

AMENDED IN SENATE APRIL 5, 2016

SENATE BILL

No. 1234

Introduced by Senator De León

February 18, 2016

An act to amend ~~Section 100032~~ of Sections 100002, 100004, 100008, 100010, 100012, 100014, 100032, and 100036 of, to add Sections 100046, 100048, and 100050 to, and to repeal Sections 100013, 100040, 100042, and 100043.5 of, the Government Code, relating to retirement savings plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement. Existing law, the California Secure Choice Retirement Savings Trust Act, establishes the California Secure Choice Savings Program, administered by the California Secure Choice Retirement Savings Investment Board, contingent on specified funding and interest criteria being met. *Existing law prescribes the composition of the board and its duties and provides that it acts as trustee in entering contracts and accepting moneys, among other things. Existing law prohibits the board from permitting enrollment in the program until enactment of a statute expressing legislative approval of program implementation.* The program requires specified eligible employers, as defined, to offer a payroll deposit retirement savings arrangement and requires eligible employees, as defined, who do not opt out of the program, to contribute a portion of their salary or wages to a retirement savings account in the program, as specified. Existing law requires contributions from the wages of employees

participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which is continuously appropriated and administered by the board. Existing law authorizes the board to adjust the employee contribution amount between 2% and 4%, inclusive, of the employee's annual salary or wages, as specified.

This bill would express legislative approval of the program and its implementation on January 1, 2017. The bill would require the board to design and implement the program and would prescribe certain parameters that the board is to consider and utilize in establishing the design. The bill would specify that funding and first year administrative costs may be appropriated in the annual budget from the General Fund and would require the board to repay the amount appropriated, plus interest, as specified. The bill would provide that investment policy decisions, including asset allocation and investment options, are entrusted to the board as a fiduciary, and would revise certain principles that the board is to consider in connection with investment policy. The bill would make various changes to existing duties of the board, including those regarding dissemination of information and the entities with which the board is to collaborate and cooperate. The bill would require the Treasurer to appoint an executive director of the board, to service its pleasure, and to determine the duties of the office and its compensation. The bill would eliminate the duty of the board to ensure that insurance or some other mechanism is in place to protect the value of individual accounts. The bill would repeal the duty of the board to conduct an initial market analysis to determine if the condition for the implementation of the program can be met and associated provisions.

This bill would require eligible employers that do not offer specified retirement plans or accounts to have a payroll deposit retirement savings arrangement so that employees may participate in the program within specified time periods based on the number of eligible employees that the employer has, and the bill would authorize the board to extend these time periods. The bill would authorize the board to adjust the employee contribution amount described above up to 5%. The bill would authorize the board to make annual, automatic escalations of employee contributions subject to certain limitations, including that the employee may opt out, as specified. By authorizing the board to increase ~~the amount of money that is~~ moneys that are deposited into the California Secure Choice Retirement Savings Trust, which is continuously appropriated, the bill would make an appropriation. The bill would authorize the board to adopt regulations to implement the program and

would provide that the adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency. The bill would make various conforming changes.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 100002 of the Government Code is
2 amended to read:

3 100002. (a) (1) There is hereby created within state
4 government the California Secure Choice Retirement Savings
5 Investment Board, which shall consist of nine members, with the
6 Treasurer serving as chair, as follows:

7 (A) The Treasurer.

8 (B) The Director of Finance, or his or her designee.

9 (C) The Controller.

10 (D) An individual with retirement savings and investment
11 expertise appointed by the Senate Committee on Rules.

12 (E) An employee representative appointed by the Speaker of
13 the Assembly.

14 (F) A small business representative appointed by the Governor.

15 (G) A public member appointed by the Governor.

16 (H) Two additional members appointed by the Governor.

17 (2) Members of the board appointed by the Governor, the Senate
18 Committee on Rules, and the Speaker of the Assembly shall serve
19 at the pleasure of the appointing authority.

20 (b) All members of the board shall serve without compensation.
21 Members of the board shall be reimbursed for necessary travel
22 expenses incurred in connection with their board duties.

