

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0167.02 Nicole Myers x4326

HOUSE BILL 16-1403

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HOUSE SPONSORSHIP

Pettersen and Buckner, Danielson, Duran, Esgar, Winter

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Todd and Donovan,

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House Committees  
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A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE COLORADO SECURE SAVINGS  
102 PLAN.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill establishes the Colorado secure savings plan (plan), which is a retirement savings plan for private-sector employees in the form of an automatic enrollment payroll deduction individual retirement account. Employers with a specified number of employees in the state are required to participate in the plan, but any employer may choose to participate in the plan.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

The Colorado secure savings plan board of trustees (board) is created and consists of the state controller, the director of the governor's office of state planning and budgeting, and 7 additional trustees with certain experience who are appointed by the governor and confirmed by the senate. The trustees on the board have a fiduciary duty to the plan's enrollees and beneficiaries and are required to:

- ! Establish investment options that offer employees returns on contributions without incurring debt or liabilities to the state;
- ! Establish the process for allocating investment earnings and losses to individual plan accounts on a pro rata basis;
- ! Make and enter into contracts and hire staff as necessary for the administration of the plan;
- ! Conduct a periodic review of the performance of any investment vendors;
- ! Cause moneys in the Colorado secure savings plan fund (fund) to be held and invested together in trust;
- ! Establish the process for an enrollee to contribute a portion of his or her wages to the plan for automatic deposit and establish the process by which the participating employer forwards those contributions to the plan;
- ! Establish the process for enrollment in the plan including the process by which an employee can opt not to participate in the plan;
- ! Accept gifts, grants, and donations from specified entities and pursue options for bank loans or a line of credit to cover the start-up costs of the plan;
- ! Procure, as needed, insurance against loss in connection with the property, assets, or activities of the plan;
- ! Allocate administrative fees to individual retirement accounts in the plan on a pro rata basis;
- ! Set minimum and maximum contribution levels;
- ! Facilitate education and outreach to employers and employees;
- ! Ensure that the plan complies with all applicable state and federal laws;
- ! Deposit all gifts, grants, donations, fees, and earnings from investment of moneys in the fund into the fund and pay the administrative costs and expenses for the creation, management, and operation of the plan from moneys in the fund;
- ! Determine any nominal and reasonable assistance that may be provided to businesses to offset the initial costs of enrolling employees in the plan;
- ! Prepare or cause to be prepared certain annual audits and

annual reports regarding the plan; and

- ! Develop a process to ensure that employers are in compliance with the requirements of the plan and develop a penalty structure for employers who fail, without reasonable cause, to enroll employees in the plan.

The bill specifies the process by which the board is required to engage an investment manager to invest the assets of the plan and specifies the investment options that the board is required to create.

The bill creates the Colorado secure savings plan fund as a trust outside of the state treasury, specifies that the fund will include the individual retirement accounts of enrollees in the plan, and allows the board to use a certain percentage of moneys in the fund for the administrative expenses of the plan. The moneys in the fund are not property of the state and cannot be commingled with state moneys.

The board is required to design and disseminate to all employers that are required to or that choose to participate in the plan employer and employee information packets regarding the plan and the options for employee participation in the plan.

The bill dictates the timing for the board to implement the plan and a time frame for employers to establish a system by which enrollees in the plan can remit payroll deduction contributions to the plan. Employers are required to automatically enroll employees in the plan unless an employee has opted out of participation in the plan. Enrollees may select an investment option and contribution level or use the default investment option and contribution amount established by the board.

The bill specifies that the state and employers do not have any duty or liability to any party for the payments of any retirement savings benefits accrued by any individual through the plan.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) More than thirty-nine million working-age American  
5 households do not have any retirement assets. For near-retirement  
6 households, the median retirement account balance is only fourteen  
7 thousand five hundred dollars and the average working-age household  
8 has a median account balance of only two thousand five hundred dollars.

9 (b) Only one in four women aged sixty-five and older and almost

1 four in ten men aged sixty-five and older receive any income from  
2 pensions and retirement savings. Women receive an average of nine  
3 thousand dollars per year and men receive an average of fifteen thousand  
4 three hundred ninety-six dollars per year.

5 (c) Minority households have too little accumulated wealth to tap  
6 for retirement. White households have over seven times as much saved  
7 in retirement accounts as Hispanic and African-American households.  
8 The median household net worth of Hispanic and African-American  
9 households is less than nine percent of the median net wealth of white  
10 households, which translates into an average net worth of one hundred  
11 thirty-four thousand eight dollars for the average white family, compared  
12 to nine thousand two hundred twenty-nine dollars for Hispanic families  
13 and eleven thousand one hundred eighty-four dollars for  
14 African-American families.

15 (d) Coloradans are less prepared for retirement today than in  
16 previous decades, and the overwhelming majority of people in the state  
17 are concerned about their ability and their children's ability to retire;

18 (e) Older workers are working longer and delaying their  
19 retirement. Many of today's seniors rely on their children, who are  
20 already struggling to raise their own families, or on other social services  
21 that are underfunded.

22 (f) Almost five out of ten Coloradans, aged twenty-five to  
23 sixty-four, working in the private sector lack access to a retirement plan  
24 at work;

25 (g) Colorado's younger workers are disproportionately affected,  
26 with forty-nine percent of workers between the age of twenty-five and  
27 twenty-nine, forty-five percent of workers between the age of thirty and

1 thirty-four, and forty-eight percent of workers between the age of  
2 thirty-five and thirty-nine, lacking access to a retirement plan at work;

3 (h) Minority workers in Colorado are also disproportionately  
4 affected, with forty-nine percent of African-American workers and  
5 fifty-seven percent of Hispanic workers lacking access to a retirement  
6 plan at work;

7 (i) Colorado's lowest wage workers are also less likely to have  
8 access to a workplace retirement savings plan. Seventy-six percent of  
9 Colorado's workers in the lowest income quintile and fifty-two percent  
10 of Colorado's workers in the second lowest income quintile have no  
11 access to a retirement plan at work.

12 (j) The major reason many workers do not participate in  
13 retirement savings plans is their employers do not offer them. Experts on  
14 retirement recommend that the best way to increase retirement savings is  
15 to offer a workplace savings plan to all workers, and enroll them  
16 automatically with the right to opt out.

17 (k) For decades, Americans have built their retirement with  
18 traditional pensions, social security, and individual savings, but  
19 America's retirement system has unraveled. About half of Colorado  
20 workers in the private sector do not have any type of employer-sponsored  
21 retirement plan, and individual savings plans are not filling the gap and  
22 have proved risky and unreliable.

23 (l) The future of Colorado's economic growth relies on our aging  
24 population having sufficient income in retirement so they can afford to  
25 live independently and have quality healthcare. Our seniors contribute  
26 significantly to local economies throughout the state, and their retirement  
27 investment spending provides stability to those communities.

