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SENATE BILL 392

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Bill Tallman and Tomás E. Salazar

AN ACT

RELATING TO PRIVATE-SECTOR RETIREMENT; ENACTING THE NEW MEXICO SAVES ACT; AUTHORIZING A NONPROFIT CORPORATION AND A BOARD; PROVIDING POWERS AND DUTIES; ALLOWING FOR A RETIREMENT SAVINGS WEB-BASED MARKETPLACE; ALLOWING FOR A VOLUNTARY SAVINGS PROGRAM FOR PRIVATE-SECTOR EMPLOYEES AND THE SELF-EMPLOYED; PROVIDING CONDITIONS; LIMITING LIABILITY OF EMPLOYERS AND THE STATE; PROVIDING FOR CONFIDENTIALITY OF PARTICIPANTS AND ACCOUNT INFORMATION; REQUIRING AUDITS AND ANNUAL REPORTS; REQUIRING PARTICIPATION BY COVERED EMPLOYERS UNDER CERTAIN CONDITIONS; PROVIDING A PRIVATE RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "New Mexico Saves Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND

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1 PURPOSE.--

2 A. The legislature finds that:

3 (1) approximately one-half of the United  
4 States private-sector workforce is not participating in a  
5 workplace-sponsored retirement program, a trend that, if it  
6 continues, will have severe consequences for retirees,  
7 taxpayers, the economy and federal and state safety net  
8 programs;

9 (2) social security, which many workers depend  
10 on, was never meant to be a sole-source retirement program and  
11 is woefully inadequate for most retirees to live on; and

12 (3) it is necessary for the state to act to  
13 protect private-sector employees and taxpayers from the  
14 negative effects of retirement insecurity by educating New  
15 Mexico's workforce on the importance of saving for retirement,  
16 promoting the efforts by employers to adopt retirement programs  
17 for employees and assisting employees who do not have access to  
18 an employer-offered savings arrangement to initiate individual  
19 retirement accounts.

20 B. The purpose of the New Mexico Saves Act is to  
21 provide for a nonprofit corporation with the responsibility to  
22 work with private-sector covered employers and employees  
23 throughout New Mexico to provide for voluntary payroll  
24 deductions for employee individual retirement accounts to  
25 benefit employees upon retirement and to alleviate

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1 unsustainable stress on state and federal safety net programs.

2 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 New Mexico Saves Act:

4 A. "administrative fund" means the New Mexico saves  
5 administrative fund;

6 B. "board" means the New Mexico saves board of  
7 directors;

8 C. "covered employee" means a person who is at  
9 least eighteen years of age and who is employed by a covered  
10 employer, either full time or part time, who has wages or other  
11 compensation that is allocable to the state or a person who is  
12 self-employed as a sole proprietor or an independent  
13 contractor; provided that "covered employee" does not include  
14 an employee:

15 (1) covered under the federal Railway Labor  
16 Act;

17 (2) on whose behalf an employer makes  
18 contributions to a multi-employer pension trust fund pursuant  
19 to the federal Taft-Hartley Act; or

20 (3) of federal, state or local government or  
21 any agency, department, board, commission, institution or  
22 instrumentality of those governments;

23 D. "covered employer" means a person engaged in a  
24 business, industry, profession, trade or other enterprise with  
25 its primary place of business physically located in New Mexico

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1 that agrees to execute payroll deduction instructions from  
2 covered employees, excluding a federal, state or local  
3 government or any agency, department, board, commission,  
4 institution or instrumentality of those governments;

5 E. "director" means a member of the board;

6 F. "financial institution" means a bank, savings  
7 and loan association, credit union, broker-dealer, asset  
8 manager, insurance company, mutual fund or other financial  
9 entity;

10 G. "Internal Revenue Code" means the United States  
11 Internal Revenue Code of 1986, as amended;

12 H. "New Mexico saves" means the retirement savings  
13 program that invests payroll deductions of covered employees  
14 without any contributions from covered employers;

15 I. "New Mexico saves more marketplace" means a web-  
16 based marketplace for retirement savings plans for private-  
17 sector employers and employees separate from New Mexico saves;

18 J. "participating employer" means a covered  
19 employer that provides payroll deductions for individual  
20 retirement accounts through New Mexico saves but that does not  
21 contribute to those accounts;

22 K. "program manager" means a financial institution  
23 under contract with the board to serve as manager of New Mexico  
24 saves and the trust fund and receive contributions on behalf of  
25 program participants;

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1 L. "program participant" means a covered employee  
2 who is contributing to a Roth individual retirement account  
3 through New Mexico saves or has a Roth individual retirement  
4 account balance through New Mexico saves;

5 M. "Roth individual retirement account" means a  
6 voluntary payroll deduction Roth individual retirement account  
7 that conforms to the requirements of Section 408A of the  
8 Internal Revenue Code;

9 N. "total fees and expenses" means all fees, costs  
10 and expenses, including administrative expenses, investment  
11 expenses, investment advice expenses, accounting costs,  
12 actuarial costs, legal costs, marketing expenses, education  
13 expenses, trading costs, insurance annuitization costs and  
14 other miscellaneous costs; and

15 O. "trust fund" means the trust fund in which the  
16 assets of New Mexico saves are held, including voluntary  
17 payroll deductions of covered employees or contributions by the  
18 self-employed, distributions, operations and administration or  
19 management of the trust.

