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HOUSE . . . . . No. 3754

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 amended by inserting after section 64D the following section:-

Section 64E. (a) As used in this section, the term "not-for-profit employer" shall include eligible organizations incorporated under section 501(c) of the Internal Revenue Code, but does not include a governmental employer.

(b) 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.

(c) The treasurer and receiver general, on behalf of the commonwealth, may sponsor a qualified defined contribution plan within the meaning of section 414(i) of the Internal Revenue Code, in this section called the Code, that may be adopted by not-for-profit employers for their employees in accordance with section 401(a) of the Code, regulations provided under that section and applicable guidance from the Internal Revenue Service. The treasurer shall obtain approval from the Internal Revenue Service with respect to the plan and shall ensure the administration of the plan is in compliance with the Code and other applicable federal and state laws including the Employee Retirement Income Security Act of 1974, in this section called ERISA.

The plan shall provide for a qualified trust under said section 401(a), with contributions made to the trust by the not-for-profit employer, the employer's employees, or both. Under the trust instrument, any part of the corpus or income shall not be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries. In order to

23 participate in the plan, a not-for-profit employer shall execute a participation agreement, agree to
24 the terms of the plan and operate the plan in compliance with the Code and ERISA. The treasurer
25 may require that the not-for-profit employer sign a service agreement and use forms and
26 procedures prescribed by the treasurer. The treasurer may also require that certain employers
27 seek approval of their plans from the Internal Revenue Service.

28 (d) The treasurer may contract with practitioners, administrators, investment managers
29 and other entities, including the Pension Reserves Investment Management Board, in order to
30 design, administer and provide investment options under the plan. The treasurer shall, before
31 making any such contract, solicit bids from companies authorized to conduct business within the
32 commonwealth, which shall be sealed and opened at a time and place designated by the
33 treasurer. A submitted bid shall, where applicable, clearly indicate the interest rate which shall
34 be paid on the deferred funds, any commissions which shall be paid to salespersons, any load
35 imposed for the purpose of administering the funds, mortality projections, expected payouts, tax
36 implications for participating employees and such other information as the treasurer may require.
37 A contract entered into between an employee and the not-for-profit employer pursuant to this
38 section shall include all such information in terms the employee can reasonably be expected to
39 understand. Upon a determination by the treasurer as to which provider offers the investment
40 options most beneficial to the employee in each category for which bids were solicited, the
41 employee may choose the investment option for the employee's account.

42 Notwithstanding any provision to the contrary, the treasurer shall not be required to
43 solicit bids to invest the contributed portion of an employee's income into the employee's defined
44 contribution plan account provided: (i) that the treasurer is authorized by the employee to pay
45 that portion of the employee's compensation into the employee's defined contribution plan
46 account in the same investment products as provided through a deferred compensation plan for
47 employees of the commonwealth administered by the treasurer, and (ii) that such plan resulted
48 from the solicitation of bids in accordance with the requirements under this section.

49 (e) There shall be in the office of the treasurer and receiver general a not-for-profit
50 defined contribution committee. The committee shall consist of the treasurer or a designee, who
51 shall serve as chairperson, and 4 additional members appointed by the treasurer, 2 of whom shall
52 have practical experience in the human services, educational or public and societal benefit sector
53 of the non-profit community and 2 of whom shall be currently employed by not-for-profit
54 corporations. Each member shall be appointed for a term of 3 years and shall be eligible for
55 reappointment. In the case of a vacancy, a successor shall be appointed for a full term or for the
56 unexpired portion thereof, as the case may be. A member of the committee shall be eligible for
57 reappointment. The committee shall annually elect 1 of its members to serve as vice-
58 chairperson. The committee shall meet from time to time and assist the treasurer in the
59 development of general policy regarding the program, and shall provide technical advice and
60 input to the state treasurer. The members of the committee shall serve without compensation, but
61 shall be reimbursed for necessary expenses incurred in the performance of their duties.

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

64 SECTION 2. Notwithstanding any general or special law to the contrary, in making his
65 initial appointments to the not-for-profit defined contribution committee pursuant to section 64E
66 of chapter 29 of the General Laws, the treasurer shall appoint 1 member currently employed by a
67 not-for-profit corporation to serve for a term of 2 years.