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October 24, 2016

AGENDA ITEM 04  
INFORMATION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

*Summary of Senate Bill 1234*

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***Summary***

In 2012, the California State Legislature passed and the Governor signed Senate Bills 1234 and 923 which added Sections 100000-100044 to Title 21 of the Government code (“existing statute”) to establish the California Secure Choice Retirement Savings Investment Board (“the Board”). The Board was tasked with conducting a market analysis, program design, and financial feasibility study (“the study”) to determine if the California Secure Choice Retirement Savings Program (“Secure Choice” or “the Program”) would be financially feasible and to make recommendations on how to best design the Program. The Board completed the study in February 2016 and in March submitted the results of the study and their recommendations for implementing legislation to the Legislature.

Senate President pro Tempore, Kevin de León took the Board’s recommendations and incorporated them in Senate Bill 1234 (“SB 1234” or “the bill”). On August 31, 2016, the bill passed out of the Legislature and onto the Governor’s desk who signed it September 29, 2016. The bill goes into effect January 1, 2017 at which point a \$1.9 million loan from the General Fund, included in the Budget Act of 2016, would be available to the Board for implementation.

The bill includes a wide array of specific detail regarding duties required of the Board, powers and authority granted to the Board, and specifications on how the Program and Board shall operate. While the contents of the bill are largely consistent with the original bills, it does include many adjustments to those provisions and includes some entirely new items.

What follows in this memorandum is a summary of the key items included in SB 1234 and related statutes organized by sections prescribing how the Program and Board shall operate, the responsibilities required by the Board; and powers and authority granted to the Board. Notations are included where the final bill differs from the existing statute.

Program design and operation – employers, employees, and the Board

The Bill and existing statutes prescribe how the Program would operate for employers and employees and how the Board may administer it. Below are some of the key items included in the Bill and existing statute:

### *Employers*

After the Program is implemented, employers with more than five employees are required to provide their employees access to an employer-sponsored retirement plan or Secure Choice. Application of the mandate varies for eligible employers depending on the number of their employees. The Bill gives the Board the ability to extend the deadline for the employer mandate. The mandate for employer participation is as follows:

- Within 12 months after the Board opens the program for enrollment, eligible employers with more than 100 eligible employees shall have a payroll deposit retirement savings arrangement.
- Within 24 months after the Board opens the program for enrollment, eligible employers with more than 50 eligible employees shall have a payroll deposit arrangement.
- Within 36 months after the Board opens the program for enrollment, all other eligible employers shall have a payroll deposit retirement savings arrangement. [GC § 100032 (a-e)]
- Each eligible employer that, without good cause, fails to allow its eligible employees to participate in Secure Choice shall pay a penalty of \$250 per eligible employee on or before 90 days after service of notice by the Director of the Employment Development Department (EDD) If found to be in noncompliance 180 days or more after the notice, an additional penalty of five hundred dollars (\$500) per eligible employee shall be paid by the employer. [Unemployment Insurance Code § 1088.9]
- An employer shall be exempt from the mandate if they provide an employer-sponsored retirement plan such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, Savings Incentive Match Plan for Employees (SIMPLE) plan, or an automatic payroll deduction IRA [GC § 100032(g)(1-2)]
- Employers shall disseminate to their employees an information packet designed by the Board that provides information about the program and disclosures that address program operations. [GC § 100014(a)]
- New language: the Board shall include comprehensive employer education and outreach in the program, with emphasis on employers with less than 100 employees. To be developed in consultation with stakeholders and the integration of a website to assist employers, toll-free help line, live presentations, and targeted outreach to small businesses with 10 or less employees. [GC § 100046(e)(f)]
- New language: The Board shall include a provider of in-home supportive services (IHSS) among eligible employers should it determine, and the Director of the State Department of Social Services and Director of the Department of Finance certify, that such a provider is an eligible employer under the program and it determines inclusion of IHSS providers can be implemented at reasonable costs. Mention of IHSS workers is a new feature of SB 1234 [GC § 100046(a)]. The bill also amends Section 12302.2 of the Welfare and Institutions code to clarify how the payment into the accounts of IHSS workers should be made.

### *Employees*

- Each eligible employee will be required to acknowledge that they have read the disclosures and understands their content. They will then be enrolled in the program

unless they elect not to participate in the program by making a notation on the opt-out form [GC § 100032(f)(1)]

- An eligible employee may terminate their participation in the Program at any time [GC § 100032(h)]
- An employee that opts out may enroll during a designated enrollment period at least once every two years. [GC § 100032(f)(2)]
- Unless otherwise specified by the employee, a participating employee shall automatically contribute 3% of their annual salary or wages to the Program [GC § 100032(i)] The bill gives the Board authority to adjust the default contribution amount to no less than 2% and no more than 5%. [GC § 100032(j)]
- New language: The Board may implement annual automatic escalation of employee contributions by no more than 1% of salary per calendar year, not to exceed 8% of total salary. A participating employee may set their automatic escalation rate and may elect to opt out of automatic escalation [GC § 100032(k)(1-3)]