1 (m) Colorado needs a remedy to the retirement security crisis so  
2 that Coloradans can look forward to a retirement free from financial  
3 anxiety or hardship; and

4 (n) Coloradans have a history of creating unique solutions to the  
5 challenges that the state faces. The state has an opportunity to craft a plan  
6 for the future that can ensure all Coloradans have the ability to save for  
7 retirement.

8 (2) The general assembly further finds and declares that it is  
9 therefore in the best interest of the state to establish the Colorado secure  
10 savings plan to provide a workplace savings plan for all Colorado  
11 workers whose employers do not provide such a plan.

12 **SECTION 2.** In Colorado Revised Statutes, **add** article 54.3 to  
13 title 24 as follows:

14 **ARTICLE 54.3**

15 **Colorado Secure Savings Plan Act**

16 **24-54.3-101. Short title.** THE SHORT TITLE OF THIS ARTICLE IS THE  
17 "COLORADO SECURE SAVINGS PLAN ACT".

18 **24-54.3-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "BOARD" MEANS THE COLORADO SECURE SAVINGS PLAN  
21 BOARD ESTABLISHED IN SECTION 24-54.3-104.

22 (2) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO IS EIGHTEEN YEARS  
23 OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER, AND WHO EARNS WAGES  
24 SUBJECT TO INCOME TAX PURSUANT TO SECTION 39-22-104, C.R.S.

25 (3) "EMPLOYER" MEANS A PERSON OR ENTITY ENGAGED IN A  
26 BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE  
27 STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT:

1 (a) (I) EMPLOYS THE FOLLOWING NUMBER OF EMPLOYEES IN THE  
2 STATE:

3 (A) FOR THE FIRST YEAR OF OPERATION OF THE PLAN, ONE  
4 HUNDRED OR MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS  
5 CALENDAR YEAR;

6 (B) FOR THE SECOND YEAR OF OPERATION OF THE PLAN, FIFTY OR  
7 MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;  
8 AND

9 (C) FOR THE THIRD YEAR OF OPERATION OF THE PLAN AND FOR  
10 EVERY YEAR OF OPERATION OF THE PLAN THEREAFTER, FIVE OR MORE  
11 EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;

12 (II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS; AND

13 (III) HAS NOT OFFERED A QUALIFIED RETIREMENT PLAN,  
14 INCLUDING, BUT NOT LIMITED TO, A PLAN QUALIFIED UNDER SECTIONS  
15 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), OR 457(b) OF THE FEDERAL  
16 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN THE PRECEDING  
17 TWO YEARS; OR

18 (b) EMPLOYS FEWER THAN THE NUMBER OF EMPLOYEES SPECIFIED  
19 IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (3) FOR THE  
20 APPLICABLE YEAR OF OPERATION OF THE PLAN, HAS NOT OFFERED A  
21 QUALIFIED RETIREMENT PLAN AS SPECIFIED IN SUBPARAGRAPH (III) OF  
22 PARAGRAPH (a) OF THIS SUBSECTION (3), AND THAT CHOOSES TO  
23 PARTICIPATE IN THE PLAN.

24 (4) "ENROLLEE" MEANS ANY EMPLOYEE WHO IS ENROLLED IN THE  
25 PLAN.

26 (5) "FUND" MEANS THE COLORADO SECURE SAVINGS PLAN FUND  
27 CREATED IN SECTION 24-54.3-110.

1 (6) "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL  
2 REVENUE CODE OF 1986", AS AMENDED, OR ANY SUCCESSOR LAW.

3 (7) "IRA" MEANS A ROTH INDIVIDUAL RETIREMENT ACCOUNT  
4 AUTHORIZED PURSUANT TO SECTION 408A OF THE INTERNAL REVENUE  
5 CODE OR, IF AN EMPLOYEE IS INELIGIBLE TO ENROLL IN A ROTH  
6 INDIVIDUAL RETIREMENT ACCOUNT BASED ON HIS OR HER INCOME, "IRA"  
7 MEANS A TRADITIONAL INDIVIDUAL RETIREMENT ACCOUNT.

8 (8) "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT  
9 PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS  
10 PROVIDED FOR IN THIS ARTICLE FOR ITS EMPLOYEES WHO ARE ENROLLEES  
11 IN THE PLAN.

12 (9) "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT"  
13 MEANS AN ARRANGEMENT BY WHICH A PARTICIPATING EMPLOYER ALLOWS  
14 ENROLLEES TO REMIT PAYROLL DEDUCTION CONTRIBUTIONS TO THE PLAN.

15 (10) "PLAN" MEANS THE COLORADO SECURE SAVINGS PLAN  
16 CREATED IN THIS ARTICLE.

17 (11) "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING  
18 OF SECTION 219(f)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED  
19 BY AN ENROLLEE FROM A PARTICIPATING EMPLOYER DURING THE  
20 CALENDAR YEAR.

21 **24-54.3-103. Colorado secure savings plan - established.** A  
22 RETIREMENT SAVINGS PLAN IN THE FORM OF AN AUTOMATIC ENROLLMENT  
23 PAYROLL DEDUCTION IRA, KNOWN AS THE COLORADO SECURE SAVINGS  
24 PLAN, IS HEREBY ESTABLISHED. THE BOARD SHALL ADMINISTER THE PLAN  
25 FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR  
26 PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND  
27 PORTABLE MANNER.



1           **24-54.3-104. Colorado secure savings plan board - creation -**

2           **composition.** (1) THERE IS HEREBY CREATED THE BOARD OF TRUSTEES  
3 OF THE PLAN, WHICH SHALL HAVE THE RESPONSIBILITIES, DUTIES, AND  
4 AUTHORITIES SET FORTH IN THIS ARTICLE.

5           (2) THE BOARD SHALL CONSIST OF THE FOLLOWING NINE  
6 TRUSTEES:

7           (a) THE STATE CONTROLLER, OR HIS OR HER DESIGNEE;

8           (b) THE DIRECTOR OF THE GOVERNOR'S OFFICE OF STATE  
9 PLANNING AND BUDGETING, OR HIS OR HER DESIGNEE; AND

10          (c) SEVEN TRUSTEES APPOINTED BY THE GOVERNOR AND  
11 CONFIRMED BY THE SENATE AS FOLLOWS:

12          (I) FOUR PUBLIC REPRESENTATIVES WITH EXPERTISE IN  
13 INVESTMENT OR RETIREMENT SAVINGS PLAN ADMINISTRATION, INCLUDING  
14 THE DAY-TO-DAY OPERATIONS OF PLANS, MAINTAINING INDIVIDUAL  
15 ACCOUNTS, AND KEEPING TRACK OF TRANSACTIONS AND ASSETS AT THE  
16 INDIVIDUAL PARTICIPANT ACCOUNT LEVEL;

17          (II) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS;

18          (III) A REPRESENTATIVE OF ENROLLEES OR POTENTIAL  
19 ENROLLEES; AND

20          (IV) A RETIRED COLORADO RESIDENT.

