
JUNE 26, 2017

AGENDA ITEM 6
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Resolution No. 2017-05: Resolution of the California Secure Choice Retirement Savings Investment Board Relating to the Approval to Amend the Memorandum of Understanding with Other States to Share Costs for Legal Services

Background

Agreement CSCRSIB02-14 (“Agreement”) between the California Secure Choice Retirement Savings Investment Board (“Board”) and K&L Gates, LLP for legal services was executed to identify and advise on legal issues necessary for the implementation of the California Secure Choice Retirement Savings Program (“Secure Choice” or “the Program”). Those services include ensuring that the Program accounts qualify for the federal income tax treatment ordinarily afforded to Individual Retirement Accounts (IRAs) under the Internal Revenue Code, the Program not be considered an employee benefit plan subject to the federal Employee Retirement Income Security Act, and the Program can operate in a manner that complies with all applicable state and federal laws.

In March 2016, the Board authorized Secure Choice staff to enter into a Memorandum of Understanding (MOU) with the Oregon Retirement Savings Board and the Office of the Illinois State Treasurer to pay for shared legal services. The MOU identifies an amount of expenditures not to be exceeded by the three states under the MOU, however costs for the shared legal services will exceed the limit stated in the MOU.

To ensure each state is able to continue to receive necessary legal services, staff recommend the Board approve amending the MOU to increase the total amount that may be paid by each state under the MOU. The increase would not add any additional funds to the Agreement, but will ensure that each state is able to pay for shared legal services from their respective individual contracts with K&L Gates, LLP. If the Board approves staff recommendation, the total amount that could be paid by the Board under the MOU would be increased by \$147,782.

Staff Recommendation

Secure Choice staff recommends the Board approve Resolution No. 2017-05 of the California Secure Choice Retirement Savings Investment Board relating to the approval to amend the Memorandum of Understanding with other states to share costs for legal services.

Attachments

- Attachment #1: Resolution No. 2017-05

- Attachment #2: Amendment One to Memorandum of Understanding for Joint Secure Choice Legal Services

RESOLUTION NO. 2017-05

RESOLUTION OF THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD RELATING TO THE APPROVAL TO AMEND A MEMORANDUM OF UNDERSTANDING WITH OTHER STATES TO SHARE COSTS FOR LEGAL SERVICES

WHEREAS, the California Secure Choice Retirement Savings Investment Board (the “Board”) is established under SB 1234 (Chapter 734, 2012; codified under Government Code section 100000 et seq.) and was mandated to conduct a market analysis and feasibility study to determine whether the necessary conditions for implementation of the California Secure Choice Retirement Savings Trust Act (the “Act”) can be met, provided that the Board shall conduct the market analysis and feasibility study only if sufficient funds to initiate and complete the required market analysis and feasibility study are made available through a nonprofit or private entity, or from federal funding;

WHEREAS, Government Code section 100042 provided, in part, that the Act shall become operative only if the Board determines that, based on the market analysis, the provisions of the Act will be self-sustaining, and funds are made available through a nonprofit or other private entity, federal funding, or an annual Budget Act appropriation in amounts sufficient to allow the Board to implement the Act until the California Secure Choice Retirement Savings Trust has sufficient funds to be self-sustaining;

WHEREAS, Government Code section 100043 provides that the Board shall not implement the California Secure Choice Retirement Savings Program (the “Program”) if the Individual Retirement Account or Individual Retirement Annuity (collectively “IRA”) arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the Program is an employee benefit plan under the federal Employee Retirement Income Security Act;

WHEREAS, the Board deemed it necessary to contract with a law firm to provide the Board with legal services to satisfy the statutory provisions and advise on legal issues regarding the market analysis, feasibility study, and program design and thus entered into Agreement No. CSCRSIB02-14 (the “Agreement”) with K&L Gates, LLP for the necessary legal services;

WHEREAS, K&L Gates, LLP has advised it is necessary to engage with the U.S. Securities and Exchange Commission (the “SEC”) to determine whether the necessary conditions for implementation of the Act can be met; and

WHEREAS, the States of Oregon and Illinois also recognize that they will have significant commonality of legal services to be provided by K&L Gates, LLP with regard to securities laws and the SEC;

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby directed and authorized to prepare and take whatever steps necessary to amend the memorandum of understanding with other states and K&L Gates, LLP to increase the maximum amount that can be expended under the MOU for shared legal services.

