



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2758

Introduced 1/28/2014, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.855 new

Creates the Illinois Secure Choice Savings Program Act. Establishes a retirement savings program in the form of an automatic enrollment payroll deduction IRA with the intent of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner. Creates the Illinois Secure Choice Savings Program Fund consisting of moneys received from enrollees and participating employers. Sets forth the composition of the Board, the Board's duties, and provisions governing risk management, investment firms, and investment options. Provides for employee and employer information packets, as well as program implementation and enrollment. Provides that the State shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Program. Requires annual reports and audits of the Program. Sets forth penalties. Amends the State Finance Act to create the Illinois Secure Choice Savings Program Fund. Effective immediately.

LRB098 17555 OMW 54519 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Secure Choice Savings Program Act.

6 Section 5. Definitions. Unless the context requires a
7 different meaning or as expressly provided in this Section, all
8 terms shall have the same meaning as when used in a comparable
9 context in the Internal Revenue Code. As used in this Act:

10 "Board" means the Illinois Secure Choice Savings Board
11 established under this Act.

12 "Department" means the Department of Revenue.

13 "Director" means the Director of Revenue.

14 "Employee" means any individual who is employed by an
15 employer and who has wages that are allocable to Illinois
16 during a calendar year under the provisions of Section
17 304(a)(2)(B) of the Illinois Income Tax Act.

18 "Employer" means a person or entity engaged in a business,
19 industry, profession, trade, or other enterprise in Illinois,
20 whether for profit or not for profit, that (i) has employed 10
21 or more employees in the State throughout the previous calendar
22 year, (ii) has been in business at least 2 years, and (iii) has
23 not offered a qualified retirement plan, including, but not

1 limited to, a plan qualified under Section 401(a), Section
2 401(k), Section 403(a), Section 403(b), Section 408(k),
3 Section 408(p), or Section 457(b) of the Internal Revenue Code
4 of 1986 in the preceding 2 years.

5 "Enrollee" means any employee who is enrolled in the
6 Program.

7 "Fund" means the Illinois Secure Choice Savings Program
8 Fund.

9 "Internal Revenue Code" means Internal Revenue Code of
10 1986, or any successor law, in effect for the calendar year.

11 "IRA" means an individual retirement account under Section
12 408 of the Internal Revenue Code.

13 "Participating employer" means an employer or small
14 employer that provides a payroll deposit retirement savings
15 arrangement as provided for by this Act for its employees who
16 are enrollees in the Program.

17 "Payroll deposit retirement savings arrangement" means an
18 arrangement by which a participating employer allows enrollees
19 to remit payroll deduction contributions to the Program.

20 "Program" means the Illinois Secure Choice Savings
21 Program.

22 "Small employer" means a person or entity engaged in a
23 business, industry, profession, trade, or other enterprise in
24 Illinois, whether for profit or not for profit, that (i)
25 employed less than 10 employees at any one time in the State
26 throughout the previous calendar year, or (ii) has been in

1 business less than 2 years, or both items (i) and (ii), but
2 that notifies the Department that it is interested in being a
3 participating employer.

4 "Wages" means any compensation within the meaning of
5 Section 219(f)(1) of the Internal Revenue Code that is received
6 by an enrollee from a participating employer during the
7 calendar year.

8 Section 10. Establishment of Illinois Secure Choice
9 Savings Program. A retirement savings program in the form of an
10 automatic enrollment payroll deduction IRA, known as the
11 Illinois Secure Choice Savings Program, is hereby established
12 and shall be administered by the Board for the purpose of
13 promoting greater retirement savings for private-sector
14 employees in a convenient, low-cost, and portable manner.

15 Section 15. Illinois Secure Choice Savings Program Fund.
16 The Illinois Secure Choice Savings Program Fund is hereby
17 established as a special fund in the State treasury. The Fund
18 shall include the individual retirement accounts of enrollees,
19 which shall be accounted for as individual accounts. Moneys in
20 the Fund shall consist of moneys received from enrollees and
21 participating employers pursuant to automatic payroll
22 deductions and contributions to savings made under this Act,
23 grants from the United States Government and its agencies and
24 instrumentalities, and any other available sources of funds,

1 public or private. The Fund shall be operated in a manner
2 determined by the Board, provided that the Fund is operated so
3 that the accounts of enrollees established under the Program
4 meet the requirements for IRAs under the Internal Revenue Code.