20 SECTION 4. [NEW MATERIAL] CORPORATION AUTHORIZED--BOARD  
21 OF DIRECTORS--ORGANIZATION--LIMITATION ON LIABILITY.--

22 A. A nonprofit organization to provide a retirement  
23 program for covered employees is authorized to be formed  
24 pursuant to the provisions of the Nonprofit Corporation Act and  
25 the New Mexico Saves Act. The name of the corporation shall be

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1 "New Mexico saves".

2 B. The corporation shall be governed by a board of  
3 directors composed of the following:

4 (1) the state treasurer or the state  
5 treasurer's designee;

6 (2) the executive director of the public  
7 employees retirement association or the executive director's  
8 designee;

9 (3) the educational retirement director or the  
10 director's designee;

11 (4) two members appointed by the governor as  
12 follows:

13 (a) one member who has a favorable  
14 reputation for skill, knowledge and experience in the field of  
15 retirement saving and investments; and

16 (b) one member who has a favorable  
17 reputation for skill, knowledge and experience relating to  
18 small business;

19 (5) two members appointed by the speaker of  
20 the house of representatives as follows:

21 (a) one member who is a representative  
22 of an association representing employees or who has a favorable  
23 reputation for skill, knowledge and experience in the interests  
24 of employees in retirement saving; and

25 (b) one member to be a representative of

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1 the interests of retirees; and

2 (6) two members appointed by the president pro  
3 tempore of the senate as follows:

4 (a) one member who has a favorable  
5 reputation for skill, knowledge and experience in the interests  
6 of employers in retirement saving; and

7 (b) one member who has a favorable  
8 reputation for skill, knowledge and experience in retirement  
9 investment products or retirement plan designs.

10 C. The appointing authorities shall appoint the  
11 first members of the board for staggered terms so that the  
12 governor appoints one member for two years and one member for  
13 four years, the speaker of the house of representatives  
14 appoints one member for two years and one member for three  
15 years and the president pro tempore of the senate appoints one  
16 member for three years and one member for four years.

17 Thereafter, members of the board shall be appointed for four-  
18 year terms. A member is eligible for reappointment. Members  
19 shall serve until their successors have been appointed and  
20 qualified. If there is a vacancy for any reason, the  
21 appointing authority shall make a like appointment for the  
22 unexpired term.

23 D. The board shall:

24 (1) elect a chair and other officers it deems  
25 necessary; and

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1                   (2) hire an executive director, who shall be  
2 the chief administrative officer of the corporation and shall  
3 be responsible for the operation of the corporation.

4                   E. A director, the executive director or any other  
5 officer shall not be personally liable for any damages  
6 resulting from any:

7                   (1) negligent act or omission of an employee  
8 of the corporation;

9                   (2) negligent act or omission of another  
10 director or officer of the corporation; or

11                   (3) action taken as a director or officer or a  
12 failure to take any action as a director or officer unless the  
13 director or officer has breached or failed to perform the  
14 duties of the director's or officer's office and the breach or  
15 failure to perform constitutes malfeasance or misfeasance.

16                   SECTION 5. [NEW MATERIAL] CORPORATION--POWERS.--The  
17 corporation shall have the powers conferred upon domestic  
18 nonprofit corporations by the Nonprofit Corporation Act unless  
19 otherwise specified in the New Mexico Saves Act and shall also  
20 have the power to:

21                   A. sue and be sued in its corporate name;

22                   B. adopt and alter bylaws for its organization and  
23 internal management and adopt rules, policies and procedures as  
24 necessary and appropriate to implement the provisions of the  
25 New Mexico Saves Act and the administration and operation of

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1 the New Mexico saves more marketplace, New Mexico saves and the  
2 trust fund consistent with the Internal Revenue Code and rules  
3 adopted in accordance with that code, including ensuring that  
4 New Mexico saves and the trust fund satisfy all criteria for  
5 favorable tax treatment and comply with all other applicable  
6 federal and state laws;

7 C. establish and maintain reserves for the  
8 administrative fund;

9 D. sell, convey, pledge, exchange, transfer or  
10 otherwise dispose of its assets other than the trust fund for  
11 consideration upon terms and conditions that the corporation  
12 shall determine;

13 E. make contracts, incur liabilities or borrow  
14 money at rates of interest that the corporation may determine;

15 F. make and execute all contracts, agreements or  
16 instruments necessary or convenient in the exercise of the  
17 powers and functions granted the corporation by the New Mexico  
18 Saves Act; provided that the board may delegate such power to  
19 the executive director and may limit the scope of that  
20 delegation;

21 G. receive and administer contracts, government or  
22 private grants and donations;

23 H. fix, revise from time to time, charge and  
24 collect fees and other charges in connection with the New  
25 Mexico saves more marketplace or New Mexico saves;

