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HOUSE BILL 176

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Linda Serrato and Bill Tallman

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; CREATING THE RETIREMENT SAVINGS FACILITATION INCOME TAX CREDIT; CLARIFYING CERTAIN DEFINITIONS IN THE NEW MEXICO WORK AND SAVE ACT; REQUIRING CERTAIN EMPLOYERS TO REGISTER AS PARTICIPATING EMPLOYERS AND TO AUTOMATICALLY ENROLL THEIR EMPLOYEES IN THE NEW MEXICO WORK AND SAVE INDIVIDUAL RETIREMENT ACCOUNT PROGRAM; ALLOWING EMPLOYEES TO OPT OUT OF AUTOMATIC ENROLLMENT; ALIGNING PROVISIONS OF THE NEW MEXICO WORK AND SAVE ACT TO ENABLE THE FORMATION OF AN AUTO-IRA PARTNERSHIP WITH ONE OR MORE OTHER STATES; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] RETIREMENT SAVINGS FACILITATION INCOME TAX

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1 CREDIT.--

2 A. For taxable years prior to January 1, 2028, a
3 taxpayer who is not a dependent of another individual and is an
4 owner of a business that meets the requirements of this section
5 may apply for, and the department may allow, a credit in an
6 amount up to three hundred dollars (\$300) against the
7 taxpayer's tax liability imposed pursuant to the Income Tax
8 Act. The tax credit provided by this section may be referred
9 to as the "retirement savings facilitation income tax credit".

10 B. A taxpayer may claim the tax credit provided by
11 this section for the taxable year in which the taxpayer is an
12 owner of a business that is actively registered as a
13 marketplace participant or a participating employer pursuant to
14 the New Mexico Work and Save Act and employs one or more
15 residents; provided that a taxpayer shall be ineligible for a
16 tax credit pursuant to this section if that taxpayer offered an
17 employer-sponsored retirement plan prior to July 1, 2022. To
18 receive the tax credit, a taxpayer shall apply to the
19 department on forms and in the manner prescribed by the
20 department. A completed application shall include a
21 certification made by the New Mexico work and save board
22 pursuant to Subsection E of this section.

23 C. That portion of credit that exceeds a taxpayer's
24 tax liability for the taxable year in which the credit is
25 claimed shall not be refunded but may be carried forward for a

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1 maximum of three consecutive taxable years.

2 D. A taxpayer may be allocated the right to claim a
3 tax credit provided by this section in proportion to the
4 taxpayer's ownership interest if the taxpayer owns an interest
5 in a business entity that is taxed for federal income tax
6 purposes as a partnership or limited liability company and that
7 business entity has met all of the requirements to be eligible
8 for the credit. The total credit claimed by all members of the
9 partnership or limited liability company shall not exceed the
10 allowable amount of credit pursuant to this section.

11 E. The New Mexico work and save board shall adopt
12 rules establishing procedures to provide certification to a
13 business that meets the requirements of this section for
14 purposes of obtaining the tax credit provided by this section.

15 F. A taxpayer allowed a tax credit pursuant to this
16 section shall report the amount of the credit to the department
17 in a manner required by the department.

18 G. The department shall compile an annual report on
19 the tax credit that shall include the number of taxpayers
20 approved by the department to receive the credit, the aggregate
21 amount of credits approved and any other information necessary
22 to evaluate the effectiveness of the credit. The department
23 shall present the report to the revenue stabilization and tax
24 policy committee and the legislative finance committee with an
25 analysis of the tax credit, including the cost of the tax

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1 credit."

2 SECTION 2. Section 58-33-2 NMSA 1978 (being Laws 2020,
3 Chapter 7, Section 2, as amended) is amended to read:

4 "58-33-2. DEFINITIONS.--As used in the New Mexico Work
5 and Save Act:

6 A. "board" means the New Mexico work and save
7 board;

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

9 C. "covered employee" means a person who is at
10 least eighteen years of age and ~~[who]~~ earns taxable income
11 pursuant to the Income Tax Act and for at least one hundred
12 eighty days is employed by a covered employer or an eligible
13 employer, either full time or part time, or a person who is
14 self-employed as a sole proprietor or an independent
15 contractor; provided that "covered employee" does not include
16 an employee:

17 (1) covered under the federal Railway Labor
18 Act;

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

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

25 D. "covered employer" means a person engaged in a

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1 business, industry, profession, trade, nonprofit or other
2 enterprise [~~with its primary place of business physically~~
3 ~~located~~] in New Mexico that employed five or more employees at
4 any time during the previous calendar year, has operated for at
5 least twenty-four consecutive months and, in the preceding two
6 calendar years, has not offered to all employees a qualified
7 retirement plan pursuant to the Internal Revenue Code,
8 including a plan qualified under Section 401(a), 401(k),
9 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal
10 Revenue Code, but does not include a federal, state or local
11 government or any agency, department, board, commission,
12 institution or instrumentality of those governments;

13 E. "default investment option" means a Roth
14 individual retirement account with a target date fund
15 investment and a default contribution rate established by the
16 board;

17 F. "eligible employer" means a person engaged in a
18 business, industry, profession, trade, nonprofit or other
19 enterprise in New Mexico that employs four or fewer employees
20 or is self-employed and does not offer all of its employees a
21 qualified retirement plan pursuant to the Internal Revenue
22 Code, including a plan qualified under Section 401(a), 401(k),
23 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal
24 Revenue Code, but does not include a federal, state or local
25 government or any agency, department, board, commission,