5 Section 20. Composition of the Board. There is created the
6 Illinois Secure Choice Savings Board.

7 (a) The Board shall consist of the following 7 members:

8 (1) the State Treasurer, or his or her designee, who
9 shall serve as chair;

10 (2) the State Comptroller, or his or her designee;

11 (3) the Director of the Governor's Office of Management
12 and Budget, or his or her designee;

13 (4) two public representatives with expertise in
14 retirement savings plan administration or investment, or
15 both, appointed by the Governor;

16 (5) a representative of participating employers,
17 appointed by the Governor; and

18 (6) a representative of enrollees, appointed by the
19 Governor.

20 (b) Members of the Board shall serve without compensation
21 but may be reimbursed for necessary travel expenses incurred in
22 connection with their Board duties from funds appropriated for
23 the purpose.

24 (c) The initial appointments for the Governor's appointees
25 shall be as follows: one public representative for 4 years; one

1 public representative for 2 years; the representative of
2 participating employers for 3 years; and the representative of
3 enrollees for 1 year. Thereafter, all of the Governor's
4 appointees shall be for terms of 4 years.

5 (d) A vacancy in the term of an appointed Board member
6 shall be filled for the balance of the unexpired term in the
7 same manner as the original appointment.

8 (e) Each appointment by the Governor shall be subject to
9 approval by the State Treasurer, and, when so approved, the
10 Governor and the State Treasurer shall certify their respective
11 appointments and approvals to the Secretary of State. If the
12 State Treasurer does not approve or disapprove the appointment
13 by the Governor within 15 days after receipt thereof, the
14 person shall be deemed to have been approved by the State
15 Treasurer.

16 (f) Each Board member, prior to assuming office, shall take
17 an oath that he or she will diligently and honestly administer
18 the affairs of the Board and that he or she will not knowingly
19 violate or willingly permit to be violated any of the
20 provisions of law applicable to the Program. The oath shall be
21 certified by the officer before whom it is taken and
22 immediately filed in the office of the Secretary of State.

23 Section 25. Fiduciary Duty. Members of the Board and all
24 persons serving as Program staff shall discharge their duties
25 with respect to the Program solely in the interest of the

1 Program's enrollees and beneficiaries as follows:

2 (1) for the exclusive purposes of providing benefits to
3 enrollees and beneficiaries and defraying reasonable
4 expenses of administering the Program;

5 (2) by investing with the care, skill, prudence, and
6 diligence under the prevailing circumstances that a
7 prudent person acting in a like capacity and familiar with
8 those matters would use in the conduct of an enterprise of
9 a like character and with like aims; and

10 (3) by using any contributions paid by employees and
11 employers into the trust exclusively for the purpose of
12 paying benefits to the enrollees of the Program, for the
13 cost of administration of the program, and for investments
14 made for the benefit of the Program.

15 Section 30. Duties of the Board. In addition to the other
16 duties and responsibilities stated in this Act, the Board
17 shall:

18 (a) Cause the Program to be designed, established and
19 operated in a manner that:

20 (1) accords with best practices for retirement savings
21 vehicles;

22 (2) maximizes participation, savings, and sound
23 investment practices;

24 (3) maximizes simplicity, including ease of
25 administration for participating employers and enrollees;

1 (4) provides an efficient product to enrollees by
2 pooling investment funds;

3 (5) ensures the portability of benefits; and

4 (6) provides for the deaccumulation of enrollee assets
5 in a manner that maximizes financial security in
6 retirement.

7 (b) Appoint a trustee to the IRA Fund in compliance with
8 Section 408 of the Internal Revenue Code.

