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HOUSE BILL 44

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Tomás E. Salazar

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; ENACTING THE NEW MEXICO  
WORK AND SAVE ACT; CREATING THE NEW MEXICO WORK AND SAVE BOARD;  
PROVIDING POWERS AND DUTIES; ALLOWING FOR A RETIREMENT SAVINGS  
PLAN WEB-BASED MARKETPLACE; ALLOWING FOR A VOLUNTARY SAVINGS  
PROGRAM FOR PRIVATE SECTOR AND NONPROFIT EMPLOYEES AND THE  
SELF-EMPLOYED; PROVIDING PROTECTION FOR COVERED EMPLOYERS;  
PROVIDING FOR CONFIDENTIALITY OF PARTICIPANTS AND ACCOUNT  
INFORMATION; REQUIRING ANNUAL REPORTS.

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 Work and Save Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
New Mexico Work and Save Act:

A. "board" means the New Mexico work and save

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1 board;

2 B. "board member" means a member of the board;

3 C. "covered employee" means a person who is at  
4 least eighteen years of age and who is employed by a covered  
5 employer, either full time or part time, or a person who is  
6 self-employed as a sole proprietor or an independent  
7 contractor; provided that "covered employee" does not include  
8 an employee:

9 (1) covered under the federal Railway Labor  
10 Act;

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

14 (3) of federal, state or local governments or  
15 any agency, department, board, commission, institution or  
16 instrumentality of those governments;

17 D. "covered employer" means a person engaged in a  
18 business, industry, profession, trade, nonprofit, or other  
19 enterprise with its primary place of business physically  
20 located in New Mexico, but does not include a federal, state or  
21 local government or any agency, department, board, commission,  
22 institution or instrumentality of those governments;

23 E. "financial institution" means a bank, savings  
24 and loan association, credit union, broker-dealer, asset  
25 manager, insurance company, mutual fund or other financial

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1 entity;

2 F. "Internal Revenue Code" means the United States  
3 Internal Revenue Code of 1986, as amended;

4 G. "New Mexico retirement plan marketplace" means a  
5 web-based marketplace for retirement savings plans for private  
6 sector and nonprofit employers and employees, including  
7 multiple-employer plans;

8 H. "New Mexico work and save" means the retirement  
9 savings program that invests payroll deductions of program  
10 participants in Roth individual retirement accounts without any  
11 contributions from covered employers;

12 I. "participating employer" means a covered  
13 employer that provides payroll deductions for individual  
14 retirement accounts through New Mexico work and save but that  
15 does not contribute to those accounts;

16 J. "program participant" means a covered employee  
17 who is contributing to a Roth individual retirement account  
18 through New Mexico work and save or has a Roth individual  
19 retirement account balance through New Mexico work and save;

20 K. "Roth individual retirement account" means a  
21 voluntary payroll deduction Roth individual retirement account  
22 that conforms to the requirements of Section 408A of the  
23 Internal Revenue Code; and

24 L. "total fees and expenses" means all fees, costs  
25 and expenses, including administrative expenses, investment

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1 expenses of New Mexico work and save, investment advice  
2 expenses, accounting costs, actuarial costs, legal costs,  
3 marketing expenses, education expenses, trading costs,  
4 insurance annuitization costs and other miscellaneous costs.

5 SECTION 3. [NEW MATERIAL] BOARD CREATED--ORGANIZATION.--

6 A. The "New Mexico work and save board" is created  
7 and is administratively attached to the office of the state  
8 treasurer. The office of the state treasurer shall provide  
9 administrative support for the board in carrying out its duties  
10 pursuant to the New Mexico Work and Save Act.