23 (c) A board member, program administrator, and other staff of
24 the board shall not do any of the following:

25 (1) Directly or indirectly have any interest in the making of any
26 investment made for the program, or in the gains or profits accruing
27 from any investment made for the program.

28 (2) Borrow any funds or deposits of the trust, or use those funds
29 or deposits in any manner, for himself or herself or as an agent or
30 partner of others.

31 (3) Become an endorser, surety, or obligor on investments by
32 the board.

1 (d) The board and the program administrator and ~~staff staff,~~
2 *including contracted administrators and consultants,* shall
3 discharge their duties *as fiduciaries* with respect to the trust solely
4 in the interest of the program participants as follows:

5 (1) For the exclusive purposes of providing benefits to program
6 participants and defraying reasonable expenses of administering
7 the program.

8 (2) By investing with the care, skill, prudence, and diligence
9 under the circumstances then prevailing that a prudent person
10 acting in a like capacity and familiar with those matters would use
11 in the conduct of an enterprise of a like character and with like
12 aims.

13 (e) (1) *Investment policy decisions, including asset allocation*
14 *and investment options, shall be entrusted to the board subject to*
15 *its fiduciary duties.* The board shall annually prepare and adopt a
16 written statement of investment policy that includes a risk
17 management and oversight program. The board shall consider the
18 statement of investment policy and any changes in the investment
19 policy at a public hearing.

20 (2) The investment policy shall adhere to the following guiding
21 principles:

22 (A) ~~The primary objective of the investment policy is to preserve~~
23 ~~the safety of principal and provide a stable and low-risk is, through~~
24 ~~pooled investing, to extend investment horizons, lower risks, and~~
25 ~~provide participants with a stable and reasonable rate of return.~~

26 (B) The investment policy shall mitigate risk by maintaining a
27 balanced investment portfolio that provides assurance that no single
28 investment or class of investments will have a disproportionate
29 impact on the total portfolio.

30 ~~(3) The following list represents the entire range of asset~~
31 ~~categories that the board may consider and the only types of~~
32 ~~investments which shall be permitted for the investment of funds:~~

33 ~~(A) Domestic equities and international equities.~~

34 ~~(B) Medium-term and long-term debt obligations of domestic~~
35 ~~corporations.~~

36 ~~(C) United States government and government sponsored entity~~
37 ~~debt obligations.~~

38 ~~(D) Real estate commingled funds that invest in publicly traded~~
39 ~~real estate securities.~~

1 ~~(E) Money market instruments, cash, and money market mutual~~
2 ~~funds that are registered in the United States and denominated in~~
3 ~~United States dollars.~~

4 ~~(F) Investments in mutual funds, but limited to existing, rated~~
5 ~~mutual funds, that are registered in the United States and~~
6 ~~denominated in United States dollars.~~

7 ~~(G) Insurance agreements.~~

8 ~~(H) FDIC-insured bank products.~~

9 ~~(4) Equities shall not exceed 50 percent of the overall asset~~
10 ~~allocation of the fund.~~

11 ~~(5) The investment policy shall also adhere to the following~~
12 ~~restrictions:~~

13 ~~(A) Borrowing for investment purposes, or leverage, is~~
14 ~~prohibited.~~

15 ~~(B) Instruments known as variable rate demand notes, floaters,~~
16 ~~inverse floaters, leveraged floaters, and equity-linked securities~~
17 ~~are not permitted. Investment in any instrument, which is~~
18 ~~commonly considered a “derivative” instrument, including, but~~
19 ~~not limited to, options, futures, swaps, caps, floors, and collars, is~~
20 ~~prohibited.~~

21 ~~(C) Contracting to sell securities not yet acquired in order to~~
22 ~~purchase other securities for purposes of speculating on~~
23 ~~developments or trends in the market is prohibited.~~

24 ~~(6)~~

25 (3) The risk management and oversight program shall be
26 designed to ensure that an effective risk management system is in
27 place to monitor the risk levels of the California Secure Choice
28 Retirement Savings Program investment portfolio and ensure that
29 the risks taken are prudent and properly managed. The program
30 shall be managed to provide an integrated process for overall risk
31 management on both a consolidated and disaggregated basis, and
32 to monitor investment returns as well as risk to determine if the
33 risks taken are adequately compensated compared to applicable
34 performance benchmarks and standards.