21          (3) THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES  
22 SHALL BE TWO PUBLIC REPRESENTATIVES FOR FOUR YEARS; THE  
23 REPRESENTATIVE OF PARTICIPATING EMPLOYERS AND THE RETIRED  
24 COLORADO RESIDENT FOR THREE YEARS; AND TWO PUBLIC  
25 REPRESENTATIVES AND THE REPRESENTATIVE OF ENROLLEES OR  
26 POTENTIAL ENROLLEES FOR TWO YEARS. THEREAFTER, ALL OF THE  
27 GOVERNOR'S APPOINTEES SHALL BE FOR TERMS OF FOUR YEARS.

1           (4) IN MAKING APPOINTMENTS TO THE BOARD, THE GOVERNOR  
2 SHALL MAKE A CONCERTED EFFORT TO INCLUDE MEMBERS OF DIVERSE  
3 POLITICAL, RACIAL, CULTURAL, INCOME, AND ABILITY GROUPS AND  
4 MEMBERS FROM URBAN AND RURAL AREAS OF THE STATE.

5           (5) THE TRUSTEES SHALL ELECT FROM AMONG THEMSELVES A  
6 CHAIRPERSON AND ANY OTHER OFFICERS AS MAY BE NECESSARY FOR THE  
7 BOARD TO CARRY OUT ITS DUTIES AND RESPONSIBILITIES.

8           (6) A VACANCY IN THE TERM OF AN APPOINTED BOARD TRUSTEE  
9 SHALL BE FILLED FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME  
10 MANNER AS THE ORIGINAL APPOINTMENT.

11           (7) TRUSTEES OF THE BOARD SHALL SERVE WITHOUT  
12 COMPENSATION BUT MAY BE REIMBURSED FOR NECESSARY TRAVEL  
13 EXPENSES INCURRED IN CONNECTION WITH THEIR BOARD DUTIES FROM  
14 MONEYS IN THE FUND.

15           (8) NO PERSON CAN BE OR CAN CONTINUE TO BE A TRUSTEE OF THE  
16 BOARD WHO HAS BEEN ADJUDICATED OF HAVING VIOLATED ANY  
17 PROVISIONS OF THIS ARTICLE OR WHO HAS BEEN CONVICTED OF A FELONY  
18 OR ANY CRIME INVOLVING THE MISAPPROPRIATION OF FUNDS.

19           **24-54.3-105. Standard of conduct - fiduciary duty.** (1) THE  
20 TRUSTEES OF THE BOARD, ANY OTHER AGENTS APPOINTED OR ENGAGED  
21 BY THE BOARD, AND ALL PERSONS SERVING AS PLAN STAFF SHALL  
22 DISCHARGE THEIR DUTIES WITH RESPECT TO THE PLAN SOLELY IN THE  
23 INTEREST OF THE PLAN'S ENROLLEES AND BENEFICIARIES AS FOLLOWS:

24           (a) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO  
25 ENROLLEES AND BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES  
26 OF ADMINISTERING THE PLAN;

27           (b) BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND

1 DILIGENCE UNDER THE PREVAILING CIRCUMSTANCES THAT A PRUDENT  
2 PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH RELEVANT  
3 MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE  
4 CHARACTER AND WITH LIKE AIMS; AND

5 (c) BY USING ANY CONTRIBUTIONS PAID BY EMPLOYEES AND  
6 EMPLOYERS INTO THE TRUST FUND EXCLUSIVELY FOR THE PURPOSE OF  
7 PAYING BENEFITS TO THE ENROLLEES OF THE PLAN, FOR THE COST OF  
8 ADMINISTRATION OF THE PLAN, AND FOR INVESTMENTS MADE FOR THE  
9 BENEFIT OF THE PLAN.

10 (2) THE TRUSTEES OF THE BOARD SHALL NOT ENGAGE IN ANY  
11 ACTIVITIES THAT MIGHT RESULT IN A CONFLICT OF INTEREST WITH THEIR  
12 FUNCTIONS AS FIDUCIARIES FOR THE PLAN.

13 **24-54.3-106. Additional duties of the board.** (1) IN ADDITION  
14 TO THE OTHER DUTIES AND RESPONSIBILITIES SPECIFIED IN THIS ARTICLE,  
15 THE BOARD SHALL:

16 (a) CAUSE THE PLAN TO BE DESIGNED, ESTABLISHED, AND  
17 OPERATED IN A MANNER THAT:

18 (I) IS IN ACCORDANCE WITH BEST PRACTICES FOR RETIREMENT  
19 SAVINGS VEHICLES AND IS BASED ON THE RESULTS OF A FINANCIAL  
20 FEASIBILITY STUDY, CONDUCTED PURSUANT TO PARAGRAPH (v) OF THIS  
21 SUBSECTION (1), TO ENSURE THAT THE PLAN IS SELF-SUSTAINING;

22 (II) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND  
23 INVESTMENT PRACTICES;

24 (III) MAXIMIZES SIMPLICITY, INCLUDING EASE OF  
25 ADMINISTRATION FOR PARTICIPATING EMPLOYERS AND ENROLLEES;

26 (IV) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING  
27 INVESTMENT FUNDS;

1 (V) ENSURES THE PORTABILITY OF BENEFITS; AND

2 (VI) PROVIDES FOR THE DEACCUMULATION OF ENROLLEE ASSETS  
3 IN A MANNER THAT MAXIMIZES FINANCIAL SECURITY IN RETIREMENT;

4 (b) EXPLORE AND ESTABLISH INVESTMENT OPTIONS PURSUANT TO  
5 SECTION 24-54.3-109, THAT OFFER EMPLOYEES RETURNS ON  
6 CONTRIBUTIONS AND THE CONVERSION OF INDIVIDUAL RETIREMENT  
7 SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT INCOME WITHOUT  
8 INCURRING DEBT OR LIABILITIES TO THE STATE;

9 (c) ESTABLISH THE PROCESS BY WHICH INTEREST, INVESTMENT  
10 EARNINGS, AND INVESTMENT LOSSES ARE ALLOCATED TO INDIVIDUAL  
11 PLAN ACCOUNTS ON A PRO RATA BASIS AND ARE COMPUTED AT THE  
12 INTEREST RATE ON THE BALANCE OF AN ENROLLEE'S ACCOUNT;

13 (d) MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE  
14 ADMINISTRATION OF THE PLAN AND FUND, INCLUDING, BUT NOT LIMITED  
15 TO, RETAINING AND CONTRACTING WITH INVESTMENT MANAGERS,  
16 PRIVATE FINANCIAL INSTITUTIONS, PUBLIC ENTITIES, OTHER FINANCIAL  
17 AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES, COUNSEL,  
18 AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER PROFESSIONALS  
19 AS NECESSARY;

20 (e) CONDUCT A REVIEW OF THE PERFORMANCE OF ANY  
21 INVESTMENT VENDORS EVERY FOUR YEARS, INCLUDING, BUT NOT LIMITED  
22 TO, A REVIEW OF RETURNS, FEES, AND CUSTOMER SERVICE. THE BOARD  
23 SHALL MAKE THE RESULTS OF THE REVIEWS CONDUCTED PURSUANT TO  
24 THIS PARAGRAPH (f) AVAILABLE TO THE PUBLIC.