11 B. The board consists of the following voting  
12 members:

13 (1) two members appointed by the state  
14 treasurer as follows:

15 (a) one member who has skill, knowledge  
16 and experience in the field of retirement saving and  
17 investments; and

18 (b) one member who has skill, knowledge  
19 and experience in retirement investment products or retirement  
20 plan designs;

21 (2) three members appointed by the governor as  
22 follows:

23 (a) one member who is a representative  
24 of an association representing employees;

25 (b) one member who is a representative

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1 of small businesses; and

2 (c) one member who is a representative  
3 of the interests of program participants;

4 (3) two members appointed by the speaker of  
5 the house of representatives as follows:

6 (a) one member who is a representative  
7 of the interests of program participants; and

8 (b) one member who has skill, knowledge  
9 and experience in the field of retirement saving and  
10 investments; and

11 (4) two members appointed by the president pro  
12 tempore of the senate as follows:

13 (a) one member who is a representative  
14 of the interests of program participants; and

15 (b) one member who has skill, knowledge  
16 and experience in the field of retirement saving and  
17 investments.

18 C. A majority of the board constitutes a quorum.  
19 Action may be taken by the board upon an affirmative vote of  
20 the majority of members present at the meeting at which a  
21 quorum is present. A vacancy in the membership of the board  
22 does not impair the right of a quorum to exercise the powers  
23 and duties of the board.

24 D. The appointing authorities shall appoint the  
25 first members of the board for staggered terms so that the

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1 state treasurer appoints one member for two years and one  
2 member for four years, the governor appoints two members for  
3 two years and one member for four years, the speaker of the  
4 house of representatives appoints one member for two years and  
5 one member for four years and the president pro tempore of the  
6 senate appoints one member for two years and one member for  
7 four years. Thereafter, members of the board shall be  
8 appointed for four-year terms.

9 E. A board member shall be eligible for  
10 reappointment, provided that a board member shall not serve  
11 more than three full terms, consecutive or otherwise. Members  
12 shall serve until their successors have been appointed. If  
13 there is a vacancy for any reason, the appointing authority  
14 shall appoint a qualified person to fill the unexpired term.

15 F. The appointing authority may remove a member of  
16 the board that it has appointed for neglect of a duty required  
17 by law, for incompetency, for malfeasance or for unprofessional  
18 conduct.

19 G. Board members shall receive no salary for their  
20 service as board members but shall receive per diem and mileage  
21 pursuant to the Per Diem and Mileage Act.

22 SECTION 4. [NEW MATERIAL] BOARD--POWERS AND DUTIES.--

23 A. The board shall:

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

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1 (2) meet as necessary to perform its duties;

2 (3) appoint an executive director, who shall  
3 be the chief administrative officer of the board;

4 (4) establish and direct the implementation  
5 and maintenance of the New Mexico retirement plan marketplace  
6 and New Mexico work and save;

7 (5) cause New Mexico work and save to be  
8 designed, established and operated:

9 (a) in accordance with best practices  
10 for retirement saving vehicles;

11 (b) to encourage participation, saving,  
12 sound investment practices and appropriate selection of  
13 investment options, including any default investments;

14 (c) to maximize simplicity and ease of  
15 administration for covered employers;

16 (d) to minimize total costs, including  
17 by collective investment and economies of scale;

18 (e) to require portability of benefits;

19 and

20 (f) to avoid preemption of New Mexico  
21 work and save by federal law;

22 (6) ensure that no assets of New Mexico work  
23 and save are encumbered, expended or otherwise used for a  
24 purpose other than those specified in the New Mexico Work and  
25 Save Act;

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1 (7) develop and implement an education and  
2 outreach plan to gain input and disseminate information  
3 regarding the New Mexico retirement plan marketplace, New  
4 Mexico work and save and retirement savings in general,  
5 including timely information to covered employers regarding New  
6 Mexico work and save;

7 (8) develop and implement an investment policy  
8 and designate appropriate default investments for New Mexico  
9 work and save that include a mix of asset classes, including  
10 target date funds and index funds, that minimize program  
11 participant fees and total expenses;

12 (9) establish procedures for the timely and  
13 fair resolution of any disputes related to accounts or program  
14 operation;

15 (10) provide a blanket surety bond for all  
16 employees and board members in an amount as determined by the  
17 board and conditioned on the faithful performance of the duties  
18 of each employee during the employee's employment and each  
19 board member during the board member's term of office; and

20 (11) perform other activities as are needed to  
21 further the purposes of the New Mexico Work and Save Act.