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1 I. invest and reinvest its funds;  
2 J. conduct its activities, carry on its operations,  
3 have offices and exercise the powers granted by the New Mexico  
4 Saves Act;

5 K. employ officers and employees that it deems  
6 necessary, set their compensation and prescribe their duties;

7 L. enter into agreements with this or any other  
8 state;

9 M. enter into agreements with insurance carriers to  
10 insure against any loss in connection with its operations;  
11 and

12 N. contract with private and public financial  
13 institutions, depositories, consultants, actuaries, counsel,  
14 auditors, investment advisers, investment administrators,  
15 investment management firms, other investment firms, third-  
16 party administrators and other professionals as may be required  
17 and to fix and pay their compensation.

18 SECTION 6. [NEW MATERIAL] CORPORATION--DUTIES.--Pursuant  
19 to policies established by its board and as directed by its  
20 executive director, the corporation shall:

21 A. participate in or sponsor retirement forums or  
22 conferences and make presentations to private-sector employers  
23 and employees throughout New Mexico to educate them on the  
24 benefits of saving for retirement;

25 B. provide a blanket surety bond for all employees

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1 and directors in such amount as determined by the board and  
2 conditioned on the faithful performance of the duties of each  
3 employee during the employee's employment and each director  
4 during the director's term of office until the director's  
5 successor is appointed and qualified and on a proper accounting  
6 for all money and property in the employee's or director's  
7 official capacity;

8 C. establish and direct the implementation and  
9 maintenance of the New Mexico saves more marketplace, New  
10 Mexico saves and the trust fund;

11 D. cause the New Mexico saves more marketplace, New  
12 Mexico saves, the trust fund and arrangements and accounts  
13 established under New Mexico saves to be designed, established  
14 and operated:

15 (1) in accordance with best practices for  
16 retirement saving vehicles;

17 (2) to encourage participation, saving, sound  
18 investment practices and appropriate selection of investment  
19 options, including any default investments;

20 (3) to maximize simplicity and ease of  
21 administration for covered employers;

22 (4) to minimize costs, including by collective  
23 investment and economies of scale;

24 (5) to require portability of benefits; and

25 (6) to avoid preemption of New Mexico saves by

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1 federal law;

2 E. establish procedures for the timely and fair  
3 resolution of program participant and other disputes related to  
4 accounts or program operation;

5 F. develop and implement an outreach plan to gain  
6 input and disseminate information regarding the New Mexico  
7 saves more marketplace, New Mexico saves and retirement savings  
8 in general, including timely information to covered employers  
9 regarding New Mexico saves and how it applies to them, with  
10 special emphasis on their ability at any time to sponsor a  
11 specified tax-favored retirement program that would exempt them  
12 from any responsibilities under New Mexico saves;

13 G. ensure that all contributions to Roth individual  
14 retirement accounts under New Mexico saves and any fees and  
15 charges shall be used only to:

16 (1) pay benefits to program participants;

17 (2) pay the cost of administering New Mexico  
18 saves and the New Mexico saves more marketplace;

19 (3) make investments for the benefit of New  
20 Mexico saves; and

21 (4) ensure that no assets of the New Mexico  
22 saves more marketplace, New Mexico saves or the trust fund are  
23 encumbered, expended or otherwise used for any purpose other  
24 than those specified in the New Mexico Saves Act;

25 H. evaluate the need for, and procure if and as

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1 needed, insurance against any and all loss in connection with  
2 the property, assets or activities of New Mexico saves and the  
3 trust fund;

4 I. collaborate with and evaluate the role of  
5 financial advisors or other financial professionals and  
6 financial institutions, including those assisting and providing  
7 guidance for program participants;

8 J. require competitive selection pursuant to  
9 requests for proposals for personal service contracts over  
10 twenty thousand dollars (\$20,000);

11 K. discharge its duties and see to it that each  
12 director discharges that director's duties as a fiduciary with  
13 respect to the New Mexico saves more marketplace and New Mexico  
14 saves solely in the interest of the program participants and  
15 for the exclusive purpose of providing benefits to program  
16 participants and defraying reasonable expenses of administering  
17 the program and the trust fund with the care, skill, prudence  
18 and diligence under the circumstances then prevailing that a  
19 prudent person acting in a like capacity and familiar with  
20 those matters would use in the conduct of an enterprise of a  
21 like character and with like aims; and

22 L. perform such other activities as are needed to  
23 further the purposes of the New Mexico Saves Act.

24 SECTION 7. [NEW MATERIAL] APPLICATION OF OTHER LAWS.--

25 A. The corporation formed pursuant to the New

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1 Mexico Saves Act is separate and apart from the state and shall  
2 not be deemed an agency, public body or other political  
3 subdivision of the state for purposes of applying laws relating  
4 to personnel, procurement of goods and services, gross receipts  
5 tax, disposition or acquisition of property, capital outlay and  
6 per diem and mileage.