35 (f) The board shall approve an investment management entity
36 or entities, the costs of which shall be paid out of funds held in the
37 trust and shall not be attributed to the administrative costs of the
38 board in operating the trust. Not later than 30 days after the close
39 of each month, the board shall place on file for public inspection
40 during business hours a report with respect to investments made

1 pursuant to this section and a report of deposits in financial
2 institutions. The investment manager shall report the following
3 information to the board within 20 days following the end of the
4 each month:

5 (1) The type of investment, name of the issuer, date of maturity,
6 and the par and dollar amount invested in each security, investment,
7 and money within the program fund.

8 (2) The weighted average maturity of the investments within
9 the program fund.

10 (3) Any amounts in the program fund that are under the
11 management of private money managers.

12 (4) Any amounts in the program fund that are under the
13 management of the Board of Administration of the Public
14 Employees' Retirement System.

15 (5) The market value as of the date of the report and the source
16 of this valuation for each security within the program fund.

17 (6) A description of compliance with the statement of investment
18 policy.

19 *SEC. 2. Section 100004 of the Government Code is amended*
20 *to read:*

21 100004. (a) There is hereby established a retirement savings
22 trust known as the California Secure Choice Retirement Savings
23 Trust to be administered by the board for the purpose of promoting
24 greater retirement savings for California private employees in a
25 convenient, voluntary, low-cost, and portable manner. After
26 sufficient funds are made available for this title to be ~~operative~~
27 ~~pursuant to Section 100042~~, *operative*, the California Secure
28 Choice Retirement Savings Trust, as a self-sustaining trust, shall
29 pay all costs of administration only out of moneys on deposit
30 therein.

31 (b) The board shall segregate moneys received by the California
32 Secure Choice Retirement Savings Trust into two funds, which
33 shall be identified as the program fund and the administrative fund.
34 Notwithstanding Section 13340, moneys in the trust are hereby
35 continuously appropriated, without regard to fiscal years, to the
36 board for the purposes of this title.

37 (c) Moneys in the program fund may be invested or reinvested
38 by the Treasurer or may be invested in whole or in part under
39 contract with the Board of Administration of the Public Employees'

1 Retirement System or private money managers, or both, as
2 determined by the board.

3 (d) Transfers may be made from the program fund to the
4 administrative fund for the purpose of paying operating costs
5 associated with administering the trust and as required by this title.
6 On an annual basis, expenditures from the administrative fund
7 shall not exceed more than 1 percent of the total program fund.
8 All costs of administration of the trust shall be paid out of the
9 administrative fund. Operating costs associated with administering
10 the trust do not include the procurement of private underwriting
11 for the retirement savings' return.

12 (e) Any contributions paid by employees and employers into
13 the trust shall be used exclusively for the purpose of paying benefits
14 to the participants of the California Secure Choice Retirement
15 Savings Program, for the cost of administration of the program,
16 and for investments made for the benefit of the program.

17 *SEC. 3. Section 100008 of the Government Code is amended*
18 *to read:*

19 100008. ~~(a)~~ The California Secure Choice Retirement Savings
20 Program shall include, as determined by the board, one or more
21 payroll deposit IRA arrangements.

