HEARING. AS SOON AS PRACTICABLE AFTER SUCH RECONSIDER-
9 ATION AND HEARING, THE COMPTROLLER SHALL ISSUE A NOTICE OF DECISION TO
10 THE EMPLOYER. THE NOTICE SHALL SET FORTH BRIEFLY THE COMPTROLLER'S FIND-
11 INGS OF FACT AND THE BASIS OF DECISION IN EACH CASE DECIDED IN WHOLE OR
12 IN PART ADVERSELY TO THE EMPLOYER. A DENIAL OF A CLAIM FOR REFUND
13 BECOMES FINAL NINETY DAYS AFTER THE DATE OF ISSUANCE OF THE NOTICE OF
14 THE DENIAL EXCEPT FOR SUCH AMOUNTS DENIED AS TO WHICH THE EMPLOYER HAS
15 FILED A PROTEST WITH THE COMPTROLLER. IF A PROTEST HAS BEEN TIMELY
16 FILED, THE DECISION OF THE COMPTROLLER SHALL BECOME FINAL:

17 (A) IF NO ACTION FOR REVIEW OF THE DECISION IS COMMENCED ON THE DATE
18 ON WHICH THE TIME FOR COMMENCEMENT OF SUCH REVIEW HAS EXPIRED; OR

19 (B) IF A TIMELY ACTION FOR REVIEW OF THE DECISION IS COMMENCED ON THE
20 DATE ALL PROCEEDINGS IN COURT FOR THE REVIEW OF SUCH ASSESSMENT HAVE
21 TERMINATED OR THE TIME FOR THE TAKING THEREOF HAS EXPIRED WITHOUT SUCH
22 PROCEEDINGS BEING INSTITUTED.

23 6. NO NOTICE OF PROPOSED ASSESSMENT MAY BE ISSUED WITH RESPECT TO A
24 CALENDAR YEAR AFTER JUNE THIRTIETH OF THE FOURTH SUBSEQUENT CALENDAR
25 YEAR. NO CLAIM FOR REFUND MAY BE FILED MORE THAN ONE YEAR AFTER THE DATE
26 OF PAYMENT OF THE AMOUNT TO BE REFUNDED.

27 7. WHENEVER NOTICE IS REQUIRED BY THIS SECTION, IT MAY BE GIVEN OR
28 ISSUED BY MAILING IT BY FIRST-CLASS MAIL ADDRESSED TO THE PERSON
29 CONCERNED AT HIS OR HER LAST KNOWN ADDRESS.

30 8. ALL BOOKS AND RECORDS AND OTHER PAPERS AND DOCUMENTS RELEVANT TO
31 THE DETERMINATION OF ANY PENALTY DUE UNDER THIS SECTION SHALL, AT ALL
32 TIMES DURING BUSINESS HOURS OF THE DAY, BE SUBJECT TO INSPECTION BY THE
33 COMPTROLLER OR ITS DULY AUTHORIZED AGENTS AND EMPLOYEES.

34 9. THE COMPTROLLER MAY REQUIRE EMPLOYERS TO REPORT INFORMATION RELE-
35 VANT TO THEIR COMPLIANCE WITH THIS ARTICLE ON TAX RETURNS AND FAILURE TO
36 PROVIDE THE REQUESTED INFORMATION ON A RETURN SHALL CAUSE SUCH RETURN TO
37 BE TREATED AS UNPROCESSABLE.

38 10. FOR PURPOSES OF ANY PROVISION OF STATE LAW ALLOWING THE COMP-
39 TROLLER OR ANY OTHER AGENCY OF THIS STATE TO OFFSET AN AMOUNT OWED TO A
40 TAXPAYER AGAINST A TAX LIABILITY OF THAT TAXPAYER OR ALLOWING THE COMP-
41 TROLLER TO OFFSET AN OVERPAYMENT OF TAX AGAINST ANY LIABILITY OWED TO
42 THE STATE, A PENALTY ASSESSED UNDER THIS SECTION SHALL BE DEEMED TO BE A
43 TAX LIABILITY OF THE EMPLOYER AND ANY REFUND DUE TO AN EMPLOYER SHALL BE
44 DEEMED TO BE AN OVERPAYMENT OF TAX OF THE EMPLOYER.