25 (f) DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS  
26 NEEDED TO ADMINISTER THE PLAN AND ASSEMBLE SUCH A STAFF,  
27 INCLUDING, AS NEEDED, EMPLOYING STAFF AND APPOINTING A PLAN

1 ADMINISTRATOR. THE BOARD MAY CONTRACT WITH THIRD PARTIES,  
2 INCLUDING STATE AGENCIES, TO ASSIST IN ADMINISTERING THE PLAN.

3 (g) CAUSE MONEYS IN THE FUND TO BE HELD AND INVESTED  
4 TOGETHER IN TRUST PURSUANT TO SECTION 24-54.3-110, WITH THE  
5 INTENT TO ACHIEVE COST-SAVINGS THROUGH EFFICIENCIES AND  
6 ECONOMIES OF SCALE;

7 (h) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN  
8 ENROLLEE IS ABLE TO CONTRIBUTE A PORTION OF HIS OR HER WAGES TO  
9 THE PLAN FOR AUTOMATIC DEPOSIT OF THOSE CONTRIBUTIONS AND THE  
10 PROCESS BY WHICH THE PARTICIPATING EMPLOYER PROVIDES A PAYROLL  
11 DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO FORWARD THOSE  
12 CONTRIBUTIONS AND RELATED INFORMATION TO THE PLAN, INCLUDING,  
13 BUT NOT LIMITED TO, CONTRACTING WITH FINANCIAL SERVICE COMPANIES  
14 AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE  
15 AND PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR  
16 PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENTS OR SIMILAR  
17 ARRANGEMENTS;

18 (i) DESIGN AND ESTABLISH THE PROCESS FOR ENROLLMENT  
19 PURSUANT TO SECTION 24-54.3-113, INCLUDING THE PROCESS BY WHICH  
20 AN EMPLOYEE CAN OPT NOT TO PARTICIPATE IN THE PLAN, SELECT A  
21 CONTRIBUTION LEVEL, SELECT AN INVESTMENT OPTION, AND TERMINATE  
22 PARTICIPATION IN THE PLAN;

23 (j) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN  
24 INDIVIDUAL MAY VOLUNTARILY ENROLL IN AND MAKE CONTRIBUTIONS TO  
25 THE PLAN;

26 (k) ACCEPT ANY GIFTS, GRANTS, AND DONATIONS, OR OTHER  
27 MONEYS FROM THE STATE, ANY UNIT OF FEDERAL, STATE, OR LOCAL

1 GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR  
2 CORPORATION THAT HAS OPERATIONS IN THE STATE TO COVER START-UP  
3 COSTS OF THE PLAN. THE BOARD MAY ALSO PURSUE OPTIONS FOR BANK  
4 LOANS OR A LINE OF CREDIT TO COVER THE START-UP COSTS OF THE PLAN.

5 (l) EVALUATE THE NEED FOR, AND PROCURE AS NEEDED,  
6 INSURANCE AGAINST ANY AND ALL LOSS IN CONNECTION WITH THE  
7 PROPERTY, ASSETS, OR ACTIVITIES OF THE PLAN, AND INDEMNIFY AS  
8 NEEDED EACH MEMBER OF THE BOARD FROM PERSONAL LOSS OR LIABILITY  
9 RESULTING FROM A MEMBER'S ACTION OR INACTION AS A MEMBER OF THE  
10 BOARD;

11 (m) MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE  
12 COSTS AND EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION  
13 OF THE PLAN. ALL ADMINISTRATIVE COSTS OF THE PLAN, INCLUDING  
14 REPAYMENT OF ANY START-UP MONEYS PROVIDED BY THE STATE, SHALL  
15 BE PAID ONLY OUT OF MONEYS IN THE FUND; EXCEPT THAT ANY GIFTS,  
16 GRANTS, OR DONATIONS RECEIVED PURSUANT TO PARAGRAPH (k) OF THIS  
17 SUBSECTION (1) TO IMPLEMENT THE PLAN UNTIL THE FUND IS  
18 SELF-SUSTAINING SHALL NOT BE REPAID UNLESS THOSE MONEYS WERE  
19 OFFERED CONTINGENT UPON THE PROMISE OF SUCH REPAYMENT.

20 (n) ALLOCATE ADMINISTRATIVE FEES TO IRAS IN THE PLAN ON A  
21 PRO RATA BASIS;

22 (o) SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN  
23 ACCORDANCE WITH LIMITS ESTABLISHED FOR IRAS BY THE INTERNAL  
24 REVENUE CODE;

25 (p) FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND  
26 EMPLOYEES;

27 (q) FACILITATE COMPLIANCE BY THE PLAN WITH ALL APPLICABLE

1 REQUIREMENTS FOR THE PLAN UNDER THE INTERNAL REVENUE CODE,  
2 INCLUDING TAX QUALIFICATION REQUIREMENTS OR ANY OTHER  
3 APPLICABLE LAW AND ACCOUNTING REQUIREMENTS;

4 (r) CARRY OUT THE DUTIES AND OBLIGATIONS OF THE PLAN IN AN  
5 EFFECTIVE, EFFICIENT, AND LOW-COST MANNER;

6 (s) EXERCISE ANY AND ALL OTHER POWERS REASONABLY  
7 NECESSARY FOR THE EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND  
8 PROVISIONS OF THIS ARTICLE;

9 (t) DEPOSIT INTO THE FUND ALL GIFTS, GRANTS, DONATIONS, FEES,  
10 AND EARNINGS FROM INVESTMENTS FROM THE FUND THAT ARE USED TO  
11 RECOVER ADMINISTRATIVE COSTS. ALL EXPENSES OF THE BOARD SHALL  
12 BE PAID FROM THE FUND.

13 (u) DETERMINE ANY NOMINAL AND REASONABLE ASSISTANCE  
14 THAT MAY BE PROVIDED FROM MONEYS IN THE FUND TO BUSINESSES TO  
15 OFFSET THE INITIAL COSTS OF ENROLLING EMPLOYEES IN THE PLAN; AND

16 (v) CONDUCT OR CAUSE TO BE CONDUCTED A FINANCIAL  
17 FEASIBILITY STUDY TO ENSURE THAT THE PLAN WILL BE SELF-SUSTAINING.