22 ~~(b) (1) Prior to July 1 of the initial program year, and prior to~~
23 ~~the beginning of each program year thereafter, the board shall~~
24 ~~adopt a program amendment in coordination with the investment~~
25 ~~management entity or entities with respect to the program to declare~~
26 ~~the stated rate at which interest shall be allocated to program~~
27 ~~accounts for the following program year.~~

28 ~~(2) Interest shall be allocated to program accounts and shall be~~
29 ~~computed at the stated interest rate on the balance of an individual's~~
30 ~~account and shall be compounded daily.~~

31 ~~(c) An individual's retirement savings benefit under the program~~
32 ~~shall be an amount equal to the balance in the individual's program~~
33 ~~account on the date the retirement savings benefit becomes payable.~~

34 *SEC. 4. Section 100010 of the Government Code is amended*
35 *to read:*

36 100010. (a) The board, in the capacity of trustee, shall have
37 the power and authority to do all of the following:

38 (1) Make and enter into contracts necessary for the
39 administration of the trust.

40 (2) Adopt a seal and change and amend it from time to time.

1 (3) Cause moneys in the program fund to be held and invested
2 and reinvested.

3 (4) Accept any grants, gifts, legislative appropriation, and other
4 moneys from the state, any unit of federal, state, or local
5 government or any other person, firm, partnership, or corporation
6 for deposit to the administrative fund or the program fund.

7 (5) Appoint a program ~~administrator, the costs of which shall~~
8 ~~be paid out of funds held in the trust and shall not be attributed to~~
9 ~~the administrative costs of the board in operating the trust,~~
10 *administrator* and determine the duties of the program
11 administrator and other staff as necessary and set their
12 compensation. *The Treasurer shall, on behalf of the board, appoint*
13 *an executive director, who shall not be a member of the board and*
14 *who shall serve at the pleasure of the board. The Treasurer shall*
15 *determine the duties of the executive director and other staff as*
16 *necessary and set his or her compensation. The board may*
17 *authorize the executive director to enter into contracts on behalf*
18 *of the board or conduct any business necessary for the efficient*
19 *operation of the board.*

20 (6) Make provisions for the payment of costs of administration
21 and operation of the trust. *The costs of the program administrator*
22 *shall be paid out of funds held in the trust and shall not be*
23 *attributed to the administrative costs of the board in operating the*
24 *trust.*

25 (7) Employ staff.

26 (8) Retain and contract with the ~~Board of Administration of the~~
27 ~~Public Employees' Retirement System, board of a California~~
28 *public retirement system*, private financial institutions, other
29 financial and service providers, consultants, actuaries, counsel,
30 auditors, third-party administrators, and other professionals as
31 necessary.

32 (9) Procure insurance against any loss in connection with the
33 property, assets, or activities of the trust, and secure private
34 underwriting and reinsurance to manage risk and insure the
35 retirement savings rate of return.

36 (10) Procure insurance indemnifying each member of the board
37 from personal loss or liability resulting from a member's action
38 or inaction as a member of the board.

1 (11) Set minimum and maximum investment levels in
2 accordance with contribution limits set for IRAs by the Internal
3 Revenue Code.

4 (12) Collaborate and cooperate with the ~~Board of Administration~~
5 ~~of the Public Employees' Retirement System~~, *board of a California*
6 *public retirement system*, private financial institutions, service
7 providers, and business, financial, trade, membership, and other
8 organizations to the extent necessary or desirable for the effective
9 and efficient design, implementation, and administration of the
10 program and to maximize outreach to eligible employers and
11 eligible employees.

12 (13) Cause expenses incurred to initiate, implement, maintain,
13 and administer the program to be paid from contributions to, or
14 investment returns or assets of, the program or arrangements
15 established under the program, to the extent permitted under state
16 and federal law.

17 (14) Facilitate compliance by the retirement savings program
18 or arrangements established under the program with all applicable
19 requirements for the program under the Internal Revenue Code of
20 1986, including tax qualification requirements or any other
21 applicable law and accounting requirements, including providing
22 or arranging for assistance to program sponsors and individuals
23 in complying with applicable law and tax qualification
24 requirements in a cost-effective manner.

25 (15) Carry out the duties and obligations of the California Secure
26 Choice Retirement Savings Trust pursuant to this title and exercise
27 any and all other powers as may be reasonably necessary for the
28 effectuation of the purposes, objectives, and provisions of this title
29 pertaining to the trust.