45 11. EXCEPT AS PROVIDED IN THIS SUBDIVISION, ALL INFORMATION RECEIVED
46 BY THE COMPTROLLER FROM RETURNS FILED BY AN EMPLOYER OR FROM ANY INVE-
47 STIGATION CONDUCTED UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE CONFID-
48 ENTIAL, EXCEPT FOR OFFICIAL PURPOSES WITHIN THE OFFICE OF THE COMP-
49 TROLLER OR PURSUANT TO OFFICIAL PROCEDURES FOR COLLECTION OF PENALTIES
50 ASSESSED UNDER THIS ARTICLE. NOTHING CONTAINED IN THIS SUBDIVISION
51 SHALL PREVENT THE DIRECTOR FROM PUBLISHING OR MAKING AVAILABLE TO THE
52 PUBLIC REASONABLE STATISTICS CONCERNING THE OPERATION OF THIS ARTICLE
53 WHEREIN THE CONTENTS OF RETURNS ARE GROUPED INTO AGGREGATES IN SUCH A
54 WAY THAT THE SPECIFIC INFORMATION OF ANY EMPLOYER SHALL NOT BE
55 DISCLOSED. NOTHING CONTAINED IN THIS SUBDIVISION SHALL PREVENT THE
56 DIRECTOR FROM DIVULGING INFORMATION TO AN AUTHORIZED REPRESENTATIVE OF

1 THE EMPLOYER OR TO ANY PERSON PURSUANT TO A REQUEST OR AUTHORIZATION
2 MADE BY THE EMPLOYER OR BY AN AUTHORIZED REPRESENTATIVE OF THE EMPLOYER.

3 12. CIVIL PENALTIES AND FEES COLLECTED UNDER THIS ARTICLE SHALL BE
4 DEPOSITED WITH THE COMPTROLLER FOR PURPOSES DEDICATED TO THE ADMINIS-
5 TRATION OF THE PROGRAM.

6 13. THE COMPTROLLER MAY CHARGE THE BOARD INCURRED EXPENSES FOR ITS
7 COSTS IN PERFORMING ITS DUTIES UNDER THIS SECTION TO THE EXTENT THAT
8 SUCH COSTS HAVE NOT BEEN RECOVERED FROM PENALTIES IMPOSED UNDER THIS
9 SECTION.

10 14. THIS SECTION SHALL BECOME OPERATIVE NINE MONTHS AFTER THE BOARD
11 NOTIFIES THE DIRECTOR THAT THE PROGRAM HAS BEEN IMPLEMENTED. UPON
12 RECEIPT OF SUCH NOTIFICATION FROM THE BOARD, THE COMPTROLLER SHALL IMME-
13 DIATELY POST ON ITS INTERNET WEBSITE A NOTICE STATING THAT THIS SECTION
14 IS OPERATIVE AND THE DATE THAT IT IS FIRST OPERATIVE. THIS NOTICE SHALL
15 INCLUDE A STATEMENT THAT RATHER THAN ENROLLING EMPLOYEES IN THE PROGRAM
16 UNDER THIS ARTICLE, EMPLOYERS MAY SPONSOR AN ALTERNATIVE ARRANGEMENT.

17 S 586. DELAYED IMPLEMENTATION. IF THE BOARD DOES NOT OBTAIN ADEQUATE
18 FUNDS TO IMPLEMENT THE PROGRAM WITHIN THE TIME FRAME SET FORTH UNDER
19 THIS ARTICLE AND IS SUBJECT TO APPROPRIATION, THE BOARD MAY DELAY THE
20 IMPLEMENTATION OF THE PROGRAM.

