

HOUSE BILL 44

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

INTRODUCED BY

Tomás E. Salazar and Christine Chandler and Gail Armstrong and  
Bill Tallman and Michael Padilla

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

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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 board;

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

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

(1) covered under the federal Railway Labor Act;

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

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

D. "covered employer" means a person engaged in a business, industry, profession, trade, nonprofit, or other enterprise with its primary place of business physically located in New Mexico, but does not include a federal, state or local government or any agency, department, board, commission,

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institution or instrumentality of those governments;

E. "financial institution" means a HSEIC→duly licensed←HSEIC bank, savings and loan association, credit union, broker-dealer, asset manager, insurance company, mutual fund or other financial entity;

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

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

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

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

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

K. "Roth individual retirement account" means a voluntary payroll deduction Roth individual retirement account

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that conforms to the requirements of Section 408A of the Internal Revenue Code; and

L. "total fees and expenses" means all fees, costs and expenses, including administrative expenses, investment expenses of New Mexico work and save, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs and other HSEIC→related←HSEIC miscellaneous costs.

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

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

B. The board consists of the following voting members:

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

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

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

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

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

(b) one member who is a representative of small businesses; and

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

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

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

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

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

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

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

C. A majority of the board constitutes a quorum. Action may be taken by the board upon an affirmative vote of the majority of members present at the meeting at which a

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quorum is present. A vacancy in the membership of the board does not impair the right of a quorum to exercise the powers and duties of the board.

D. The appointing authorities shall appoint the first members of the board for staggered terms so that the state treasurer appoints one member for two years and one member for four years, the governor appoints two members for two years and one member for four years, the speaker of the house of representatives appoints one member for two years and one member for four years and the president pro tempore of the senate appoints one member for two years and one member for four years. Thereafter, members of the board shall be appointed for four-year terms.

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

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

G. Board members shall receive no salary for their service as board members but shall receive per diem and mileage

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pursuant to the Per Diem and Mileage Act.

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

**A. The board shall:**

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

(2) meet as necessary to perform its duties;

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

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

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

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

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

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

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

(e) to require portability of benefits; and

(f) to avoid preemption of New Mexico

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work and save by federal law;

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

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

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

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

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

(11) perform other activities as are needed to

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further the purposes of the New Mexico Work and Save Act.

B. The board may:

(1) promulgate rules as necessary and appropriate to carry out the provisions of the New Mexico Work and Save Act consistent with the Internal Revenue Code and rules adopted in accordance with that code, including ensuring that New Mexico work and save satisfies all criteria for favorable tax treatment and complies with all applicable federal and state laws;

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

(3) sue and be sued in its name;

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

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

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

(7) invest and reinvest its funds in accordance with applicable state HSEIC and federal HSEIC law; and

(8) collaborate with and evaluate the role of financial advisors or other financial professionals and financial institutions, including those assisting and providing guidance for HSEIC HSEIC to HSEIC program participants.

SECTION 5. [NEW MATERIAL] CONFIDENTIALITY OF PARTICIPANT AND ACCOUNT INFORMATION--APPLICATION OF OTHER LAWS.--

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

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

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

(2) unless the person who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

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

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

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

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

B. The executive director shall:

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

(2) develop and disseminate educational information and tools designed to improve financial literacy and educate program participants, covered employers, covered employees and other state residents about the benefits of saving for retirement and help them decide the level of

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participation and savings strategies that may be appropriate for them;

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

(4) perform other duties as assigned by the board.

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

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

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

(1) directly or indirectly have any interest in the investment of New Mexico work and save or in gains or profits accruing from that investment, other than as HSEIC → a program participant ← HSEIC HSEIC → program participants ← HSEIC;

(2) borrow New Mexico work and save-related funds or deposits or use those funds or deposits for personal gain or as HSEIC → an agent or partner ← HSEIC HSEIC → agents or partners ← HSEIC of others; or

(3) become HSEIC → an endorser, surety or obligor ← HSEIC HSEIC → endorsers, sureties or obligors ← HSEIC on investments made by New Mexico work and save.

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

D. Board members and employees of the board shall act as fiduciaries with respect to the New Mexico retirement plan marketplace and New Mexico work and save, acting solely in the HSEIC→~~interest~~←HSEIC HSEIC→~~best interests~~←HSEIC of the program participants and for the exclusive purpose of providing benefits to program participants and administering the program with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

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

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

B. The board shall:

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

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

(3) develop marketing materials; and

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

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

D. The board shall allow all financial service firms that meet the requirements established by the board to participate in the New Mexico retirement plan marketplace. In addition, the board shall not exclude, by policy or otherwise, a retirement plan or option within a plan that meets the requirements of the board and is otherwise allowed under

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federal or state law, including plan design options that are selected by the employer.

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

F. The New Mexico retirement plan marketplace may offer an array of private retirement plan options, including a:

- (1) simple individual retirement-type plan;
- (2) payroll deduction individual retirement-type plan;
- (3) multiple-employer plan, if allowed under federal law; and
- (4) plan described in Section 401(a) or 403(b) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

(4) provide that the default investment option for program participants shall be a Roth individual retirement account with a target date fund investment and a default contribution rate established by the board by rule; provided that the board may establish a principal protection fund for initial savings up to an amount established by the board; and provided that a program participant may choose to stop

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participating altogether, choose a different investment from among the options available or choose to contribute at a higher or lower contribution rate, subject to the Roth individual retirement account contribution dollar limits applicable under the Internal Revenue Code;

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

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

(7) be professionally managed;

(8) not allow employer contributions by covered employers;

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

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

(11) provide that each program participant owns the contributions to and earnings on amounts contributed to the participant's account under New Mexico work and save and

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that the state, the board and covered employers have no proprietary interest HSEIC→, whether legal or equitable,←HSEIC in those contributions or earnings;

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

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

B. The board shall ensure that New Mexico work and save is financially self-sustaining no later than five years after the date that it is fully implemented.

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

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

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

B. establish the processes for program participants to enroll in and contribute to payroll deduction individual retirement accounts, including elections by covered employees, withholding by participating employers of program participants' payroll deduction contributions from wages and remittance for deposit to the program participants' individual retirement accounts and voluntary enrollment and contributions by self-employed persons;

C. establish the processes for withdrawals, rollovers HSEIC→, conversions←HSEIC and direct transfers from individual retirement accounts in the interest of facilitating portability and maximization of benefits;

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

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

- (1) the benefits associated with tax-favored

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retirement saving;

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

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

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

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

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

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

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

(9) statements that New Mexico work and save, the board, board members or board employees, a covered employer or the state do not offer tax, investment or other financial

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advice, and that the program participant should contact appropriate professional advisors, and that only the program participant is liable for decisions the program participant makes in relation to New Mexico work and save;

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

(11) the potential implications of account balances in New Mexico work and save for the application of asset limits under certain public assistance programs;

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

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

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

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

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

- (1) the decision to participate or not to participate in New Mexico work and save by a covered employee;
- (2) a specific election under New Mexico work and save made by a program participant;
- (3) investment decisions made by a program participant or the board;
- (4) the administration, investment, investment returns or investment performance of New Mexico work and save, including interest rate or other rate of return on a contribution or Roth individual retirement account balance;
- (5) the design or administration of New Mexico work and save or the benefits paid to program participants;
- (6) a program participant's awareness of or compliance with the conditions and other provisions of the tax laws that determine which persons are eligible to make tax-favored contributions to individual retirement accounts, in what amount and in what time frame and manner; or
- (7) loss, failure to realize gain or other adverse consequences, including adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits incurred by a program participant as a result of participating in New Mexico work and save.

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

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

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

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.

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