30 (b) The board shall adopt regulations it deems necessary to
31 implement this title consistent with the Internal Revenue Code and
32 regulations issued pursuant to that code to ensure that the program
33 meets all criteria for federal tax-deferral or tax-exempt benefits,
34 or both.

35 *SEC. 5. Section 100012 of the Government Code is amended*
36 *to read:*

37 100012. In addition to the powers and authority granted to the
38 board pursuant to Section 100010, the board shall have the power
39 and authority to do the following:

- 1 (a) Cause the retirement savings program or arrangements
2 established under the program to be designed, established, and
3 operated, in a manner consistent with all of the following:
- 4 (1) In accordance with best practices for retirement savings
5 vehicles.
- 6 (2) To maximize participation, saving, and sound investment
7 practices, and appropriate selection of default investments.
- 8 (3) With simplicity, ease of administration for participating
9 employers, and portability of benefits.
- 10 (b) Arrange for collective, common, and pooled investment of
11 assets of the retirement savings program or arrangements, including
12 investments in conjunction with other funds with which those
13 assets are permitted to be collectively invested, with a view to
14 saving costs through efficiencies and economies of scale.
- 15 (c) Explore and establish investment options that offer
16 employees returns on contributions and the conversion of individual
17 retirement savings account balances to secure retirement income
18 without incurring debt or liabilities to the state.
- 19 (d) Disseminate educational information ~~concerning saving and~~
20 ~~planning for retirement~~; *designed to educate participants about*
21 *the benefits of planning and saving for retirement and information*
22 *to help them decide the level of California Secure Choice*
23 *Retirement Savings Program participation and savings strategies*
24 *that may be appropriate for them.*
- 25 (e) Disseminate information concerning the tax credits available
26 to small business owners for establishing new retirement plans
27 and the federal Retirement Savings Contribution Credit (Saver's
28 Credit) available to lower and moderate-income households for
29 qualified savings contributions.
- 30 (f) Submit progress and status reports to participating employers
31 and eligible employees.
- 32 (g) If necessary, determine the eligibility of an employer,
33 employee, or other individual to participate in the program.
- 34 (h) Evaluate and establish the process by which an eligible
35 employee of an eligible employer is able to contribute a portion
36 of his or her salary or wages to the program for automatic deposit
37 of those contributions and the participating employer provides a
38 payroll deposit retirement savings arrangement to forward the
39 employee contribution and related information to the program or
40 its agents. This may include, but is not limited to, financial services

1 companies and third-party administrators with the capability to
2 receive and process employee information and contributions for
3 payroll deposit retirement savings arrangements or other
4 arrangements authorized by this title.

5 (i) Design and establish the process for the enrollment of
6 program participants.

7 (j) Allow participating employers to use the program to remit
8 employees' contributions to their individual retirement accounts
9 on their employees' behalf.

10 (k) Allow participating employers to make their own
11 contributions to their employees' individual retirement accounts,
12 provided that the contributions would be permitted under the
13 Internal Revenue Code and would not cause the program to be
14 treated as an employee benefit plan under the federal Employee
15 Retirement Income Security Act.

16 (l) Evaluate and establish the process by which an individual
17 or an employee of a nonparticipating employer may enroll in and
18 make contributions to the program.

19 *SEC. 6. Section 100013 of the Government Code is repealed.*

20 ~~100013. The board shall ensure that an insurance, annuity, or
21 other funding mechanism is in place at all times that protects the
22 value of individuals' accounts. The funding mechanism shall
23 protect, indemnify, and hold the state harmless at all times against
24 any and all liability in connection with funding retirement benefits
25 pursuant to this title. The costs of the funding mechanism shall be
26 paid out of the funds held in the trust and shall not be attributed
27 to the administrative costs of the board in operating the trust.~~

28 *SEC. 7. Section 100014 of the Government Code is amended*
29 *to read:*

30 100014. (a) Prior to opening the California Secure Choice
31 Retirement Savings Program for enrollment, the board shall design
32 and disseminate to employers through the Employment
33 Development Department (EDD) an employee information packet.
34 The packet shall include background information on the program
35 and appropriate disclosures for employees.