21 S 3. The state finance law is amended by adding two new sections 99-aa
22 and 99-bb to read as follows:

23 S 99-AA. NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND. 1. THERE
24 IS HEREBY ESTABLISHED WITHIN THE JOINT CUSTODY OF THE COMMISSIONER OF
25 TAXATION AND FINANCE AND THE STATE COMPTROLLER IN CONSULTATION WITH THE
26 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE
27 KNOWN AS THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND.

28 2. THE FUND SHALL INCLUDE THE INDIVIDUAL RETIREMENT ACCOUNTS OF ENROL-
29 LEES, WHICH SHALL BE ACCOUNTED FOR AS INDIVIDUAL ACCOUNTS.

30 3. MONEYS IN THE FUND SHALL CONSIST OF MONEYS RECEIVED FROM ENROLLEES
31 AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC PAYROLL DEDUCTIONS AND
32 CONTRIBUTIONS TO SAVINGS MADE UNDER THE NEW YORK STATE SECURE CHOICE
33 SAVINGS PROGRAM PURSUANT TO ARTICLE FOURTEEN-C OF THE RETIREMENT AND
34 SOCIAL SECURITY LAW.

35 4. THE FUND SHALL BE OPERATED IN A MANNER DETERMINED BY THE NEW YORK
36 STATE SECURE CHOICE SAVINGS PROGRAM BOARD, PROVIDED THAT THE FUND IS
37 OPERATED SO THAT THE ACCOUNTS OF ENROLLEES ESTABLISHED UNDER THE PROGRAM
38 MEET THE REQUIREMENTS FOR IRAS UNDER THE INTERNAL REVENUE CODE.

39 5. THE AMOUNTS DEPOSITED IN THE FUND SHALL NOT CONSTITUTE PROPERTY OF
40 THE STATE AND THE FUND SHALL NOT BE CONSTRUED TO BE A DEPARTMENT, INSTI-
41 TUTION, OR AGENCY OF THE STATE. AMOUNTS ON DEPOSIT IN THE FUND SHALL NOT
42 BE COMMINGLED WITH STATE FUNDS AND THE STATE SHALL HAVE NO CLAIM TO OR
43 AGAINST, OR INTEREST IN, SUCH FUNDS.

44 S 99-BB. NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND. 1. THERE
45 IS HEREBY ESTABLISHED WITHIN THE JOINT CUSTODY OF THE COMMISSIONER OF
46 TAXATION AND FINANCE AND THE STATE COMPTROLLER IN CONSULTATION WITH THE
47 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE
48 KNOWN AS THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND.

49 2. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
50 MONEYS IN THE ADMINISTRATIVE FUND TO PAY FOR ADMINISTRATIVE EXPENSES IT
51 INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER THE NEW YORK STATE SECURE
52 CHOICE SAVINGS PROGRAM PURSUANT TO ARTICLE FOURTEEN-C OF THE RETIREMENT
53 AND SOCIAL SECURITY LAW.

54 3. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
55 MONEYS IN THE ADMINISTRATIVE FUND TO COVER START-UP ADMINISTRATIVE

1 EXPENSES IT INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER ARTICLE FOUR-
2 TEEN-C OF THE RETIREMENT AND SOCIAL SECURITY LAW.

3 4. THE ADMINISTRATIVE FUND MAY RECEIVE ANY GRANTS OR OTHER MONEYS
4 DESIGNATED FOR ADMINISTRATIVE PURPOSES FROM THE STATE, OR ANY UNIT OF
5 FEDERAL OR LOCAL GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR
6 CORPORATION. ANY INTEREST EARNINGS THAT ARE ATTRIBUTABLE TO MONEYS IN
7 THE ADMINISTRATIVE FUND MUST BE DEPOSITED INTO THE ADMINISTRATIVE FUND.

8 S 4. This act shall take effect immediately.