7 B. Information obtained by the corporation that is  
8 proprietary or information about covered employees or accounts  
9 or participants in the New Mexico saves more marketplace is  
10 confidential and not subject to inspection pursuant to the  
11 Inspection of Public Records Act.

12 C. The corporation, its officers, directors and  
13 employees shall be granted immunity from liability for any tort  
14 as provided in the Tort Claims Act and may enter into  
15 agreements with insurance carriers to insure against a loss in  
16 connection with its operations even though the loss may be  
17 included among losses covered by the risk management fund of  
18 New Mexico.

19 SECTION 8. [NEW MATERIAL] EXECUTIVE DIRECTOR--POWERS AND  
20 DUTIES.--

21 A. The executive director of New Mexico saves may:

22 (1) hire, fire and recommend to the board  
23 compensation for staff, as needed; and

24 (2) contract for legal, fiscal, investment and  
25 other expert advisors and service providers, none of whom shall

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1 be directors and all of whom shall serve at the pleasure of the  
2 board.

3 B. The executive director shall:

4 (1) oversee requests for proposals or other  
5 public competitions at the board's request;

6 (2) conduct any business necessary for the  
7 efficient operation of the board and New Mexico saves;

8 (3) develop and disseminate educational  
9 information and tools designed to educate program participants,  
10 covered employers, covered employees and other state residents  
11 about the benefits of planning and saving for retirement and  
12 information to help them decide the level of participation and  
13 savings strategies that may be appropriate for them, including  
14 information in furtherance of financial capability and  
15 financial literacy;

16 (4) if necessary, determine the eligibility of  
17 an employer or employee to participate in New Mexico saves; and

18 (5) perform other duties as assigned by the  
19 board.

20 SECTION 9. [NEW MATERIAL] BOARD AND STAFF REQUIREMENTS  
21 AND PROHIBITIONS--CONFLICTS OF INTEREST--PRIVATE RIGHT OF  
22 ACTION.--

23 A. Directors and staff of the corporation shall  
24 comply with the Gift Act, the Governmental Conduct Act and the  
25 Open Meetings Act in the same manner as state agencies and

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1 state employees.

2 B. Directors or any member of the corporation's  
3 staff shall not:

4 (1) directly or indirectly have any interest  
5 in the making of any investment of New Mexico saves or in gains  
6 or profits accruing from any such investment;

7 (2) borrow any New Mexico saves-related or  
8 trust fund-related funds or deposits or use any such funds or  
9 deposits in any manner for personal gain or as an agent or  
10 partner of others; or

11 (3) become an endorser, surety or obligor on  
12 investments made by New Mexico saves.

13 C. If any director or employee of the corporation  
14 has an interest, either direct or indirect, in any contract to  
15 which New Mexico saves is or is to be a party, such interest  
16 shall be disclosed to the board in writing and shall be set  
17 forth in the minutes of the board. The director or employee  
18 having such interest shall not participate in any action by the  
19 board with respect to such contract.

20 D. Any person harmed by an action taken by the  
21 board when there was an undisclosed conflict of interest or the  
22 person participated in any transaction involving such conflict  
23 of interest or failed to notify the board of such conflict may  
24 bring a civil suit against the board or person so conflicted  
25 who participated in a transaction.

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1           SECTION 10.   ~~[NEW MATERIAL]~~ INVESTMENT POLICY--DEVELOPMENT

2   AND IMPLEMENTATION.--The board shall develop and direct staff  
3   to implement an investment policy that defines New Mexico  
4   saves' investment objectives, that is consistent with the  
5   program's objectives and that provides for policies and  
6   procedures consistent with those investment objectives. To  
7   that end, the investment policy shall:

8           A.   designate appropriate default investments that  
9   include a mix of asset classes, such as target date funds and  
10   balanced funds;

11          B.   seek to minimize program participant fees and  
12   expenses of investment and administration; and

13          C.   include investment options available to account  
14   owners established as part of New Mexico saves and other  
15   program features that are intended to achieve maximum possible  
16   income replacement balanced with an appropriate level of risk  
17   in a Roth individual retirement account-based environment  
18   consistent with the investment objectives of the investment  
19   policy. The investment options may encompass a range of risk  
20   and return opportunities and allow for a rate of return  
21   commensurate with an appropriate level of risk in view of the  
22   investment objectives of the policy. The menu of investment  
23   options shall:

24           (1) take into account the nature and  
25   objectives of New Mexico saves; and

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1 (2) consider the desirability, based on  
2 behavioral research findings, of limiting investment choices to  
3 a reasonable number and the extensive investment choices  
4 available to participants in the event that they roll over to  
5 an individual retirement account outside New Mexico saves.

6 SECTION 11. [NEW MATERIAL] NEW MEXICO SAVES MORE  
7 MARKETPLACE.--

8 A. The "New Mexico saves more marketplace" is a  
9 voluntary web-based marketplace to connect more small  
10 businesses with private-sector financial service firms that  
11 provide a range of retirement savings options for employers to  
12 offer to their employees. The marketplace established by the  
13 board is intended to help reduce the educational burdens that  
14 serve as barriers to entry into the retirement market for  
15 businesses with fewer than one hundred employees by educating  
16 them on plan availability and by promoting, without mandating  
17 employer participation, qualified low-burden retirement savings  
18 vehicles. The marketplace may result in more workers saving  
19 for retirement throughout their lives, while offering  
20 portability and convenience throughout their careers and  
21 ensuring that the people who participate in a marketplace plan  
22 have all the protections offered by federal law.