18 **24-54.3-107. Risk management.** THE BOARD SHALL ANNUALLY  
19 PREPARE AND ADOPT A WRITTEN STATEMENT OF INVESTMENT POLICY  
20 THAT INCLUDES A RISK MANAGEMENT AND OVERSIGHT PROGRAM. THIS  
21 INVESTMENT POLICY SHALL PROHIBIT THE BOARD, PLAN, AND FUND FROM  
22 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 OF  
25 THE PLAN AND FUND PORTFOLIO, TO ENSURE THAT THE RISKS TAKEN ARE  
26 PRUDENT AND PROPERLY MANAGED, TO PROVIDE AN INTEGRATED PROCESS  
27 FOR OVERALL RISK MANAGEMENT, AND TO ASSESS INVESTMENT RETURNS

1 AS WELL AS RISKS IN ORDER TO DETERMINE IF THE RISKS TAKEN ARE  
2 ADEQUATELY COMPENSATED COMPARED TO APPLICABLE PERFORMANCE  
3 BENCHMARKS AND STANDARDS. THE BOARD SHALL CONSIDER THE  
4 STATEMENT OF INVESTMENT POLICY AND ANY CHANGES IN THE  
5 INVESTMENT POLICY AT A PUBLIC HEARING.

6 **24-54.3-108. Investment firms.** (1) THE BOARD SHALL ENGAGE,  
7 AFTER AN OPEN BID PROCESS, AN INVESTMENT MANAGER OR MANAGERS  
8 TO INVEST THE FUND AND ANY OTHER ASSETS OF THE PLAN. MONEYS IN  
9 THE FUND MAY BE INVESTED OR REINVESTED BY THE INVESTMENT  
10 MANAGERS SELECTED BY THE BOARD. IN SELECTING THE INVESTMENT  
11 MANAGER OR MANAGERS, THE BOARD SHALL TAKE INTO CONSIDERATION  
12 AND GIVE WEIGHT TO THE INVESTMENT MANAGER'S FEES AND CHARGES IN  
13 ORDER TO REDUCE THE PLAN'S ADMINISTRATIVE EXPENSES.

14 (2) THE INVESTMENT MANAGER OR MANAGERS SHALL COMPLY  
15 WITH ALL APPLICABLE FEDERAL AND STATE LAWS, RULES, AND  
16 REGULATIONS, AS WELL AS ALL RULES, POLICIES, AND GUIDELINES  
17 PROMULGATED BY THE BOARD WITH RESPECT TO THE PLAN AND THE  
18 INVESTMENT OF MONEYS IN THE FUND, INCLUDING, BUT NOT LIMITED TO,  
19 THE INVESTMENT POLICY.

20 (3) THE INVESTMENT MANAGER OR MANAGERS SHALL PROVIDE  
21 SUCH REPORTS AS THE BOARD DEEMS NECESSARY FOR THE BOARD TO  
22 OVERSEE EACH INVESTMENT MANAGER'S PERFORMANCE AND THE  
23 PERFORMANCE OF THE FUND.

24 **24-54.3-109. Investment options.** (1) THE BOARD MAY  
25 ESTABLISH THE FOLLOWING INVESTMENT OPTIONS:

- 26 (a) A LOW-RISK INVESTMENT PORTFOLIO; AND
- 27 (b) A DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM GROWTH



1 POTENTIAL.

2 (2) THE DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM  
3 GROWTH POTENTIAL SHALL BE THE DEFAULT INVESTMENT OPTION FOR  
4 ENROLLEES WHO FAIL TO ELECT AN INVESTMENT OPTION UNLESS THE  
5 BOARD DESIGNATES BY RULE A NEW INVESTMENT OPTION AS THE DEFAULT  
6 PURSUANT TO SUBSECTION (4) OF THIS SECTION.

7 (3) UNDER NO CIRCUMSTANCES SHALL THE BOARD, PLAN, FUND,  
8 THE STATE, OR ANY PARTICIPATING EMPLOYER ASSUME ANY LIABILITY  
9 FOR INVESTMENT OR ACTUARIAL RISK. THE BOARD SHALL DETERMINE  
10 WHETHER TO ESTABLISH SUCH INVESTMENT OPTIONS BASED UPON AN  
11 ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL, FEASIBILITY, AND  
12 EASE OF IMPLEMENTATION.

13 (4) IF THE BOARD ELECTS TO ESTABLISH A LOW-RISK INVESTMENT  
14 PORTFOLIO, THE BOARD SHALL DETERMINE WHETHER SUCH OPTION WILL  
15 REPLACE THE DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM GROWTH  
16 POTENTIAL AS THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO DO  
17 NOT ELECT AN INVESTMENT OPTION. IN MAKING SUCH DETERMINATION,  
18 THE BOARD SHALL CONSIDER THE COST, RISK PROFILE, BENEFIT LEVEL,  
19 AND EASE OF ENROLLMENT IN THE LOW-RISK INVESTMENT PORTFOLIO.  
20 THE BOARD MAY AT ANY TIME THEREAFTER REVISIT THIS QUESTION AND,  
21 BASED ON AN ANALYSIS OF THESE CRITERIA, ESTABLISH THE LOW-RISK  
22 INVESTMENT PORTFOLIO AS THE DEFAULT FOR ENROLLEES WHO DO NOT  
23 ELECT AN INVESTMENT OPTION.

24 **24-54.3-110. Colorado secure savings plan fund - creation.**

25 (1) (a) THE COLORADO SECURE SAVINGS PLAN FUND IS HEREBY  
26 ESTABLISHED AS A TRUST OUTSIDE OF THE STATE TREASURY. THE BOARD  
27 SHALL BE THE TRUSTEE OF THE FUND. THE FUND SHALL INCLUDE THE

1 INDIVIDUAL RETIREMENT ACCOUNTS OF ENROLLEES, WHICH SHALL BE  
2 ACCOUNTED FOR AS INDIVIDUAL ACCOUNTS.

3 (b) THE FUND SHALL CONSIST OF MONEYS RECEIVED FROM  
4 ENROLLEES AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC  
5 PAYROLL DEDUCTIONS, CONTRIBUTIONS TO SAVINGS MADE UNDER THIS  
6 ARTICLE, AND ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT  
7 TO THIS ARTICLE.

8 (c) FOR THE FIRST FIVE YEARS OF THE OPERATION OF THE PLAN,  
9 THE BOARD MAY USE UP TO ONE PERCENT OF THE MONEYS IN THE FUND TO  
10 PAY FOR THE ADMINISTRATIVE COSTS THAT IT INCURS IN THE  
11 PERFORMANCE OF ITS DUTIES UNDER THIS ARTICLE, INCLUDING START-UP  
12 ADMINISTRATIVE EXPENSES. IN THE SIXTH YEAR OF THE OPERATION OF  
13 THE PLAN AND IN EACH YEAR THEREAFTER, THE BOARD MAY USE UP TO  
14 SEVENTY-FIVE ONE HUNDREDTHS PERCENT OF THE MONEYS IN THE FUND  
15 FOR SUCH ADMINISTRATIVE PURPOSES.

16 (d) THE FUND SHALL BE OPERATED IN A MANNER DETERMINED BY  
17 THE BOARD, AND THE BOARD SHALL ENSURE THAT THE FUND IS OPERATED  
18 SO THAT THE ACCOUNTS OF ENROLLEES ESTABLISHED UNDER THE PLAN  
19 MEET THE REQUIREMENTS FOR IRAS.

