HOUSE DOCKET, NO. 2152 FILED ON: 1/20/2011

# HOUSE . . . . . No. 2411

## The Commonwealth of Massachusetts

PRESENTED BY:

***Garrett J. Bradley***

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

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

An Act to provide retirement options for nonprofit organizations.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Garrett J. Bradley* | *3rd Plymouth* | *1/20/2011* |
| *David Paul Linsky* | *5th Middlesex* | *1/28/2011* |
| *James M. Cantwell* | *4th Plymouth* | *2/3/2011* |
| *John Hart, Jr.* | | *2/3/2011* |
| *Timothy R. Madden* | *Barnstable, Dukes and Nantucket* | *2/3/2011* |
| *Elizabeth A. Malia* | *11th Suffolk* | *2/3/2011* |
| *Benjamin Swan* | *11th Hampden* | *2/3/2011* |
| *Chris Walsh* | *6th Middlesex* | *2/4/2011* |
| *Demetrius J. Atsalis* | *2nd Barnstable* | *2/4/2011* |

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# HOUSE . . . . . No. 2411

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2411) of Garrett J. Bradley and others for legislation to provide retirement options for nonprofit organizations. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *78* OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act to provide retirement options for nonprofit organizations.

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

SECTION 1. Chapter 29 of the General Laws, as appearing in the 2008 Official Edition, is hereby further amended by adding the following section, after section 64D:

"Section 64E. Defined Contribution Retirement Plan; Not-For-Profit Employers

(1) The state treasurer may conduct research regarding the current status of retirement programs available to not-for-profit employees, and the appeal of creating a program for their benefit. For the purposes of implementing and administering a defined contribution plan for the benefit of not-for-profit employees, the state treasurer shall have, in addition to all other powers and duties provided by this chapter, the following additional powers and duties with respect to the programs expressed in Massachusetts General Laws chapter 29, section 64 and Massachusetts General Laws chapter 10 section 18.

(2) The state treasurer of the commonwealth, on behalf of the commonwealth, may sponsor a defined contribution plan that may be adopted by not-for-profit employers for their employees in accordance with Section 401(a) of the U.S. Internal Revenue Code, (the "Code"), regulations provided under that section, and applicable guidance from the Internal Revenue Service. The state treasurer shall obtain approval from the Internal Revenue Service with respect to the plan and shall provide for administration of the plan so that it is in compliance with the Code and other applicable federal and state laws including the Employee Retirement Income Security Act of 1974 ("ERISA"). The plan shall provide for a qualified trust under Section 401(a) of the Code, with contributions made to the trust by the not-for-profit employer, the employer's employees, or both. Under the trust instrument it shall be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries. In order to participate in the plan, a not-for-profit employer must (i) execute a participation agreement, and (ii) agree to the terms of the plan and to operate the plan in compliance with the Code and ERISA. The state treasurer may require that the not-for-profit employer sign a service agreement and use forms and procedures prescribed by the treasurer. The state treasurer may also require that certain employers seek approval from the Internal Revenue Service with respect to their plans.

(3) The state treasurer may contract with practitioners, administrators, investment managers, and other entities in order to design, administer, and provide investment options under the plan. The state treasurer shall, before making any such contract, solicit bids from companies authorized to conduct business within the commonwealth, which bids shall be sealed, and opened at a time and place designated by the treasurer. Any bid submitted shall, where

applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer may require. Any contract entered into between an employee and the not-for-profit employer pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand. Upon the treasurer's determining which provider offers the product or products most beneficial to the employee in each category for which bids were solicited, the employee may choose the investment option(s) for their account.

Notwithstanding any provisions to the contrary, the state treasurer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's 401(k) account provided:

(a) that the state treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's 401(k) account in the same investment products as provided through a deferred compensation plan for employees of the commonwealth administered by the state treasurer, and

(b) that such plan resulted from the solicitation of bids in accordance with requirements provided under this section."

(4) There shall be in the office of the state treasurer a not-for-profit defined contribution committee. The committee shall consist of the state treasurer or his designee, who shall serve as chairperson, and 6 additional members appointed by the state treasurer, 3 shall have practical experience in the human services, educational, or public and societal benefit sector of the non-

profit community. The remaining three appointees shall be currently employed by not-for-profit corporations. The initial term of the first three appointees shall be for two years and the initial term of the remaining appointees shall be for three years. Except that future appointments of the fourth, fifth, and sixth members shall be arranged so as not to expire in the same year. All subsequent appointments, including reappointments, shall be for a term of three years. In the case of a vacancy of any of the members, a successor shall be appointed as aforesaid for a full term or for the unexpired portion thereof, as the case may be. A member of the committee shall be eligible for reappointment. The committee shall annually elect 1 of its members to serve as vice-chairperson. Each member of the committee serving ex officio may appoint a designee pursuant to section 6A of chapter 30. Said committee shall meet from time to time and assist the state treasurer in the development of general policy regarding the program, and shall provide technical advice and input to the state treasurer. The members of said committee shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties."

(5) The state treasurer is hereby authorized to adopt rules and regulations related to this section and do all things convenient to carry out the provisions and purposes of this section.

(6) As used in this section, the term "not-for-profit employer" shall include eligible organizations incorporated under the Internal Revenue Code Section 501(c), but does not include a governmental employer."