9 (c) Explore and establish investment options, subject to
10 Section 45 of this Act, that offer employees returns on
11 contributions and the conversion of individual retirement
12 savings account balances to secure retirement income without
13 incurring debt or liabilities to the State.

14 (d) Establish the process by which interest, investment
15 earnings, and investment losses are allocated to individual
16 program accounts on a pro rata basis and are computed at the
17 interest rate on the balance of an individual's account.

18 (e) Make and enter into contracts necessary for the
19 administration of the Program and Fund, including, but not
20 limited to, retaining and contracting with investment
21 managers, private financial institutions, other financial and
22 service providers, consultants, actuaries, counsel, auditors,
23 third-party administrators, and other professionals as
24 necessary.

25 (f) Determine the number and duties of staff members needed
26 to administer the Program and assemble such a staff, including,

1 as needed, employing staff, appointing a program
2 administrator, and entering into contracts with the State
3 Treasurer to make employees of the State Treasurer's office
4 available to administer the Program.

5 (g) Cause moneys in the Fund to be held and invested as
6 pooled investments described in Section 45 of this Act, with a
7 view to achieving cost savings through efficiencies and
8 economies of scale.

9 (h) Evaluate and establish the process by which an enrollee
10 is able to contribute a portion of his or her wages to the
11 Program for automatic deposit of those contributions and the
12 process by which the participating employer provides a payroll
13 deposit retirement savings arrangement to forward those
14 contributions and related information to the Program,
15 including, but not limited to, contracting with financial
16 service companies and third-party administrators with the
17 capability to receive and process employee information and
18 contributions for payroll deposit retirement savings
19 arrangements or similar arrangements.

20 (i) Design and establish the process for enrollment under
21 Section 60 of this Act, including the process by which an
22 employee can opt not to participate in the Program, select a
23 contribution level, select an investment option, and terminate
24 participation in the Program.

25 (j) Evaluate and establish the process by which an
26 individual or an employee of a non-participating employer may

1 voluntarily enroll in and make contributions to the Program.

2 (k) Accept any grants, appropriations, or other moneys from
3 the State, any unit of federal, State, or local government, or
4 any other person, firm, partnership, or corporation solely for
5 deposit into the Fund, whether for investment or administrative
6 purposes.

7 (l) Evaluate the need for, and procure as needed, insurance
8 against any and all loss in connection with the property,
9 assets, or activities of the Program, and indemnify as needed
10 each member of the Board from personal loss or liability
11 resulting from a member's action or inaction as a member of the
12 Board.

13 (m) Make provisions for the payment of administrative costs
14 and expenses for the creation, management, and operation of the
15 Program, including the costs associated with subsection (b) of
16 Section 20 of this Act, subsections (e), (f), (h), and (l) of
17 this Section, subsection (b) of Section 45 of this Act,
18 subsection (a) of Section 80 of this Act, and subsection (n) of
19 Section 85 of this Act. Subject to appropriation, the State may
20 pay administrative costs associated with the creation and
21 management of the Program until sufficient assets are available
22 in the Fund for that purpose. Thereafter, all administrative
23 costs of the Fund, including repayment of any start-up funds
24 provided by the State, shall be paid only out of moneys on
25 deposit therein. The Board shall keep annual administrative
26 expenses as low as possible, but in no event shall they exceed

1 1% of the total trust balance.

2 (n) Allocate administrative fees to individual retirement
3 accounts in the Program on a pro rata basis.

4 (o) Set minimum and maximum contribution levels in
5 accordance with limits established for IRAs by the Internal
6 Revenue Code.

7 (p) Facilitate education and outreach to employers and
8 employees.

9 (q) Facilitate compliance by the Program with all
10 applicable requirements for the Program under the Internal
11 Revenue Code, including tax qualification requirements or any
12 other applicable law and accounting requirements.

13 (r) Carry out the duties and obligations of the Program in
14 an effective, efficient, and low-cost manner.

15 (s) Exercise any and all other powers reasonably necessary
16 for the effectuation of the purposes, objectives, and
17 provisions of this Act pertaining to the Program.