20 (2) MONEYS DEPOSITED IN THE FUND SHALL NOT CONSTITUTE  
21 PROPERTY OF THE STATE AND THE FUND SHALL NOT BE CONSTRUED TO BE  
22 A DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE. AMOUNTS ON  
23 DEPOSIT IN THE FUND SHALL NOT BE COMMINGLED WITH STATE FUNDS  
24 AND THE STATE SHALL NOT HAVE ANY CLAIM TO OR AGAINST, OR  
25 INTEREST IN, SUCH FUNDS.

26 (3) EXCEPT TO THE EXTENT NECESSARY TO ADMINISTER THE PLAN  
27 IN ACCORDANCE WITH THE INTERNAL REVENUE CODE AND THE STATE TAX

1 LAWS, ALL INFORMATION CONTAINED IN THE ACCOUNTS OF INDIVIDUAL  
2 ENROLLEES OF THE PLAN, INCLUDING BUT NOT LIMITED TO NAMES,  
3 ADDRESSES, TELEPHONE NUMBERS, PERSONAL IDENTIFICATION  
4 INFORMATION, AMOUNTS CONTRIBUTED, AND EARNINGS ON AMOUNTS  
5 CONTRIBUTED, SHALL BE KEPT CONFIDENTIAL BY THE BOARD AND BY ANY  
6 PERSON OR ENTITY WORKING ON BEHALF OF THE BOARD. THIS SECTION  
7 SHALL NOT APPLY IF AN INDIVIDUAL ENROLLEE OF THE PLAN EXPRESSLY  
8 AGREES IN WRITING THAT CERTAIN INFORMATION CONTAINED IN HIS OR  
9 HER ACCOUNT MAY BE DISCLOSED.

10 **24-54.3-111. Benefits.** INTEREST, INVESTMENT EARNINGS, AND  
11 INVESTMENT LOSSES SHALL BE ALLOCATED TO INDIVIDUAL PLAN  
12 ACCOUNTS AS ESTABLISHED BY THE BOARD PURSUANT TO SECTION  
13 24-54.3-106 (1) (c). AN INDIVIDUAL'S RETIREMENT SAVINGS BENEFIT  
14 UNDER THE PLAN SHALL BE AN AMOUNT EQUAL TO THE BALANCE IN THE  
15 INDIVIDUAL'S PLAN ACCOUNT ON THE DATE THE RETIREMENT SAVINGS  
16 BENEFIT BECOMES PAYABLE. THE STATE SHALL NOT HAVE LIABILITY FOR  
17 THE PAYMENT OF ANY BENEFIT TO ANY PARTICIPANT IN THE PLAN.

18 **24-54.3-112. Employer and employee information packets -**  
19 **disclosure forms.** (1) PRIOR TO THE OPENING OF THE PLAN FOR  
20 ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO ALL  
21 EMPLOYERS AN EMPLOYER INFORMATION PACKET AND AN EMPLOYEE  
22 INFORMATION PACKET, WHICH SHALL INCLUDE BACKGROUND  
23 INFORMATION ON THE PLAN AND APPROPRIATE DISCLOSURES FOR  
24 EMPLOYEES.

25 (2) THE BOARD SHALL DETERMINE THE CONTENTS OF BOTH THE  
26 EMPLOYEE INFORMATION PACKET AND THE EMPLOYER INFORMATION  
27 PACKET.

1           (3) THE EMPLOYEE INFORMATION PACKET SHALL INCLUDE A  
2 DISCLOSURE FORM THAT EXPLAINS THE FOLLOWING:

3           (a) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING  
4 CONTRIBUTIONS TO THE PLAN;

5           (b) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE  
6 PLAN;

7           (c) HOW TO OPT OUT OF THE PLAN;

8           (d) HOW TO PARTICIPATE IN THE PLAN WITH A LEVEL OF EMPLOYEE  
9 CONTRIBUTIONS OTHER THAN FIVE PERCENT OF THE EMPLOYEE'S WAGES;

10          (e) THE PROCESS TO WITHDRAW RETIREMENT SAVINGS;

11          (f) HOW TO OBTAIN ADDITIONAL INFORMATION ABOUT THE PLAN;

12          (g) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD  
13 CONTACT FINANCIAL ADVISORS, THAT PARTICIPATING EMPLOYERS ARE  
14 NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE, AND THAT  
15 PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR DECISIONS EMPLOYEES  
16 MAKE PURSUANT TO THIS ARTICLE;

17          (h) THAT THE PLAN IS NOT AN EMPLOYER-SPONSORED RETIREMENT  
18 PLAN;

19          (i) THAT THE PLAN FUND IS NOT GUARANTEED BY THE STATE; AND

20          (j) ANY OTHER INFORMATION DEEMED NECESSARY BY THE BOARD.

21          (4) THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE  
22 A FORM FOR AN EMPLOYEE TO NOTE HIS OR HER DECISION TO OPT OUT OF  
23 PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE WITH A LEVEL OF  
24 EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT OF THE  
25 EMPLOYEE'S WAGES.

26          (5) PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE  
27 INFORMATION PACKET TO EMPLOYEES UPON LAUNCH OF THE PLAN.

1 PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION  
2 PACKET TO NEW EMPLOYEES AT THE TIME OF HIRING, AND NEW  
3 EMPLOYEES MAY OPT OUT OF PARTICIPATION IN THE PLAN OR ELECT TO  
4 PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS OTHER THAN  
5 FIVE PERCENT OF THE EMPLOYEE'S WAGES AT THAT TIME.

6 **24-54.3-113. Plan implementation - enrollment.** (1) EXCEPT AS  
7 OTHERWISE PROVIDED IN SECTION 24-54.3-119, THE PLAN SHALL BE  
8 IMPLEMENTED, AND ENROLLMENT OF EMPLOYEES SHALL BEGIN, WITHIN  
9 TWENTY-FOUR MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

10 (2) EACH EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT  
11 RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EACH EMPLOYEE TO  
12 PARTICIPATE IN THE PLAN AS FOLLOWS:

13 (a) FOR AN EMPLOYER THAT EMPLOYS ONE HUNDRED OR MORE  
14 EMPLOYEES AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY  
15 PRECEDING THE YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER  
16 SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS  
17 ARRANGEMENT WITHIN NINE MONTHS AFTER THE IMPLEMENTATION DATE  
18 OF THE PLAN;

19 (b) FOR AN EMPLOYER THAT EMPLOYS FIFTY OR MORE EMPLOYEES  
20 AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY PRECEDING THE  
21 SECOND YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL  
22 ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT  
23 WITHIN ONE YEAR AND NINE MONTHS AFTER THE IMPLEMENTATION DATE  
24 OF THE PLAN; AND

25 (c) FOR AN EMPLOYER THAT EMPLOYS FIVE OR MORE EMPLOYEES  
26 AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY PRECEDING THE  
27 THIRD YEAR IN WHICH THE PLAN IS OPERATING OR IN ANY SUCCEEDING

1 YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL ESTABLISH  
2 A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT WITHIN TWO  
3 YEARS AND NINE MONTHS AFTER THE IMPLEMENTATION DATE OF THE  
4 PLAN.