23 B. The board may act in concert with other states  
24 offering a similar New Mexico saves more website. The board  
25 shall provide public notice of the availability of and the

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1 process for inclusion on the New Mexico saves more marketplace  
2 website before it becomes publicly available. The marketplace  
3 shall be available to the public before the board opens New  
4 Mexico saves for enrollment, and the marketplace website  
5 address shall be included on any internet website posting or  
6 other materials regarding New Mexico saves before it is offered  
7 to the public by the board. The New Mexico saves more  
8 marketplace shall be implemented no later than July 1, 2020.

9 C. The board shall:

10 (1) design the operation of the New Mexico  
11 saves more marketplace as a website to connect employers with  
12 retirement savings plans, ensuring that the design does not  
13 favor a particular kind of service provider or business model;

14 (2) develop marketing materials; and

15 (3) promote the benefits of retirement savings  
16 and financial literacy.

17 D. The board shall allow all financial service  
18 firms that meet the requirements of the board to participate in  
19 the New Mexico saves more marketplace. In addition, the board  
20 shall not exclude, by policy or otherwise, any retirement plan  
21 or option within a plan that meets the requirements of the  
22 board and is otherwise allowed under federal or state law,  
23 including plan design options that are selected by the  
24 employer.

25 E. Participation in the New Mexico saves more

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1 marketplace by covered employers and employees is voluntary;  
2 provided that an employer may use automatic enrollment and  
3 automatic escalation of contributions but must allow an  
4 employee opt-out option.

5 F. The New Mexico saves more marketplace shall  
6 offer an array of private retirement plan options, including:

7 (1) a simple individual retirement-type plan;

8 (2) a payroll deduction individual retirement-  
9 type plan; and

10 (3) a plan described in Section 401(a) or  
11 403(b) of the Internal Revenue Code.

12 G. The New Mexico saves more marketplace shall  
13 allow, but shall not require, the availability within approved  
14 plans of distribution options that provide income in  
15 retirement, such as systematic withdrawal programs, guaranteed  
16 lifetime withdrawal benefits and annuities.

17 H. The board may establish administrative fees.  
18 Such fees shall be deposited in the administrative fund.

19 SECTION 12. [NEW MATERIAL] NEW MEXICO SAVES--CREATED--  
20 IMPLEMENTATION.--

21 A. "New Mexico saves" is the voluntary private-  
22 sector payroll deduction Roth individual retirement account  
23 program created by the board in accordance with the provisions  
24 of the New Mexico Saves Act.

25 B. New Mexico saves shall:

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1 (1) provide that the individual retirement  
2 account to which contributions are made shall be a Roth  
3 individual retirement account;

4 (2) allow covered employees in New Mexico to  
5 voluntarily choose to contribute to a Roth individual  
6 retirement account through New Mexico saves, including allowing  
7 covered employees to contribute to a Roth individual retirement  
8 account through payroll deductions to New Mexico saves  
9 automatically, if approved by the board and allowed pursuant to  
10 federal law;

11 (3) provide that the default option shall be a  
12 Roth individual retirement account with a target date fund  
13 investment and a contribution rate determined by the covered  
14 employee; provided that the covered employee may choose to stop  
15 participating altogether, choose a different investment from  
16 among the options available or choose to contribute at a higher  
17 or lower contribution rate, subject to the Roth individual  
18 retirement account contribution dollar limits applicable under  
19 the Internal Revenue Code;

20 (4) provide for direct deposit of  
21 contributions into one or more investments selected by New  
22 Mexico saves;

23 (5) be professionally managed;

24 (6) not allow employer contributions by  
25 covered employers;

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1 (7) report on the status of each program  
2 participant's trust fund account to be provided to each program  
3 participant at least annually;

4 (8) when possible and practicable, use  
5 existing employer and public infrastructure to facilitate  
6 contributions, recordkeeping and outreach and use pooled or  
7 collective investment arrangements;

8 (9) provide that each program participant owns  
9 the contributions to and earnings on amounts contributed to the  
10 participant's trust fund account under New Mexico saves and  
11 that the state, the board and covered employers have no  
12 proprietary interest in those contributions or earnings;

13 (10) be designed and implemented in a manner  
14 consistent with federal law to the extent that it applies to  
15 and is consistent with New Mexico saves not being preempted by  
16 the federal Employee Retirement Income Security Act of 1974;

17 (11) keep total fees and expenses as low as  
18 possible;

19 (12) adopt policies and procedures governing  
20 the distribution of funds from New Mexico saves, including such  
21 distributions as may be permitted or required by New Mexico  
22 saves and any applicable provisions of tax laws, with the  
23 objectives of maximizing financial security in retirement,  
24 helping to protect spousal rights and assisting program  
25 participants with the challenges of decumulation of savings.