36 (b) The disclosure form shall include, but not be limited to, all
37 of the following:

38 (1) The benefits and risks associated with making contributions
39 to the program.

40 (2) The mechanics of how to make contributions to the program.

- 1 (3) How to opt out of the program.
- 2 (4) The process for withdrawal of retirement savings.
- 3 (5) How to obtain additional information on the program.
- 4 (c) In addition, the disclosure form shall clearly articulate the
- 5 following:
- 6 (1) Employees seeking financial advice should contact financial
- 7 advisors, that employers are not in a position to provide financial
- 8 advice, and that employers are not liable for decisions employees
- 9 make pursuant to Section 100034.
- 10 (2) The program is not an employer-sponsored retirement plan.
- 11 (3) The program fund is ~~privately insured~~ and is not guaranteed
- 12 by the State of California.
- 13 (d) The disclosure form shall include a signature line for the
- 14 employee to sign and date acknowledging that the employee has
- 15 read all of the disclosures and understands their content.
- 16 (e) The employee information packet shall also include an
- 17 opt-out form for an eligible employee to note his or her decision
- 18 to opt out of participation in the program. The opt-out notation
- 19 shall be simple and concise and drafted in a manner that the board
- 20 deems necessary to appropriately evidence the employee’s
- 21 understanding that he or she is choosing not to automatically deduct
- 22 earnings to save for retirement.
- 23 (f) The employee information packet shall be made available
- 24 to employers through EDD and supplied to employees at the time
- 25 of hiring. All new employees shall review the packet and
- 26 acknowledge having read it by signing the signature line
- 27 accompanied by the date of the signature.
- 28 (g) The employee information packet shall be supplied to
- 29 existing employees when the program is initially launched for that
- 30 participating employer pursuant to Section 100032 and employees
- 31 shall review and sign the disclosure form at that time.

32 **SECTION 1.**

33 *SEC. 8.* Section 100032 of the Government Code is amended
 34 to read:

35 100032. (a) After the board opens the California Secure Choice
 36 Retirement Savings Program for enrollment, any employer may
 37 choose to have a payroll deposit retirement savings arrangement
 38 to allow employee participation in the program.

39 (b) ~~Beginning three months~~ *Within 12 months* after the board
 40 opens the program for enrollment, eligible employers with more

1 than 100 eligible employees and that do not offer an
2 employer-sponsored retirement plan or automatic enrollment
3 payroll deduction IRA shall have a payroll deposit retirement
4 savings arrangement to allow employee participation in the
5 program.

6 ~~(c) Beginning six months~~ *Within 24 months* after the board
7 opens the program for enrollment, eligible employers with more
8 than 50 eligible employees and that do not offer an
9 employer-sponsored retirement plan or automatic enrollment
10 payroll deduction IRA shall have a payroll deposit retirement
11 savings arrangement to allow employee participation in the
12 program.

13 ~~(d) Beginning nine months~~ *Within 36 months* after the board
14 opens the program for enrollment, all other eligible employers that
15 do not offer an employer-sponsored retirement plan or automatic
16 enrollment payroll deduction IRA shall have a payroll deposit
17 retirement savings arrangement to allow employee participation
18 in the program.

19 *(e) The board, in its discretion, may extend the time limits*
20 *defined in subdivisions (b) to (d), inclusive.*

21 ~~(e)~~

22 *(f) (1) Each eligible employee shall be enrolled in the program*
23 *unless the employee elects not to participate in the program. An*
24 *eligible employee may elect to opt out of the program by making*
25 *a notation on the opt-out form.*

26 *(2) Following initial implementation of the program pursuant*
27 *to this section, at least once every two years, participating*
28 *employers shall designate an open enrollment period during which*
29 *eligible employees that previously opted out of the program shall*
30 *be enrolled in the program unless the employee again elects to opt*
31 *out as provided in this subdivision.*