5 (3) EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PLAN  
6 EACH OF THEIR EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION  
7 IN THE PLAN AND SHALL PROVIDE PAYROLL DEDUCTION RETIREMENT  
8 SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON BEHALF  
9 OF SUCH EMPLOYEES, THESE FUNDS INTO THE PLAN. ANY EMPLOYER MAY,  
10 BUT IS NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION RETIREMENT  
11 SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS TO  
12 PARTICIPATE IN THE PLAN.

13 (4) ENROLLEES MAY SELECT A CONTRIBUTION LEVEL INTO THE  
14 FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR AS  
15 A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S  
16 TAXABLE YEAR UNDER SECTION 219(b)(1)(A) OF THE INTERNAL REVENUE  
17 CODE. ENROLLEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY  
18 TIME, SUBJECT TO RULES PROMULGATED BY THE BOARD. IF AN ENROLLEE  
19 FAILS TO SELECT A CONTRIBUTION LEVEL, THEN HE OR SHE SHALL  
20 CONTRIBUTE FIVE PERCENT OF HIS OR HER WAGES TO THE PLAN, PROVIDED  
21 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL  
22 CONTRIBUTIONS TO IRAs FOR THE YEAR TO EXCEED THE DEDUCTIBLE  
23 AMOUNT FOR THE ENROLLEE'S TAXABLE YEAR UNDER SECTION  
24 219(b)(1)(A) OF THE INTERNAL REVENUE CODE.

25 (5) ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE  
26 PERMITTED INVESTMENT OPTIONS SPECIFIED IN SECTION 24-54.3-109.  
27 ENROLLEES MAY CHANGE THEIR INVESTMENT OPTION AT ANY TIME,

1 SUBJECT TO RULES PROMULGATED BY THE BOARD. IN THE EVENT THAT AN  
2 ENROLLEE FAILS TO SELECT AN INVESTMENT OPTION, THAT ENROLLEE  
3 SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED BY THE BOARD  
4 AS THE DEFAULT PURSUANT TO SECTION 24-54.3-109. IF THE BOARD HAS  
5 NOT SELECTED A DEFAULT INVESTMENT OPTION PURSUANT TO SECTION  
6 24-54.3-109, THEN AN ENROLLEE WHO FAILS TO SELECT AN INVESTMENT  
7 OPTION SHALL BE PLACED IN THE DIVERSIFIED PORTFOLIO THAT OFFERS  
8 LONG-TERM GROWTH POTENTIAL.

9 (6) FOLLOWING INITIAL IMPLEMENTATION OF THE PLAN PURSUANT  
10 TO THIS SECTION, AT LEAST ONCE EVERY YEAR, PARTICIPATING  
11 EMPLOYERS SHALL DESIGNATE AN OPEN ENROLLMENT PERIOD DURING  
12 WHICH EMPLOYEES WHO PREVIOUSLY OPTED OUT OF THE PLAN MAY  
13 ENROLL IN THE PLAN.

14 (7) AN EMPLOYEE WHO OPTS OUT OF THE PLAN WHO  
15 SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE PARTICIPATING  
16 EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY  
17 ONLY ENROLL DURING THE PARTICIPATING EMPLOYER'S DESIGNATED OPEN  
18 ENROLLMENT PERIOD OR, IF PERMITTED BY THE PARTICIPATING EMPLOYER,  
19 AT AN EARLIER TIME.

20 (8) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO  
21 ESTABLISH ANY TYPE OF EMPLOYER-SPONSORED RETIREMENT PLAN, SUCH  
22 AS A DEFINED BENEFIT PLAN OR 401(k), SIMPLIFIED EMPLOYEE PENSION  
23 (SEP) PLAN, OR SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES  
24 (SIMPLE) PLAN, OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL  
25 DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT RETIREMENT  
26 SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE  
27 PLAN.

1 (9) AN EMPLOYEE MAY TERMINATE HIS OR HER PARTICIPATION IN  
2 THE PLAN AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD.

3 **24-54.3-114. Payments.** (1) EMPLOYEE CONTRIBUTIONS  
4 DEDUCTED BY THE PARTICIPATING EMPLOYER THROUGH PAYROLL  
5 DEDUCTIONS SHALL BE PAID BY THE PARTICIPATING EMPLOYER TO THE  
6 FUND USING ONE OR MORE PAYROLL DEPOSIT RETIREMENT SAVINGS  
7 ARRANGEMENTS ESTABLISHED BY THE BOARD PURSUANT TO SECTION  
8 24-54.3-106 (1) (h) EITHER:

9 (a) ON OR BEFORE THE LAST DAY OF THE MONTH FOLLOWING THE  
10 MONTH IN WHICH THE COMPENSATION WOULD HAVE OTHERWISE BEEN  
11 PAYABLE TO THE EMPLOYEE IN CASH; OR

12 (b) BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD  
13 FOR MAKING SUCH PAYMENTS, BUT NOT LATER THAN THE DUE DATE FOR  
14 THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD  
15 RELATING TO COLLECTION OF INCOME TAX ON WAGES OR FOR THE DEPOSIT  
16 OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE  
17 SYSTEM FOR THE PAYROLL PERIOD TO WHICH SUCH PAYMENTS RELATE.

18 **24-54.3-115. Duty and liability - state.** (1) THE STATE SHALL  
19 NOT HAVE ANY DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF  
20 ANY RETIREMENT SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL  
21 UNDER THE PLAN. ANY FINANCIAL LIABILITY FOR THE PAYMENT OF  
22 RETIREMENT SAVINGS BENEFITS IN EXCESS OF FUNDS AVAILABLE UNDER  
23 THE PLAN SHALL BE BORNE SOLELY BY THE ENTITIES WITH WHOM THE  
24 BOARD CONTRACTS TO PROVIDE INSURANCE TO PROTECT THE VALUE OF  
25 THE PLAN.

26 (2) NO STATE BOARD, COMMISSION, AGENCY, OR ANY OFFICER OR  
27 EMPLOYEE THEREOF IS LIABLE FOR ANY LOSS OR DEFICIENCY RESULTING



1 FROM PARTICULAR INVESTMENTS SELECTED UNDER THIS ARTICLE.

2 **24-54.3-116. Duty and liability - participating employers.**

3 (1) PARTICIPATING EMPLOYERS SHALL NOT HAVE ANY LIABILITY FOR AN  
4 EMPLOYEE'S DECISION TO PARTICIPATE IN, OR OPT OUT OF, THE PLAN OR  
5 FOR THE INVESTMENT DECISIONS OF THE BOARD OR OF ANY ENROLLEE.

6 (2) A PARTICIPATING EMPLOYER SHALL NOT BE A FIDUCIARY, OR  
7 CONSIDERED TO BE A FIDUCIARY, OVER THE PLAN. A PARTICIPATING  
8 EMPLOYER SHALL NOT BEAR RESPONSIBILITY FOR THE ADMINISTRATION,  
9 INVESTMENT, OR INVESTMENT PERFORMANCE OF THE PLAN. A  
10 PARTICIPATING EMPLOYER SHALL NOT BE LIABLE WITH REGARD TO  
11 INVESTMENT RETURNS, PLAN DESIGN, AND BENEFITS PAID TO PLAN  
12 ENROLLEES.