18 Section 35. Risk Management. The Board shall annually
19 prepare and adopt a written statement of investment policy that
20 includes a risk management and oversight program. This
21 investment policy shall prohibit the Board, Program, and Fund
22 from borrowing for investment purposes. The risk management and
23 oversight program shall be designed to ensure that an effective
24 risk management system is in place to monitor the risk levels
25 of the Program and Fund portfolio, to ensure that the risks

1 taken are prudent and properly managed, to provide an
2 integrated process for overall risk management, and to assess
3 investment returns as well as risk to determine if the risks
4 taken are adequately compensated compared to applicable
5 performance benchmarks and standards. The Board shall consider
6 the statement of investment policy and any changes in the
7 investment policy at a public hearing.

8 Section 40. Investment firms.

9 (a) The Board shall engage, after an open bid process, an
10 investment manager or managers to invest the Fund and any other
11 assets of the Program. Moneys in the Fund may be invested or
12 reinvested by the State Treasurer's Office or may be invested
13 in whole or in part under contract with the State Board of
14 Investment, private investment managers, or both, as selected
15 by the Board. In selecting the investment manager or managers,
16 the Board shall take into consideration and give weight to the
17 investment manager's fees and charges in order to reduce the
18 Program's administrative expenses.

19 (b) The investment manager or managers shall comply with
20 any and all applicable federal and state laws, rules, and
21 regulations, as well as any and all rules, policies, and
22 guidelines promulgated by the Board with respect to the Program
23 and the investment of the Fund, including, but not limited to,
24 the investment policy.

25 (c) The investment manager or managers shall provide such

1 reports as the Board deems necessary for the Board to oversee
2 each investment manager's performance and the performance of
3 the Fund.

4 Section 45. Investment options.

5 (a) The Board shall establish as an investment option a
6 life-cycle fund with a target date based upon the age of the
7 enrollee. This shall be the default investment option for
8 enrollees who fail to elect an investment option unless and
9 until the Board designates by rule a new investment option as
10 the default as described in subsection (c) of this Section.

11 (b) The Board may also establish any or all of these three
12 additional investment options:

13 (1) a conservative principal protection fund;

14 (2) a growth fund;

15 (3) a secure return fund whose primary objective is the
16 preservation of the safety of principal and the provision
17 of a stable and low-risk rate of return. If the Board
18 elects to establish a secure return fund, the Board may
19 procure any insurance, annuity, or other product to insure
20 the value of individuals' accounts and guarantee a rate of
21 return. The cost of such funding mechanism shall be paid
22 out of the Fund. Under no circumstances shall the Board,
23 Program, Fund, the State, or any participating employer
24 assume any liability for investment or actuarial risk. The
25 Board shall determine whether to establish such investment

1 options based upon an analysis of their cost, risk profile,
2 benefit level, feasibility, and ease of implementation.

3 (c) If the Board elects to establish a secure return fund,
4 the Board shall then determine whether such option shall
5 replace the target date or life-cycle fund as the default
6 investment option for enrollees who do not elect an investment
7 option. In making such determination, the Board shall consider
8 the cost, risk profile, benefit level, and ease of enrollment
9 in the secure return fund. The Board may at any time thereafter
10 revisit this question and, based upon an analysis of these
11 criteria, establish either the secure return fund or the
12 life-cycle fund as the default for enrollees who do not elect
13 an investment option.

14 Section 50. Benefits. Interest, investment earnings, and
15 investment losses shall be allocated to individual Program
16 accounts as established by the Board under subsection (d) of
17 Section 30 of this Act. An individual's retirement savings
18 benefit under the program shall be an amount equal to the
19 balance in the individual's program account on the date the
20 retirement savings benefit becomes payable. The State shall
21 have no liability for the payment of any benefit to any
22 participant in the program.

23 Section 55. Employer and employee information packets and
24 disclosure forms.

1 (a) Prior to the opening of the Program for enrollment, the
2 Board shall design and disseminate to all employers through the
3 Department an employer information packet and an employee
4 information packet, which shall include background information
5 on the Program and appropriate disclosures for employees.