32 *(3) An employee who elects to opt out of the program who*
33 *subsequently wants to participate through the employer's payroll*
34 *deposit retirement savings arrangement may only enroll during*
35 *the employer's designated open enrollment period or if permitted*
36 *by the employer at an earlier time.*

37 ~~(f)~~

38 *(g) Employers shall retain the option at all times to set up any*
39 *type of employer-sponsored retirement plan, such as a defined*
40 *benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,*

1 or Savings Incentive Match Plan for Employees (SIMPLE) plan,
 2 or to offer an automatic enrollment payroll deduction IRA, instead
 3 of having a payroll deposit retirement savings arrangement to allow
 4 employee participation in the California Secure Choice Retirement
 5 Savings Program.

6 ~~(g)~~
 7 (h) An eligible employee may also terminate his or her
 8 participation in the program at any time in a manner prescribed
 9 by the board and thereafter by making a notation on the opt-out
 10 form.

11 ~~(h)~~
 12 (i) Unless otherwise specified by the employee, a participating
 13 employee shall contribute 3 percent of the employee’s annual
 14 salary or wages to the program.

15 ~~(i)~~
 16 (j) By regulation, the board may adjust the contribution amount
 17 set in subdivision ~~(h)~~ (i) to no less than 2 percent and no more than
 18 5 percent and may vary that amount within that 2 percent to 5
 19 percent range for participating employees according to the length
 20 of time the employee has contributed to the program.

21 (k) *The Board may implement annual automatic escalation of*
 22 *employee contributions.*

23 (1) *Employee contributions subject to automatic escalation shall*
 24 *not exceed 8 percent of salary.*

25 (2) *Automatic escalation shall result in no more than a 1-percent*
 26 *increase in employee contributions per calendar year.*

27 (3) *A participating employee may elect to opt out of automatic*
 28 *escalation and may set his or her contribution percentage rate at*
 29 *a level determined by the participating employee.*

30 *SEC. 9. Section 100036 of the Government Code is amended*
 31 *to read:*

32 100036. The state shall not have any liability for the payment
 33 of the retirement savings benefit earned by program participants
 34 pursuant to this title. ~~Any financial liability for the payment of~~
 35 ~~benefits in excess of funds available under the program shall be~~
 36 ~~borne by the entities with whom the board contracts to provide an~~
 37 ~~insurance, annuity, or other funding mechanism to protect the value~~
 38 ~~of individuals’ accounts pursuant to Section 100013.~~ The state,
 39 and any of the funds of the state, shall have no obligation for
 40 payment of the benefits arising from this title.

1 *SEC. 10. Section 100040 of the Government Code is repealed.*

2 ~~100040. The board shall initially conduct a market analysis to~~
3 ~~determine whether the necessary conditions for implementation~~
4 ~~of this title can be met, including, but not limited to, likely~~
5 ~~participation rates, participants' comfort with various investment~~
6 ~~vehicles and degree of risk, contribution levels, and the rate of~~
7 ~~account closures and rollovers. The board shall conduct this~~
8 ~~analysis only if sufficient funds to initiate and complete the~~
9 ~~required market analysis are made available through a nonprofit~~
10 ~~or private entity, or from federal funding. The Secure Choice~~
11 ~~Retirement Savings Program Fund is hereby created in the State~~
12 ~~Treasury. Moneys made available to conduct the market analysis~~
13 ~~shall be deposited in this fund. The board shall forward and offer~~
14 ~~to present its findings to the Chair of the Senate Committee on~~
15 ~~Labor and Industrial Relations, the Chair of the Assembly~~
16 ~~Committee on Labor and Employment, the Chair of the Senate~~
17 ~~Committee on Public Employment and Retirement, and the Chair~~
18 ~~of the Assembly Committee on Public Employees, Retirement and~~
19 ~~Social Security.~~