#### *Program operation*

- The Budget Act of 2016 allows the Board to receive up to \$1.9 million as a loan from the General Fund to support the administrative costs of the Board. The loan would be required to be repaid by June 30, 2022, with interest calculated at the rate earned by the [Pooled Money Investment Account](#) at the time of transfer [§ 2.00 of [Senate Bill 826](#)]
- New language: The Bill differs from the existing statute by requiring the Program fees to remain below 1% only after the first six years of operation, rather than throughout the existence of the Program [GC § 100004(d)]
- New language: Secure Choice accounts will have the same status and be treated the same as any other IRA for purposes of determining eligibility or benefit levels for means tested programs. [GC § 100049]
- Statute still requires the Board to establish, prior to opening the program for enrollment, a Retirement Investments Clearing House on its internet website if there is sufficient interest by vendors to participate and provide the necessary funding. [GC § 100016]

#### Board responsibilities

The bill prescribes the Board duties it must perform prior to implementation and throughout the Program's operation. While many of its responsibilities would likely be carried out by consultants hired by the Board, the Board would have the responsibility to oversee and administer the program. Among the duties required of the Board are the following:

#### **Prior to implementation**

##### Investments

- Design and implement the Program and approve an investment management entity or entities. New Language: SB 1234 includes a requirement for the Board to establish managed accounts invested in U.S. Treasuries, *myRA*'s, or similar investments for up to the first three years of program operation. The Board may only invest in *myRA*'s if contributions and investment returns are not used to pay any costs of administration [GC § 100002(e-f)]
- New language: During the first three years, the Board shall develop and implement an investment policy that defines the program's investment objectives and shall establish

policies and procedures enabling investment objectives to be met in a prudent manner. The board may also develop investment option recommendations that address risk-sharing and smoothing of market losses and gains. Investment option recommendations may include, but are not limited to, the creation of a reserve fund or the establishment of customized investment products. Implementation of these options would be contingent upon legislative approval. [GC § 100002(e)(2)(b)]

#### Educational materials:

- Design and disseminate to employers through EDD an employee information packet to be provided to employees at the time of hiring and/or during Secure Choice enrollment periods that provides background about the program and disclosures that the employer is not liable for the employee's decisions nor can provide financial advice. The packet shall include an opt-out form for an employee to note their decision to opt out of participation in the Program. New language: The bill specifies that the packet be made available in an electronic format and the Board will include a method for employees to acknowledge that they have read and understand the disclosures—the previous version of the bill required an employee signature. [GC § 100014(a-g)]
- New language: The Bill includes specific requirements for the Board to consult and collaborate with employer representatives and other stakeholder groups in conducting their outreach and customer service. The bill requires the Board to consult with employer representatives in developing the administrative structure of the Program. The Board is also required to provide comprehensive employer education and outreach through a website, toll-free help line, web training, and live presentations to business associations. The Board shall also provide comprehensive worker education and outreach. [GC § 100046(c-f)]

#### Administrative costs:

- Determine necessary costs associated with outreach, customer service, enforcement, staffing and consultant costs, and all other costs necessary to administer the Program. [GC § 100046(c)]

#### Reporting:

- New language: Report to the Governor and Legislature the specific date on which the Program will start to enroll participants and that the following criteria have been met:
  - The U.S. Department of Labor (DOL) has finalized a regulation setting forth a safe harbor for savings arrangements established by states for non-governmental employees for the purposes of the Employee Retirement Income Security Act (ERISA)
  - The Program is structured in a manner to meet the criteria of the DOL regulation
  - The payroll deduction IRA arrangements offered by the Program qualify for the favorable income tax treatment ordinarily accorded to IRA arrangements under the Internal Revenue Code
  - The Board has defined in regulation the roles and responsibilities of employers pursuant to the criteria outlined in the DOL regulation

- The Board has adopted a third-party administrator operational model that limits employer interaction and transactions with the employee to the extent feasible [GC § 100043(b)(1-2)]

### **Continuous duties following implementation**

- New language: At least three years following implementation, annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program [GC § 10002(e)(3)]
- File a report on investments made by the Board and a report of deposits in financial institutions no later than 30 days following the close of each month [GC § 100002(f)]
- Designate an open enrollment period at least once every two-years during which eligible employees that had previously opted out of the Program shall be given the employee information packet with disclosure and opt-out form [GC § 100032(f)(2)]

### **Board powers and authority**

Among other things, the bill gives the Board authority to do the following:

- The Board may adopt regulations it deems necessary to implement the Program [GC § 100010(b)]
- Disseminate educational information designed to educate participants about benefits of planning and saving for retirement [GC § 100012(c)]
- Disseminate information about tax credits for small businesses and the Saver's Credit [GC § 100012(d)]
- Submit progress and status reports to participating employers and eligible employees [GC § 100012(e)]
- If necessary, determine the eligibility of an employer, employee, or other individual to participate in the program [GC § 100012(f)]
- Allow participating employers to make their own contributions to their employees' IRAs, provided such contributions are permitted under the Internal Revenue Code and would not cause the program to be treated as an employee benefit plan under the federal ERISA [GC § 100012(j)]
- Evaluate and establish the process through which an individual or employee of a nonparticipating employer may participate in the program [GC § 100012(k)]