22 B. The board may:

23 (1) promulgate rules as necessary and  
24 appropriate to carry out the provisions of the New Mexico Work  
25 and Save Act consistent with the Internal Revenue Code and

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1 rules adopted in accordance with that code, including ensuring  
2 that New Mexico work and save satisfies all criteria for  
3 favorable tax treatment and complies with all applicable  
4 federal and state laws;

5 (2) enter into contracts, agreements,  
6 memorandums of understanding or other arrangements with this or  
7 any other state or their agencies or instrumentalities to  
8 operate or manage any part of New Mexico work and save or the  
9 New Mexico retirement plan marketplace, including combining  
10 resources, investments or administrative functions;

11 (3) sue and be sued in its name;

12 (4) fix, revise and collect fees and other  
13 charges in connection with the New Mexico retirement plan  
14 marketplace or New Mexico work and save;

15 (5) contract with private and public financial  
16 institutions, depositories, consultants, actuaries, attorneys,  
17 auditors, investment advisers, investment administrators,  
18 investment management firms, other investment firms, third  
19 party administrators and other professionals as may be  
20 required;

21 (6) make and execute contracts, agreements or  
22 instruments necessary or convenient in the exercise of the  
23 powers and functions granted the board by the New Mexico Work  
24 and Save Act; provided that the board may delegate that power  
25 to the executive director and may limit the scope of that

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1 delegation;

2 (7) invest and reinvest its funds in  
3 accordance with applicable state law; and

4 (8) 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 SECTION 5. [NEW MATERIAL] CONFIDENTIALITY OF PARTICIPANT  
9 AND ACCOUNT INFORMATION--APPLICATION OF OTHER LAWS.--

10 A. Information obtained by the board that is  
11 proprietary or information about covered employees or  
12 participants in the New Mexico retirement plan marketplace is  
13 confidential and not subject to inspection pursuant to the  
14 Inspection of Public Records Act.

15 B. Individual account information of New Mexico  
16 work and save program participants, including names, addresses,  
17 telephone numbers, email addresses, personal identification  
18 information, investments, contributions and earnings, is  
19 confidential and shall be maintained as confidential:

20 (1) except to the extent necessary to  
21 administer New Mexico work and save in a manner consistent with  
22 the New Mexico Work and Save Act, the tax laws of this state  
23 and the Internal Revenue Code; or

24 (2) unless the person who provides the  
25 information or is the subject of the information expressly

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1 agrees in writing to the disclosure of the information.

2 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--POWERS AND  
3 DUTIES.--

4 A. The executive director of New Mexico work and  
5 save may:

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

8 (2) contract for legal, fiscal, investment and  
9 other expert advisors and service providers, none of whom shall  
10 be board members and all of whom shall serve at the pleasure of  
11 the board.

12 B. The executive director shall:

13 (1) oversee requests for proposals at the  
14 board's direction;

15 (2) develop and disseminate educational  
16 information and tools designed to improve financial literacy  
17 and educate program participants, covered employers, covered  
18 employees and other state residents about the benefits of  
19 saving for retirement and help them decide the level of  
20 participation and savings strategies that may be appropriate  
21 for them;

22 (3) if necessary, determine the eligibility of  
23 an employer or employee to participate in New Mexico work and  
24 save; and

25 (4) perform other duties as assigned by the

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1 board.

2 SECTION 7. [NEW MATERIAL] BOARD AND BOARD EMPLOYEE  
3 REQUIREMENTS AND PROHIBITIONS--CONFLICTS OF INTEREST.--

4 A. Board members and employees of the board shall  
5 comply with the Gift Act, the Governmental Conduct Act and the  
6 Open Meetings Act.