20 *SEC. 11. Section 100042 of the Government Code is repealed.*

21 ~~100042. With the exceptions of subdivision (a) of Section~~
22 ~~100002, and Sections 100040, 100043, and 100044, the provisions~~
23 ~~of this title shall become operative only if the board determines~~
24 ~~that, based on the market analysis, the provisions of this title will~~
25 ~~be self-sustaining, and funds are made available through a nonprofit~~
26 ~~or other private entity, federal funding, or an annual Budget Act~~
27 ~~appropriation in amounts sufficient to allow the board to implement~~
28 ~~this title until the trust has sufficient funds to be self-sustaining.~~

29 *SEC. 12. Section 100043.5 of the Government Code is repealed.*

30 ~~100043.5. The board shall not open the program for enrollment~~
31 ~~until a subsequent authorizing statute is enacted that expresses the~~
32 ~~approval of the Legislature for the program to be fully~~
33 ~~implemented.~~

34 *SEC. 13. Section 100046 is added to the Government Code, to*
35 *read:*

36 *100046. (a) Based upon findings and recommendations of the*
37 *board pursuant to Section 100040, the California Secure Choice*
38 *Retirement Savings Program is approved by the Legislature and*
39 *implemented as of January 1, 2017. The board, subject to its*
40 *authority and fiduciary duty, shall design and implement the*

1 *California Secure Choice Retirement Savings Program. The board*
2 *shall consider and utilize the following parameters in designing*
3 *the program:*

4 (1) *For up to three years, the board may establish managed*
5 *accounts invested in United States Treasuries or similarly safe*
6 *investments. During this time, the board may develop investment*
7 *options that address risk-sharing and smoothing of market losses*
8 *and gains. Options may include, but are not limited to, custom*
9 *pooled, professionally managed funds that minimize costs and*
10 *fees, the creation of a reserve fund, or the establishment of*
11 *investment products.*

12 (2) *The board shall seek to minimize participant fees.*

13 (3) *The board shall strive to implement program features that*
14 *provide maximum possible income replacement balanced with*
15 *appropriate risk in an IRA-based environment.*

16 (4) *The board shall determine the default payout method for*
17 *retirees.*

18 (5) *The board shall include quasi-public and quasi-private*
19 *employees in the program if the board determines the inclusion to*
20 *be legally permissible under federal and state laws and regulations.*

21 (6) *The board shall structure the program so as to ensure the*
22 *state is prohibited from incurring liabilities associated with*
23 *administering the program and that the state has no liability for*
24 *the program or its investments.*

25 (7) *The board shall determine necessary costs associated with*
26 *outreach, customer service, enforcement, staffing and consultant*
27 *costs, and all other costs necessary to administer the program.*

28 (8) *The board shall partner with employer representatives to*
29 *create an administrative structure that ensures employee*
30 *participation while addressing employer needs, including, but not*
31 *limited to, clearly defining employers' duties and liability*
32 *exemption pursuant to Section 100034.*

33 (b) *In order to ensure timely implementation of the California*
34 *Secure Choice Retirement Savings Program, the board shall have*
35 *flexibility in designing and implementing the California Secure*
36 *Choice Retirement Savings Program. The program parameters*
37 *set forth in this section shall not be conclusive. The board shall*
38 *have the authority to augment these requirements as necessary to*
39 *fully implement the program and comply with the board's fiduciary*
40 *duties.*

1 *SEC. 14. Section 100048 is added to the Government Code, to*
2 *read:*

3 *100048. The board may adopt regulations to implement this*
4 *title. The adoption, amendment, repeal, or readoption of a*
5 *regulation authorized by this section is deemed to address an*
6 *emergency, for purposes of Sections 11346.1 and 11349.6, and*
7 *the board is hereby exempted for this purpose from the*
8 *requirements of subdivision (b) of Section 11346.1.*

9 *SEC. 15. Section 10050 is added to the Government Code, to*
10 *read:*

11 *10050. Funding for startup and first-year administrative costs*
12 *may be appropriated from the General Fund in the annual Budget*
13 *Act. The board shall repay the amount appropriated, plus interest*
14 *calculated at the rate earned by the Pooled Money Investment*
15 *Account. Necessary administrative costs in future years shall be*
16 *paid out of the administrative fund.*