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1 The board shall have the authority, in its discretion, to  
2 provide for one or more reasonably priced distribution options  
3 to provide a source of fixed regular retirement income,  
4 including income for life or for the program participant's life  
5 expectancy or for joint lives and life expectancies, as  
6 applicable; and

7 (13) adopt policies and procedures promoting  
8 portability of benefits, including the ability to make tax-free  
9 rollovers or transfers from individual retirement accounts in  
10 New Mexico saves to other individual retirement accounts or to  
11 tax-qualified plans that accept such rollovers or transfers as  
12 long as any rollover is initiated by program participants and  
13 not solicited by agents or brokers.

14 C. If a covered employer fails to transmit a  
15 payroll deduction contribution to New Mexico saves, on the  
16 earliest date the amount withheld from the covered employee's  
17 compensation can reasonably be segregated from the covered  
18 employer's assets, but not later than the fifteenth day of the  
19 month following the month in which the covered employee's  
20 contribution amounts are withheld from the covered employee's  
21 paycheck, the failure to remit such contributions on a timely  
22 basis shall be subject to the same sanctions as employer  
23 misappropriation of employee wage withholdings.

24 SECTION 13. [NEW MATERIAL] POLICIES AND PROCEDURES FOR  
25 NEW MEXICO SAVES.--The board shall adopt policies and

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1 procedures to implement New Mexico saves that:

2 A. establish the processes for enrollment and  
3 contributions to payroll deduction individual retirement  
4 accounts, including elections by covered employees, withholding  
5 by participating employers of program participants' payroll  
6 deduction contributions from wages and remittance for deposit  
7 to the program participants' individual retirement accounts and  
8 voluntary enrollment and contributions by self-employed  
9 persons;

10 B. establish the processes for withdrawals,  
11 rollovers and direct transfers from individual retirement  
12 accounts in the interest of facilitating portability and  
13 maximization of benefits;

14 C. establish processes for phasing in enrollment of  
15 eligible persons, including phasing in enrollment of covered  
16 employees by size or type of covered employer, beginning  
17 January 1, 2021 and substantially ending January 1, 2022; and

18 D. require outreach to covered employers, covered  
19 employees and the public regarding New Mexico saves. The rules  
20 shall specify the contents, frequency, timing and means of  
21 required disclosures from New Mexico saves to covered  
22 employees, covered employers, program participants and  
23 participating employers and other interested parties. These  
24 disclosures shall include:

25 (1) the benefits associated with tax-favored

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1 retirement saving;

2 (2) the potential advantages and disadvantages  
3 associated with contributing to Roth individual retirement  
4 accounts through New Mexico saves;

5 (3) the eligibility rules for Roth individual  
6 retirement accounts;

7 (4) that the program participant is solely  
8 responsible for determining whether and, if so, how much the  
9 program participant is eligible to contribute on a tax-favored  
10 basis to a Roth individual retirement account; provided that  
11 New Mexico saves, the covered employer, the state, the board,  
12 any director or other state official or employee of the state  
13 is not responsible for that determination;

14 (5) the penalty for excess contributions to  
15 Roth individual retirement accounts and the method of  
16 correcting excess contributions;

17 (6) instructions for enrolling, making  
18 elections to contribute or to decline to contribute and making  
19 elections regarding contribution rates, type of individual  
20 retirement accounts and investments;

21 (7) instructions for implementing and for  
22 changing the elections;

23 (8) the potential availability of a program  
24 participant's tax credit, including the eligibility conditions  
25 for the credit and instructions on how to claim it;

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1 (9) statements that New Mexico saves, the  
2 board, the staff, a covered employer or the state does not  
3 offer tax, investment or other financial advice, and that the  
4 program participant should contact appropriate professional  
5 advisors and that only the program participant is liable for  
6 decisions the program participant makes in relation to New  
7 Mexico saves;

8 (10) statements that payroll deduction  
9 individual retirement accounts are not intended to be employer-  
10 sponsored retirement plans and that New Mexico saves is not an  
11 employer-sponsored retirement plan;

12 (11) the potential implications of account  
13 balances in New Mexico saves for the application of asset  
14 limits under certain public assistance programs;

15 (12) that the program participant is solely  
16 responsible for investment performance, including market gains  
17 and losses, and that individual retirement accounts and rates  
18 of return are not guaranteed by New Mexico saves, the board,  
19 individual directors, board staff, covered employers or the  
20 state or any of its officers or employees;

21 (13) additional information about retirement  
22 and saving and other information and tools designed to promote  
23 financial literacy and capability, which may take the form of  
24 links to or explanations of how to obtain such information; and

25 (14) how to obtain additional information

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1 about New Mexico saves.