Attest: _____
Chairperson

Date of Adoption: _____

AMENDMENT ONE TO THE MEMORANDUM OF UNDERSTANDING FOR JOINT
SECURE CHOICE LEGAL SERVICES

This Amendment One to the Memorandum of Understanding for Joint Secure Choice Legal Services (“Amendment”) is hereby entered into on the date this Amendment is fully executed, any all necessary approvals obtained, by and between the California Secure Choice Retirement Savings Investment Board (“California”), the Office of the Illinois State Treasurer (“Illinois”), the State of Oregon, acting by and through its Retirement Savings Board and its Department of Justice (“Oregon”) (collectively, the “Boards”), and K&L Gates, LLP (“K&L Gates”).

WHEREAS, the parties entered into the Memorandum of Understanding for Joint Secure Choice Legal Services on June 20, 2016 (“MOU”) for K&L Gates to provide the Boards legal guidance on Secure Choice;

WHEREAS, the Boards are in the process of developing their respective state’s Secure Choice Programs;

WHEREAS, K&L Gates has submitted to the SEC on behalf of the Boards a draft request for a “no-action” letter confirming that the Secure Choice Programs as currently contemplated, including their investments, internal staff and governing Boards, are not subject to the Federal Securities Laws; and

WHEREAS, recent events in the United States Congress and executive agencies were not anticipated by the Boards at the time the MOU was executed and have led to additional questions regarding the application of federal requirements to the Programs, resulting in the need for additional Shared Services from K&L Gates;

NOW, THEREFORE, the Boards and K&L Gates hereby agree as follow:

1. If not otherwise defined herein, capitalized terms shall have the meanings given in the MOU.
2. Paragraph 1 of the MOU is amended to delete subsections a., b. and c. and replace them with:
 - a. 53% of Shared Service costs invoiced to California, not to exceed a total of \$225,757;
 - b. 23.5% of Shared Service costs invoiced to Oregon, not to exceed a total of \$101,000; and
 - c. 23.5% of Shared Service costs invoiced to Illinois, not to exceed a total of \$101,000.
3. By execution of this Amendment, the parties hereby ratify the Agreement, as amended, and acknowledge that K&L Gates has provided Shared Services in accord with the Agreement, as amended. The parties hereby approve and accept such Shared Service and authorize the payment of K&L Gates fees in excess of the amount provided for in the original form of the Agreement.

4. Except as specifically provided above, this Amendment does not modify the MOU and all other terms and conditions of the MOU shall remain in full force and effect during the term thereof.
5. This Amendment may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused their respective authorized representatives to sign this Amendment One to the Memorandum of Understanding for Joint Secure Choice Legal Services. Each of the undersigned hereby represents and warrants that it is authorized to execute this Amendment on behalf of the respective party, and the Amendment when executed is a valid and binding obligation enforceable by and against such party in accordance with its terms.

CALIFORNIA SECURE CHOICE
RETIREMENT SAVINGS INVESTMENT
BOARD

STATE OF OREGON, acting by and through
its RETIREMENT SAVINGS BOARD

By: _____
Name:
Title:

Date: _____

By: _____
Name:
Title:

Date: _____

OFFICE OF THE ILLINOIS STATE
TREASURER

and its DEPARTMENT OF JUSTICE
(pursuant to ORS 190.110)

By: _____
Jay H. Rowell
Deputy Treasurer

Date: _____

By: _____
Name:
Title:

Date: _____

K&L GATES LLP

By: _____
Name:
Title:

Date: _____