6 (b) The Department shall by rule provide for the contents
7 of the both the employee information packet and the employer
8 information packet.

9 (c) The employee information packet shall include a
10 disclosure form. The disclosure form shall explain, but not be
11 limited to, all of the following:

12 (1) the benefits and risks associated with making
13 contributions to the Program;

14 (2) the mechanics of how to make contributions to the
15 Program;

16 (3) how to opt out of the Program;

17 (4) how to participate in the Program with a level of
18 employee contributions other than 3%;

19 (5) the process for withdrawal of retirement savings;

20 (6) how to obtain additional information about the
21 Program;

22 (7) that employees seeking financial advice should
23 contact financial advisors, that participating employers
24 are not in a position to provide financial advice, and that
25 participating employers are not liable for decisions
26 employees make pursuant to this Act;

1 (8) that the Program is not an employer-sponsored
2 retirement plan; and

3 (9) that the Program fund is not guaranteed by the
4 State.

5 (d) The employee information packet shall also include a
6 form for an employee to note his or her decision to opt out of
7 participation in the Program or elect to participate with a
8 level of employee contributions other than 3%.

9 (e) Participating employers shall supply the employee
10 information packet to employees upon launch of the Program.
11 Participating employers shall supply the employee information
12 packet to new employees at the time of hiring, and new
13 employees may opt out of participation in the Program or elect
14 to participate with a level of employee contributions other
15 than 3% at that time.

16 Section 60. Program implementation and enrollment. The
17 Program shall be implemented, and enrollment of employees shall
18 begin, within 12 months after the effective date of this Act.
19 The provisions of this Section shall be in force after the
20 Board opens the Program for enrollment.

21 (a) Each employer shall establish a payroll deposit
22 retirement savings arrangement to allow each employee to
23 participate in the program at most nine months after the Board
24 opens the program for enrollment.

25 (b) Employers shall automatically enroll in the Program

1 each of their employees who has not opted out of participation
2 in the Program using the form described in subsection (c) of
3 Section 55 of this Act and shall provide payroll deduction
4 retirement saving arrangements for such employees and deposit,
5 on behalf of such employees, these funds into the Program.
6 Small employers may, but are not required to, provide payroll
7 deduction retirement saving arrangements for each employee who
8 elects to participate in the Program.

9 (c) Enrollees shall have the ability to select a
10 contribution level into the Fund. This level may be expressed
11 as a percentage of wages or as a dollar amount up to the
12 deductible amount for the enrollee's taxable year under Section
13 219(b) (1) (A) of the Internal Revenue Code. Enrollees may change
14 their contribution level at any time, subject to rules
15 promulgated by the Board. If an enrollee fails to select a
16 contribution level using the form described in subsection (c)
17 of Section 55 of this Act, then he or she shall contribute 3%
18 of his or her wages to the Program, provided that such
19 contributions shall not cause the enrollee's total
20 contributions to IRAs for the year to exceed the deductible
21 amount for the enrollee's taxable year under Section
22 219(b) (1) (A) of the Internal Revenue Code.

23 (d) Enrollees may select an investment option from the
24 permitted investment options listed in Section 45 of this Act.
25 Enrollees may change their investment option at any time,
26 subject to rules promulgated by the Board. In the event that an

1 enrollee fails to select an investment option, that enrollee
2 shall be placed in the investment option selected by the Board
3 as the default under subsection (c) of Section 45 of this Act.
4 If the Board has not selected a default investment option under
5 subsection (c) of Section 45 of this Act, then an enrollee who
6 fails to select an investment option shall be placed in the
7 life-cycle fund investment option.

8 (e) Following initial implementation of the program
9 pursuant to this Section, at least once every year,
10 participating employers shall designate an open enrollment
11 period during which employees who previously opted out of the
12 Program may enroll in the Program.