2 SECTION 14. [NEW MATERIAL] PROTECTION FROM LIABILITY FOR  
3 COVERED EMPLOYERS.--

4 A. New Mexico saves is not an employer-sponsored  
5 plan. A covered employer is not liable for and does not bear  
6 responsibility for:

7 (1) the decision to participate or not to  
8 participate in New Mexico saves by a covered employee;

9 (2) any specific elections under New Mexico  
10 saves made by program participants;

11 (3) program participants' or the board's  
12 investment decisions;

13 (4) the administration, investment, investment  
14 returns or investment performance of New Mexico saves,  
15 including any interest rate or other rate of return on any  
16 contribution or Roth individual retirement account balance;

17 (5) the design or administration of New Mexico  
18 saves or the benefits paid to program participants;

19 (6) a program participant's awareness of or  
20 compliance with the conditions and other provisions of the tax  
21 laws that determine which persons are eligible to make tax-  
22 favored contributions to individual retirement accounts, in  
23 what amount and in what time frame and manner; or

24 (7) any loss, failure to realize any gain or  
25 any other adverse consequences, including adverse tax

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1 consequences or loss of favorable tax treatment, public  
2 assistance or other benefits incurred by a program participant  
3 as a result of participating in New Mexico saves.

4 B. No covered employer shall be or be considered to  
5 be a fiduciary in relation to New Mexico saves or the trust  
6 fund or any other arrangement of New Mexico saves.

7 SECTION 15. [NEW MATERIAL] PROTECTION FROM LIABILITY FOR  
8 THE STATE.--

9 A. The state or any agency, department, board,  
10 commission, institution, officer or employee of the state:

11 (1) has no responsibility for compliance by  
12 program participants with the conditions and other provisions  
13 of the Internal Revenue Code that determine which persons are  
14 eligible to make tax-favored contributions to individual  
15 retirement accounts, in what amount and in what time frame and  
16 manner;

17 (2) has no duty, responsibility or liability  
18 to any party for the payment of any benefits under New Mexico  
19 saves, regardless of whether sufficient funds are available in  
20 New Mexico saves to pay such benefits;

21 (3) does not and shall not guarantee any  
22 interest rate or other rate of return on or investment  
23 performance of any contribution or account balance; and

24 (4) is not liable or responsible for any loss,  
25 deficiency, failure to realize any gain or any other adverse

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1 consequences, including any adverse tax consequences or loss of  
2 favorable tax treatment, public assistance or other benefits,  
3 incurred by a program participant as a result of participating  
4 in New Mexico saves.

5 B. The debts, contracts and obligations of New  
6 Mexico saves or the board are not the debts, contracts and  
7 obligations of the state or any of its agencies, departments,  
8 boards, commissions or institutions or any of its officers and  
9 employees. Neither the faith and credit nor the taxing power  
10 of the state is pledged directly or indirectly to the payment  
11 of the debts, contracts and obligations of New Mexico saves or  
12 the board.

13 SECTION 16. [NEW MATERIAL] CONFIDENTIALITY OF PARTICIPANT  
14 AND ACCOUNT INFORMATION.--Individual account information of New  
15 Mexico saves pertaining to program participants, including  
16 names, addresses, telephone numbers, email addresses, personal  
17 identification information, investments, contributions and  
18 earnings, is confidential and shall be maintained as  
19 confidential:

20 A. except to the extent necessary to administer New  
21 Mexico saves in a manner consistent with the New Mexico Saves  
22 Act, the tax laws of this state and the Internal Revenue Code;  
23 or

24 B. unless the person who provides the information  
25 or is the subject of the information expressly agrees in

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1 writing to the disclosure of the information.

2 SECTION 17. [NEW MATERIAL] COLLABORATION AND  
3 COOPERATION.--The board may enter into a memorandum of  
4 understanding or other agreement with a state agency to have  
5 the board receive outreach, technical assistance, enforcement  
6 and compliance services, collection or dissemination of  
7 information pertinent to New Mexico saves, subject to such  
8 obligations of confidentiality as may be agreed or required by  
9 law, or for other services or assistance. A state agency that  
10 enters into an agreement with the board shall collaborate to  
11 provide the outreach, assistance, information and compliance or  
12 other services or assistance to the board. The agreement shall  
13 cover the costs incurred by the state agency in gathering and  
14 disseminating information and the reimbursement of costs for  
15 any enforcement activities or assistance.

16 SECTION 18. [NEW MATERIAL] NEW MEXICO SAVES  
17 ADMINISTRATIVE FUND.--

18 A. The board shall establish the "New Mexico saves  
19 administrative fund" in any bank, savings and loan, credit  
20 union or other appropriate financial institution. The fund  
21 consists of:

22 (1) money from the payment of application,  
23 administrative or other fees and the payment of other money due  
24 the board;

25 (2) grants, gifts and donations;

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1 (3) money collected from contributions to or  
2 investment returns or assets of New Mexico saves or other money  
3 collected by or for New Mexico saves or pursuant to  
4 arrangements entered into pursuant to New Mexico saves to the  
5 extent permitted by federal and state law; and

6 (4) earnings from investment of money in the  
7 fund.