7 B. Board members and employees of the board shall  
8 not:

9 (1) directly or indirectly have any interest  
10 in the investment of New Mexico work and save or in gains or  
11 profits accruing from that investment, other than as a program  
12 participant;

13 (2) borrow New Mexico work and save-related  
14 funds or deposits or use those funds or deposits for personal  
15 gain or as an agent or partner of others; or

16 (3) become an endorser, surety or obligor on  
17 investments made by New Mexico work and save.

18 C. If a board member or employee of the board has  
19 an interest, either direct or indirect, in a contract to which  
20 New Mexico work and save is or is to be a party, that interest  
21 shall be disclosed to the board in writing and shall be set  
22 forth in the minutes of the board. The board member or  
23 employee having that interest shall not participate in an  
24 action by the board with respect to that contract.

25 D. Board members and employees of the board shall

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1 act as fiduciaries with respect to the New Mexico retirement  
2 plan marketplace and New Mexico work and save, acting solely in  
3 the interest of the program participants and for the exclusive  
4 purpose of providing benefits to program participants and  
5 administering the program with the care, skill, prudence and  
6 diligence under the circumstances then prevailing that a  
7 prudent person acting in a like capacity and familiar with  
8 those matters would use in the conduct of an enterprise of a  
9 like character and with like aims.

10 SECTION 8. [NEW MATERIAL] NEW MEXICO RETIREMENT PLAN  
11 MARKETPLACE.--

12 A. In developing and implementing the New Mexico  
13 retirement plan marketplace, the board may work in concert with  
14 other states offering an online marketplace similar to the New  
15 Mexico retirement plan marketplace website.

16 B. The board shall:

17 (1) design the New Mexico retirement plan  
18 marketplace as a website to connect employers and individuals  
19 with retirement savings plans, ensuring that the design does  
20 not favor a particular kind of service provider or business  
21 model;

22 (2) establish requirements for financial  
23 service firms that participate in the marketplace and for plans  
24 offered on the marketplace;

25 (3) develop marketing materials; and

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1 (4) promote the benefits of retirement savings  
2 and financial literacy.

3 C. The board shall provide public notice of the  
4 process for inclusion on the New Mexico retirement plan  
5 marketplace website before the website becomes publicly  
6 available. The marketplace shall be available to the public  
7 before the board opens New Mexico work and save for enrollment,  
8 and the marketplace website address shall be included on any  
9 internet website posting or other materials regarding New  
10 Mexico work and save.

11 D. The board shall allow all financial service  
12 firms that meet the requirements established by the board to  
13 participate in the New Mexico retirement plan marketplace. In  
14 addition, the board shall not exclude, by policy or otherwise,  
15 a retirement plan or option within a plan that meets the  
16 requirements of the board and is otherwise allowed under  
17 federal or state law, including plan design options that are  
18 selected by the employer.

19 E. Participation in plans offered on the New Mexico  
20 retirement plan marketplace is voluntary for covered employers  
21 and employees; provided that an employer that offers a  
22 retirement plan through the New Mexico retirement plan  
23 marketplace may use automatic enrollment and automatic  
24 escalation of contributions but shall allow an employee opt-out  
25 option.

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1           F. The New Mexico retirement plan marketplace may  
2 offer an array of private retirement plan options, including a:  
3           (1) simple individual retirement-type plan;  
4           (2) payroll deduction individual  
5 retirement-type plan;  
6           (3) multiple-employer plan, if allowed under  
7 federal law; and  
8           (4) plan described in Section 401(a) or 403(b)  
9 of the Internal Revenue Code.

10           G. The New Mexico retirement plan marketplace shall  
11 offer a financial literacy module for employers and employees.

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

17           I. The board shall establish administrative fees  
18 for financial service firms that participate in the New Mexico  
19 retirement plan marketplace. The fees shall be sufficient to  
20 cover the actual cost of maintaining the New Mexico retirement  
21 plan marketplace.