13 (f) An employee who opts out of the Program who
14 subsequently wants to participate through the participating
15 employer's payroll deposit retirement savings arrangement may
16 only enroll during the participating employer's designated
17 open enrollment period or if permitted by the participating
18 employer at an earlier time.

19 (g) Employers shall retain the option at all times to set
20 up any type of employer-sponsored retirement plan, such as a
21 defined benefit plan or a 401(k), Simplified Employee Pension
22 (SEP) plan, or Savings Incentive Match Plan for Employees
23 (SIMPLE) plan, or to offer an automatic enrollment payroll
24 deduction IRA, instead of having a payroll deposit retirement
25 savings arrangement to allow employee participation in the
26 Program.

1 (h) An employee may terminate his or her participation in
2 the Program at any time in a manner prescribed by the Board.

3 Section 65. Payments. Employee contributions deducted by
4 the participating employer through payroll deduction shall be
5 paid by the participating employer to the Fund using one or
6 more payroll deposit retirement savings arrangements
7 established by the Board under subsection (h) of Section 30 of
8 this Act, either:

9 (1) on or before the last day of the month following
10 the month in which the compensation otherwise would have
11 been payable to the employee in cash; or

12 (2) before such later deadline prescribed by the Board
13 for making such payments, but not later than the due date
14 for the deposit of tax required to be deducted and withheld
15 relating to collection of income tax at source on wages or
16 for the deposit of tax required to be paid under the
17 unemployment insurance system for the payroll period to
18 which such payments relate.

19 Section 70. Duty and liability of the State.

20 (a) The State shall have no duty or liability to any party
21 for the payment of any retirement savings benefits accrued by
22 any individual under the Program. Any financial liability for
23 the payment of retirement savings benefits in excess of funds
24 available under the Program shall be borne solely by the

1 entities with whom the Board contracts to provide insurance to
2 protect the value of the Program.

3 (b) No State board, commission, or agency, or any officer,
4 employee, or member thereof is liable for any loss or
5 deficiency resulting from particular investments selected
6 under this Act.

7 Section 75. Duty and liability of participating employers.

8 (a) Participating employers shall not have any liability
9 for an employee's decision to participate in, or opt out of,
10 the Program or for the investment decisions of the Board or of
11 any enrollee.

12 (b) A participating employer shall not be a fiduciary, or
13 considered to be a fiduciary, over the Program. A participating
14 employer shall not bear responsibility for the administration,
15 investment, or investment performance of the Program. A
16 participating employer shall not be liable with regard to
17 investment returns, Program design, and benefits paid to
18 Program participants.

19 Section 80. Audit and reports.

20 (a) The Board shall annually submit:

21 (1) an audited financial report, prepared in
22 accordance with generally accepted accounting principles,
23 on the operations of the Program during each calendar year
24 by July 1 of the following year to the Governor, the

1 Comptroller, the State Treasurer, and the General
2 Assembly; and

3 (2) a report prepared by the Board, which shall
4 include, but is not limited to, a summary of the benefits
5 provided by the Program, including the number of enrollees
6 in the Program, the percentage and amounts of investment
7 options and rates of return, and such other information
8 that is relevant to make a full, fair, and effective
9 disclosure of the operations of the Program and the Fund.

10 The annual audit shall be made by an independent certified
11 public accountant and shall include, but is not limited to,
12 direct and indirect costs attributable to the use of outside
13 consultants, independent contractors, and any other persons
14 who are not State employees for the administration of the
15 Program.

16 (b) In addition to any other statements or reports required
17 by law, the Board shall provide periodic reports at least
18 annually to participating employers, reporting the names of
19 each enrollee employed by the participating employer and the
20 amounts of contributions made by the participating employer on
21 behalf of each employee during the reporting period, as well as
22 to enrollees, reporting contributions and investment income
23 allocated to, withdrawals from, and balances in their Program
24 accounts for the reporting period. Such reports may include any
25 other information regarding the Program as the Board may
26 determine.