8 B. The board shall ensure that New Mexico saves is  
9 self-sustaining. To allow for the start-up and continuing  
10 operation, maintenance, administration and management of New  
11 Mexico saves until there is a sufficient balance in the  
12 administrative fund and New Mexico saves can generate  
13 sufficient funding through assessed fees and other charges, the  
14 board may borrow working capital as may be necessary for this  
15 purpose; provided, however, that loans shall be in the name of  
16 New Mexico saves and the board; and provided further that such  
17 loans shall be payable solely from the administrative revenue  
18 of New Mexico saves and shall not be considered a general  
19 obligation or other debt of the state. The board may enter  
20 into long-term procurement contracts with one or more financial  
21 providers that provide a fee structure that would assist New  
22 Mexico saves in avoiding or minimizing the need to borrow. The  
23 board shall not in any manner warrant or intimate that any  
24 state assets are or may be available to pay off any loans.

25 C. The board may use money in the administrative

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1 fund solely to pay the administrative costs and expenses of New  
2 Mexico saves and the administrative costs and expenses the  
3 board incurs in the performance of its duties pursuant to the  
4 New Mexico Saves Act.

5 SECTION 19. [NEW MATERIAL] AUDITS AND ANNUAL REPORTS.--

6 A. The board shall cause an accurate account of all  
7 of New Mexico saves', the trust fund's and the board's  
8 activities, operations, receipts and expenditures to be  
9 maintained. Each year, a full audit of the books and accounts  
10 of the board pertaining to those activities, operations,  
11 receipts and expenditures, personnel, services and facilities  
12 shall be conducted by a certified public accountant and shall  
13 include direct and indirect costs attributable to the use of  
14 outside consultants, independent contractors and any other  
15 persons for the administration of New Mexico saves. For the  
16 purposes of the audit, the auditors shall have access to the  
17 properties and records of New Mexico saves and the board and  
18 may prescribe methods of accounting and the rendering of  
19 periodic reports in relation to projects undertaken by New  
20 Mexico saves.

21 B. By August 1 of each year, the board shall submit  
22 to the governor, the state treasurer and the appropriate  
23 committees of the legislature an audited financial report,  
24 prepared in accordance with generally accepted accounting  
25 principles, detailing the activities, operations, receipts and

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1 expenditures of New Mexico saves and the board during the  
2 preceding calendar year. The report shall also include  
3 projected activities of New Mexico saves and the board for the  
4 current calendar year.

5 C. The board shall prepare an annual report on the  
6 operation of New Mexico saves to be provided to appropriate  
7 state officials and made available to all program participants,  
8 participating employers and the general public.

9 SECTION 20. [NEW MATERIAL] REQUIRED PARTICIPATION UNDER  
10 CERTAIN CONDITIONS.--If, after five years from the effective  
11 date of the New Mexico Saves Act, the board determines, based  
12 on state data, that the percentage of private-sector employees  
13 without access to a payroll deduction retirement plan remains  
14 above thirty percent, all covered employers shall be required  
15 to offer their employees the opportunity to automatically  
16 contribute to New Mexico saves through payroll deductions,  
17 unless a covered employer offers a qualified retirement plan,  
18 including a plan qualified pursuant to Section 401(a), 401(k),  
19 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal  
20 Revenue Code. The board shall have the authority to phase in  
21 this requirement and establish enforcement provisions.

22 SECTION 21. TEMPORARY PROVISION--DATES OF  
23 IMPLEMENTATION--CONDITIONS ON IMPLEMENTATION.--

24 A. The New Mexico saves board of directors shall  
25 establish New Mexico saves so that covered employees may begin

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1 contributing to New Mexico saves no later than January 1, 2021.

2 B. The New Mexico saves board of directors may  
3 phase in New Mexico saves so that the ability to contribute  
4 first applies on different dates for different classes of  
5 covered employees, including covered employees of covered  
6 employers of different sizes or types, and second applies to  
7 self-employed workers or independent contractors. Any staged  
8 or phased-in implementation schedule shall be substantially  
9 completed no later than January 1, 2022.

10 C. The New Mexico saves board of directors shall  
11 not implement New Mexico saves if and to the extent that it  
12 determines that New Mexico saves is preempted by the federal  
13 Employee Retirement Income Security Act of 1974. Accordingly,  
14 if and as needed, the board shall implement New Mexico saves in  
15 a severable fashion to the extent practicable, if and to the  
16 extent that the board determines that:

17 (1) a portion or aspect of New Mexico saves is  
18 preempted by that act, the board shall not implement that  
19 portion or aspect of New Mexico saves but shall proceed to  
20 implement the remainder of New Mexico saves to the extent  
21 practicable; or

22 (2) some but not all of the payroll deduction  
23 individual retirement account arrangements or other  
24 arrangements pursuant to New Mexico saves are or would be  
25 employee benefit plans pursuant to that act, the board shall

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1 proceed to implement New Mexico saves with respect to the other  
2 arrangements pursuant to New Mexico saves to the extent  
3 practicable.

4 SECTION 22. SEVERABILITY.--If any part or application of  
5 the New Mexico Saves Act is held invalid, the remainder or its  
6 application to other situations or persons shall not be  
7 affected.