22           SECTION 9. [NEW MATERIAL] NEW MEXICO WORK AND SAVE--  
23 CREATED--IMPLEMENTATION.--

24           A. The New Mexico work and save program developed  
25 by the board under the New Mexico Work and Save Act shall:

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1 (1) provide that a covered employer may  
2 voluntarily choose to participate in New Mexico work and save;

3 (2) provide that a participating employer may  
4 automatically enroll its employees but shall allow its  
5 employees to opt out;

6 (3) allow covered employees in New Mexico to  
7 voluntarily contribute to a Roth individual retirement account  
8 through automatic payroll deductions, if allowed pursuant to  
9 federal law;

10 (4) provide that the default investment option  
11 for program participants shall be a Roth individual retirement  
12 account with a target date fund investment and a default  
13 contribution rate established by the board by rule; provided  
14 that the board may establish a principal protection fund for  
15 initial savings up to an amount established by the board; and  
16 provided that a program participant may choose to stop  
17 participating altogether, choose a different investment from  
18 among the options available or choose to contribute at a higher  
19 or lower contribution rate, subject to the Roth individual  
20 retirement account contribution dollar limits applicable under  
21 the Internal Revenue Code;

22 (5) offer default escalation of contribution  
23 rates that can be increased or decreased by program  
24 participants within the limits allowed by the Internal Revenue  
25 Code;

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1 (6) provide for direct deposit of  
2 contributions into one or more investments approved by New  
3 Mexico work and save;

4 (7) be professionally managed;

5 (8) not allow employer contributions by  
6 covered employers;

7 (9) provide a report on the status of each  
8 program participant's account to each program participant at  
9 least annually;

10 (10) when practicable, use existing employer  
11 and public infrastructure to facilitate contributions,  
12 recordkeeping and outreach and use pooled or collective  
13 investment arrangements;

14 (11) provide that each program participant  
15 owns the contributions to and earnings on amounts contributed  
16 to the participant's account under New Mexico work and save and  
17 that the state, the board and covered employers have no  
18 proprietary interest in those contributions or earnings;

19 (12) not impose any duties on employers  
20 pursuant to the federal Employee Retirement Income Security Act  
21 of 1974; and

22 (13) keep total fees and expenses below one  
23 percent of the funds invested in New Mexico work and save.

24 B. The board shall ensure that New Mexico work and  
25 save is financially self-sustaining no later than five years

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1 after the date that it is fully implemented.

2 C. If a covered employer knowingly or intentionally  
3 fails to transmit a payroll deduction contribution to New  
4 Mexico work and save on the earliest date the amount withheld  
5 from the covered employee's compensation can reasonably be  
6 segregated from the covered employer's assets, but not later  
7 than the fifteenth day of the month following the month in  
8 which the covered employee's contribution amounts are withheld  
9 from the covered employee's paycheck, the failure to remit  
10 those contributions on a timely basis shall be subject to the  
11 same sanctions as employer misappropriation of employee wage  
12 withholdings.

13 SECTION 10. [NEW MATERIAL] POLICIES AND PROCEDURES FOR  
14 NEW MEXICO WORK AND SAVE.--The board shall promulgate rules to  
15 implement New Mexico work and save that:

16 A. establish the processes by which a covered  
17 employer may choose to voluntarily enroll in New Mexico work  
18 and save and become a participating employer;

19 B. establish the processes for program participants  
20 to enroll in and contribute to payroll deduction individual  
21 retirement accounts, including elections by covered employees,  
22 withholding by participating employers of program participants'  
23 payroll deduction contributions from wages and remittance for  
24 deposit to the program participants' individual retirement  
25 accounts and voluntary enrollment and contributions by

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1 self-employed persons;

2 C. establish the processes for withdrawals,  
3 rollovers and direct transfers from individual retirement  
4 accounts in the interest of facilitating portability and  
5 maximization of benefits;