1 Section 85. Penalties.

2 (a) An employer who fails without reasonable cause to
3 enroll an employee in the Program within the time prescribed
4 under Section 60 of this Act shall be subject to a penalty
5 equal to:

6 (1) \$250 for each employee for each calendar year or
7 portion of a calendar year during which the employee
8 neither was enrolled in the Program nor had elected out of
9 participation in the Program; or

10 (2) for each calendar year beginning after the date a
11 penalty has been assessed with respect to an employee, \$500
12 for any portion of that calendar year during which such
13 employee continues to be unenrolled without electing out of
14 participation in the Program.

15 (b) After determining that an employer is subject to
16 penalty under this Section for a calendar year, the Department
17 shall issue a notice of proposed assessment to such employer,
18 stating the number of employees for which the penalty is
19 proposed under item (1) of subsection (a) of this Section and
20 the number of employees for which the penalty is proposed under
21 item (2) of subsection (a) of this Section for such calendar
22 year, and the total amount of penalties proposed.

23 Upon the expiration of 90 days after the date on which a
24 notice of proposed assessment was issued, the penalties
25 specified therein shall be deemed assessed, unless the employer

1 had filed a protest with the Department under subsection (c) of
2 this Section.

3 If, within 90 days after the date on which it was issued, a
4 protest of a notice of proposed assessment is filed under
5 subsection (c) of this Section, the penalties specified therein
6 shall be deemed assessed upon the date when the decision of the
7 Department with respect to the protest becomes final.

8 (c) A written protest against the proposed assessment shall
9 be filed with the Department in such form as the Department may
10 by rule prescribe, setting forth the grounds on which such
11 protest is based. If such a protest is filed within 90 days
12 after the date the notice of proposed assessment is issued, the
13 Department shall reconsider the proposed assessment and shall
14 grant the employer a hearing. As soon as practicable after such
15 reconsideration and hearing, the Department shall issue a
16 notice of decision to the employer, setting forth the
17 Department's findings of fact and the basis of decision. The
18 decision of the Department shall become final:

19 (1) if no action for review of the decision is
20 commenced under the Administrative Review Law, on the date
21 on which the time for commencement of such review has
22 expired; or

23 (2) if a timely action for review of the decision is
24 commenced under the Administrative Review Law, on the date
25 all proceedings in court for the review of such assessment
26 have terminated or the time for the taking thereof has

1 expired without such proceedings being instituted.

2 (d) As soon as practicable after the penalties specified in
3 a notice of proposed assessment are deemed assessed, the
4 Department shall give notice to the employer liable for any
5 unpaid portion of such assessment, stating the amount due and
6 demanding payment. If a employer neglects or refuses to pay the
7 entire liability shown on the notice and demand within 10 days
8 after the notice and demand is issued, the unpaid amount of the
9 liability shall be a lien in favor of the State of Illinois
10 upon all property and rights to property, whether real or
11 personal, belonging to the employer, and the provisions in the
12 Illinois Income Tax Act regarding liens, levies and collection
13 actions with regard to assessed and unpaid liabilities under
14 that Act, including the periods for taking any action, shall
15 apply.

16 (e) An employer who has overpaid a penalty assessed under
17 this Section may file a claim for refund with the Department. A
18 claim shall be in writing in such form as the Department may by
19 rule prescribe and shall state the specific grounds upon which
20 it is founded. As soon as practicable after a claim for refund
21 is filed, the Department shall examine it and either issue a
22 refund or issue a notice of denial. If such a protest is filed,
23 the Department shall reconsider the denial and grant the
24 employer a hearing. As soon as practicable after such
25 reconsideration and hearing, the Department shall issue a
26 notice of decision to the employer. The notice shall set forth

1 briefly the Department's findings of fact and the basis of
2 decision in each case decided in whole or in part adversely to
3 the employer. A denial of a claim for refund becomes final 90
4 days after the date of issuance of the notice of the denial
5 except for such amounts denied as to which the employer has
6 filed a protest with the Department. If a protest has been
7 timely filed, the decision of the Department shall become
8 final:

9 (1) if no action for review of the decision is
10 commenced under the Administrative Review Law, on the date
11 on which the time for commencement of such review has
12 expired; or

13 (2) if a timely action for review of the decision is
14 commenced under the Administrative Review Law, on the date
15 all proceedings in court for the review of such assessment
16 have terminated or the time for the taking thereof has
17 expired without such proceedings being instituted.