13 **24-54.3-117. Audit and reports.** (1) THE BOARD SHALL PREPARE  
14 OR CAUSE TO BE PREPARED, THE FOLLOWING ON AN ANNUAL BASIS:

15 (a) AN ANNUAL AUDITED FINANCIAL REPORT, PREPARED IN  
16 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, ON  
17 THE OPERATIONS OF THE PLAN DURING THE PREVIOUS CALENDAR YEAR;

18 (b) A REPORT THAT INCLUDES, BUT IS NOT LIMITED TO, A  
19 SUMMARY OF THE BENEFITS PROVIDED BY THE PLAN, THE NUMBER OF  
20 ENROLLEES IN THE PLAN, THE PERCENTAGE AND AMOUNTS OF INVESTMENT  
21 OPTIONS AND RATES OF RETURN FOR THE PLAN, AND SUCH OTHER  
22 INFORMATION THAT IS RELEVANT TO MAKE A FULL, FAIR, AND EFFECTIVE  
23 DISCLOSURE OF THE OPERATIONS OF THE PLAN AND THE FUND; AND

24 (c) AN AUDIT TO BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC  
25 ACCOUNTANT CHOSEN BY THE BOARD THAT SHALL INCLUDE, BUT IS NOT  
26 LIMITED TO, DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF  
27 OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER

1 PERSONS FOR THE ADMINISTRATION OF THE PLAN DURING THE PREVIOUS  
2 CALENDAR YEAR.

3 (2) ONE YEAR AFTER THE INCEPTION OF THE PLAN, AND ON SUCH  
4 DATE EACH YEAR THEREAFTER, THE BOARD SHALL SUBMIT THE REPORTS  
5 AND THE AUDIT REQUIRED IN THIS SECTION TO THE GOVERNOR, THE STATE  
6 CONTROLLER, THE STATE TREASURER, AND THE GENERAL ASSEMBLY.

7 (3) IN ADDITION TO ANY OTHER STATEMENTS OR REPORTS  
8 REQUIRED BY LAW, THE BOARD SHALL PROVIDE ANNUAL REPORTS TO  
9 PARTICIPATING EMPLOYERS, REPORTING THE NAMES OF EACH ENROLLEE  
10 EMPLOYED BY THE PARTICIPATING EMPLOYER AND THE CONTRIBUTION  
11 AMOUNTS MADE BY THE PARTICIPATING EMPLOYER ON BEHALF OF EACH  
12 EMPLOYEE DURING THE REPORTING PERIOD, AS WELL AS ANNUAL REPORTS  
13 TO ENROLLEES, REPORTING CONTRIBUTIONS AND INVESTMENT INCOME  
14 ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PLAN  
15 ACCOUNTS FOR THE REPORTING PERIOD. SUCH REPORTS MAY INCLUDE ANY  
16 OTHER INFORMATION REGARDING THE PLAN AS DEEMED NECESSARY BY  
17 THE BOARD.

18 **24-54.3-118. Penalties.** (1) THE BOARD SHALL DEVELOP A  
19 PROCESS AND CONTRACT WITH THIRD PARTIES, WHICH MAY INCLUDE  
20 STATE AGENCIES, TO ENSURE THAT BUSINESSES ARE IN COMPLIANCE WITH  
21 THE REQUIREMENTS OF THIS ARTICLE.

22 (2) THE BOARD SHALL DETERMINE A PENALTY STRUCTURE FOR  
23 EMPLOYERS WHO FAIL, WITHOUT REASONABLE CAUSE, TO ENROLL  
24 EMPLOYEES IN THE PLAN WITHIN THE TIME SPECIFIED IN SECTION  
25 24-54.3-113; EXCEPT THAT UNDER NO CIRCUMSTANCE SHALL THE  
26 PENALTY IMPOSED ON AN EMPLOYER EXCEED TWO HUNDRED FIFTY  
27 DOLLARS FOR EACH EMPLOYEE FOR EACH CALENDAR YEAR OR PORTION OF

1 A CALENDAR YEAR DURING WHICH AN EMPLOYEE WAS NEITHER ENROLLED  
2 IN THE PLAN NOR HAD OPTED OUT OF PARTICIPATING IN THE PLAN.

3 (3) THE BOARD SHALL DEVELOP A PROCESS FOR EMPLOYEES TO  
4 REPORT EMPLOYER NON-COMPLIANCE WITH THE PROVISIONS OF THIS  
5 ARTICLE. AN EMPLOYER SHALL NOT TAKE DISCIPLINARY ACTION OR  
6 OTHERWISE RETALIATE AGAINST AN EMPLOYEE WHO REPORTS, IN  
7 ACCORDANCE WITH THE PROCESS ESTABLISHED BY THE BOARD, HIS OR HER  
8 EMPLOYER'S NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

9 **24-54.3-119. Delayed implementation.** IF THE BOARD DOES NOT  
10 OBTAIN ADEQUATE MONEYS TO IMPLEMENT THE PLAN WITHIN THE TIME  
11 SPECIFIED IN SECTION 24-54.3-113, THE BOARD MAY DELAY THE  
12 IMPLEMENTATION OF THE PLAN.

13 **24-54.3-120. Federal considerations.** (1) THE BOARD MAY NOT  
14 IMPLEMENT THE PLAN IF THE IRA ARRANGEMENTS OFFERED UNDER THE  
15 PLAN FAIL TO QUALIFY FOR THE FAVORABLE FEDERAL INCOME TAX  
16 TREATMENT ORDINARILY ACCORDED TO IRAS UNDER THE INTERNAL  
17 REVENUE CODE OR IF IT IS DETERMINED THAT THE PLAN IS AN EMPLOYEE  
18 BENEFIT PLAN AND STATE OR EMPLOYER LIABILITY IS ESTABLISHED UNDER  
19 THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT", 29  
20 U.S.C. SEC. 1001 ET SEQ.

21 (2) THE BOARD SHALL ENSURE THAT THE PLAN COMPLIES WITH  
22 ANY APPLICABLE LABOR REGULATIONS PROMULGATED BY THE FEDERAL  
23 DEPARTMENT OF LABOR.

24 **SECTION 3. Act subject to petition - effective date.** This act  
25 takes effect at 12:01 a.m. on the day following the expiration of the  
26 ninety-day period after final adjournment of the general assembly  
27 (August 10, 2016, if adjournment sine die is on May 11, 2016); except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article  
2 V of the state constitution against this act or an item, section, or part of  
3 this act within such period, then the act, item, section, or part will not  
4 take effect unless approved by the people at the general election to be  
5 held in November 2016 and, in such case, will take effect on the date of  
6 the official declaration of the vote thereon by the governor.