6 D. establish processes governing the distribution  
7 of funds from New Mexico work and save; and

8 E. require education of and outreach to covered  
9 employers, covered employees and the public regarding New  
10 Mexico work and save. The rules shall specify the content,  
11 frequency, timing and means of required disclosures from New  
12 Mexico work and save to covered employees, covered employers,  
13 program participants and participating employers and other  
14 interested parties. These disclosures shall include:

15 (1) the benefits associated with tax-favored  
16 retirement saving;

17 (2) the potential advantages and disadvantages  
18 associated with contributing to Roth individual retirement  
19 accounts through New Mexico work and save;

20 (3) the eligibility rules for Roth individual  
21 retirement accounts;

22 (4) that the program participant is solely  
23 responsible for determining whether and, if so, how much the  
24 program participant is eligible to contribute on a tax-favored  
25 basis to a Roth individual retirement account;

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1 (5) the penalty for excess contributions to  
2 Roth individual retirement accounts and the method of  
3 correcting excess contributions;

4 (6) instructions for enrolling, making  
5 elections to contribute or to decline to contribute and making  
6 elections regarding contribution rates, types of individual  
7 retirement accounts and investments;

8 (7) instructions for implementing and for  
9 changing the elections;

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

13 (9) statements that New Mexico work and save,  
14 the board, board members or board employees, a covered employer  
15 or the state do not offer tax, investment or other financial  
16 advice, and that the program participant should contact  
17 appropriate professional advisors, and that only the program  
18 participant is liable for decisions the program participant  
19 makes in relation to New Mexico work and save;

20 (10) statements that payroll deduction  
21 individual retirement accounts are not intended to be  
22 employer-sponsored retirement plans and that New Mexico work  
23 and save is not an employer-sponsored retirement plan;

24 (11) the potential implications of account  
25 balances in New Mexico work and save for the application of

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1 asset limits under certain public assistance programs;

2 (12) that the program participant is solely  
3 responsible for investment performance, including market gains  
4 and losses, and that individual retirement accounts and rates  
5 of return are not guaranteed by New Mexico work and save, the  
6 board, individual board members, board employees, covered  
7 employers or the state or any of its officers or employees;

8 (13) additional information and tools designed  
9 to promote financial literacy and capability, which may take  
10 the form of links to or explanations of how to obtain such  
11 information; and

12 (14) how to obtain additional information  
13 about New Mexico work and save.

14 SECTION 11. [NEW MATERIAL] PROTECTION FOR COVERED  
15 EMPLOYERS.--

16 A. New Mexico work and save is not an  
17 employer-sponsored plan. A covered employer does not bear  
18 responsibility for:

19 (1) the decision to participate or not to  
20 participate in New Mexico work and save by a covered employee;

21 (2) a specific election under New Mexico work  
22 and save made by a program participant;

23 (3) investment decisions made by a program  
24 participant or the board;

25 (4) the administration, investment, investment

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1 returns or investment performance of New Mexico work and save,  
2 including interest rate or other rate of return on a  
3 contribution or Roth individual retirement account balance;

4 (5) the design or administration of New Mexico  
5 work and save or the benefits paid to program participants;

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

11 (7) loss, failure to realize gain or other  
12 adverse consequences, including adverse tax consequences or  
13 loss of favorable tax treatment, public assistance or other  
14 benefits incurred by a program participant as a result of  
15 participating in New Mexico work and save.

16 B. No covered employer shall be or shall be  
17 considered to be a fiduciary under New Mexico work and save.

18 SECTION 12. [NEW MATERIAL] ANNUAL REPORT.--The board  
19 shall prepare an annual report on the operation of New Mexico  
20 work and save to be provided to the governor, the state  
21 treasurer and appropriate legislative interim committees and  
22 made available to all program participants, participating  
23 employers and the general public.

24 SECTION 13. TEMPORARY PROVISION--DATES OF  
25 IMPLEMENTATION--CONDITIONS ON IMPLEMENTATION.--

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A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.