18 (f) No notice of proposed assessment may be issued with
19 respect to a calendar year after June 30 of the fourth
20 subsequent calendar year. No claim for refund may be filed more
21 than 1 year after the date of payment of the amount to be
22 refunded.

23 (g) The provisions of the Administrative Review Law and the
24 rules adopted pursuant to it shall apply to and govern all
25 proceedings for the judicial review of final decisions of the
26 Department in response to a protest filed by the employer under

1 subsections (c) and (e) of this Section. Final decisions of the
2 Department shall constitute "administrative decisions" as
3 defined in Section 3-101 of the Code of Civil Procedure.

4 (h) Whenever notice is required by this Section, it may be
5 given or issued by mailing it by first-class mail addressed to
6 the person concerned at his or her last known address.

7 (i) All books and records and other papers and documents
8 relevant to the determination of any penalty due under this
9 Section shall, at all times during business hours of the day,
10 be subject to inspection by the Department or its duly
11 authorized agents and employees.

12 (j) The Department may require employers to report
13 information relevant to their compliance with this Act on
14 returns otherwise due from the employers under Section 704A of
15 the Illinois Income Tax Act and failure to provide the
16 requested information on a return shall cause such return to be
17 treated as unprocessable.

18 (k) For purposes of any provision of State law allowing the
19 Department or any other agency of this State to offset an
20 amount owed to a taxpayer against a tax liability of that
21 taxpayer or allowing the Department to offset an overpayment of
22 tax against any liability owed to the State, a penalty assessed
23 under this Section shall be deemed to be a tax liability of the
24 employer and any refund due to an employer shall be deemed to
25 be an overpayment of tax of the employer.

26 (l) Except as provided in this subsection, all information

1 received by the Department from returns filed by an employer or
2 from any investigation conducted under the provisions of this
3 Act shall be confidential, except for official purposes within
4 the Department or pursuant to official procedures for
5 collection of penalties assessed under this Act. Nothing
6 contained in this subsection shall prevent the Director from
7 publishing or making available to the public reasonable
8 statistics concerning the operation of this Act wherein the
9 contents of returns are grouped into aggregates in such a way
10 that the specific information of any employer shall not be
11 disclosed. Nothing contained in this subsection shall prevent
12 the Director from divulging information to an authorized
13 representative of the employer or to any person pursuant to a
14 request or authorization made by the employer or by an
15 authorized representative of the employer.

16 (m) Civil penalties collected under this Act and fees
17 collected pursuant to subsection (n) of this Section shall be
18 deposited into the Tax Compliance and Administration Fund. The
19 Department may, subject to appropriation, use moneys in the
20 fund to cover expenses it incurs in the performance of its
21 duties under this Act. Interest attributable to moneys in the
22 Tax Compliance and Administration Fund shall be credited to the
23 Tax Compliance and Administration Fund.

24 (n) The Department may charge the Board a reasonable fee
25 for its costs in performing its duties under this Section to
26 the extent that such costs have not been recovered from

1 penalties imposed under this Section.

2 (o) This Section shall become operative 9 months after the
3 Board notifies the Director that the Program has been
4 implemented. Upon receipt of such notification from the Board,
5 the Department shall immediately post on its Internet website a
6 notice stating that this Section is operative and the date that
7 it is first operative.

8 Section 90. Rules. The Board and the Department shall
9 adopt, in accordance with the Illinois Administrative
10 Procedure Act, any rules that may be necessary to implement
11 this Act.

12 Section 500. The State Finance Act is amended by adding
13 Section 5.855 as follows:

14 (30 ILCS 105/5.855 new)

15 Sec. 5.855. The Illinois Secure Choice Savings Program
16 Fund.

17 Section 999. Effective date. This Act takes effect upon
18 becoming law.