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1 institution or instrumentality of those governments;

2 [F.] G. "financial institution" means a duly
3 licensed bank, savings and loan association, credit union,
4 broker-dealer, asset manager, insurance company, mutual fund or
5 other financial entity;

6 [G.] H. "financial service provider" means a
7 financial or investment service provider that, if approved by
8 the board as meeting the eligibility criteria, may administer
9 and maintain one or more program participant investment
10 accounts or one or more marketplace participant accounts for
11 which the provider is a fiduciary;

12 [H.] I. "Internal Revenue Code" means the United
13 States Internal Revenue Code of 1986, as amended;

14 [I.] J. "IRA" means an individual retirement
15 account that conforms to the requirements of Section [408(a)]
16 408A of the Internal Revenue Code;

17 [J.] K. "marketplace participant" means a covered
18 employer or eligible employer that establishes a plan through
19 the New Mexico retirement plan marketplace or a covered
20 employee who establishes an investment account through the New
21 Mexico retirement plan marketplace;

22 [K.] L. "New Mexico retirement plan marketplace"
23 means a board-approved web-based marketplace that facilitates
24 access to retirement savings plans for private sector and
25 nonprofit employers and employees, including multiple-employer

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1 plans;

2 [L-] M. "New Mexico work and save IRA program"
3 means the retirement savings program, designed and implemented
4 by the board, that facilitates payroll deductions of program
5 participants in individual retirement accounts without any
6 contributions from covered employers;

7 [M-] N. "New Mexico work and save platform" means
8 the online digital service designed and implemented by the
9 board to facilitate interaction among covered employers,
10 eligible employers, covered employees, program participants,
11 financial service providers and other users via the internet;

12 [N-] O. "participating employer" means a covered
13 employer or eligible employer that provides payroll deductions
14 for individual retirement accounts through the New Mexico work
15 and save IRA program but that does not contribute to those
16 accounts;

17 [O-] P. "program participant" means a covered
18 employee who is contributing to an individual retirement
19 account through the New Mexico work and save IRA program or has
20 an individual retirement account balance through the New Mexico
21 work and save IRA program;

22 [P-] Q. "Roth individual retirement account" means
23 a voluntary payroll deduction Roth individual retirement
24 account that conforms to the requirements of Section 408A of
25 the Internal Revenue Code; [~~and~~]

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1 [Q-] R. "total fees and expenses" means all fees,
2 costs and expenses, including administrative expenses,
3 investment expenses of the New Mexico work and save IRA
4 program, investment advice expenses, accounting costs, revenue
5 sharing, broker fees, actuarial costs, [~~legal costs~~] marketing
6 expenses, education expenses, trading costs, insurance
7 annuitization costs and other operating expenses; and

8 S. "wages" means "compensation", as provided in
9 Section 219(f)(1) of the Internal Revenue Code that is received
10 by an employee during a calendar year."

11 **SECTION 3.** Section 58-33-9 NMSA 1978 (being Laws 2020,
12 Chapter 7, Section 9, as amended) is amended to read:

13 "58-33-9. NEW MEXICO WORK AND SAVE IRA PROGRAM--CREATED--
14 IMPLEMENTATION.--

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

18 (1) facilitate the establishment of individual
19 retirement accounts for program participants that are
20 administered and managed by board-approved financial service
21 providers;

22 (2) provide that a covered employer [~~may~~
23 ~~voluntarily choose to participate~~] that is not a marketplace
24 participant shall register and become a participating employer
25 in the New Mexico work and save IRA program;

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

4 (4) allow covered employees to voluntarily
5 contribute to an ~~[individual retirement account]~~ IRA through
6 automatic payroll deductions, if allowed pursuant to federal
7 law;

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

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

24 (7) provide for direct deposit of
25 contributions into one or more investments approved by the

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1 board;

2 (8) be professionally managed;

3 (9) not allow employer contributions by
4 covered employers;

5 (10) ensure that each board-approved financial
6 service provider submits a report on the status of each program
7 participant's account to each program participant at least
8 annually and provides annual reports to the board regarding the
9 number of program participant accounts maintained by the
10 financial service provider and the overall value of those
11 accounts;

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

16 (12) provide that each program participant
17 owns the contributions to and earnings on amounts contributed
18 to the participant's account under the New Mexico work and save
19 IRA program and that the state, the board and ~~covered~~
20 participating employers have no proprietary interest, whether
21 legal or equitable, in those contributions or earnings;

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

25 (14) ~~keep~~ ensure that the total fees and

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1 expenses [~~below one percent of the funds invested by a program~~
2 ~~participant in~~] associated with the New Mexico work and save
3 IRA program do not exceed the following rates:

4 (a) during each of the initial five
5 years of operation, total fees and expenses shall not exceed
6 one percent of the total value of the program's assets; and

7 (b) during the sixth year of operation
8 and in each year thereafter, the total fees and expenses shall
9 not exceed seventy-five hundredths percent of the total value
10 of the program's assets.

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

14 C. If a [~~covered~~] participating employer knowingly
15 or intentionally fails to transmit a payroll deduction
16 contribution to the New Mexico work and save IRA program on the
17 earliest date the amount withheld from the covered employee's
18 compensation can reasonably be segregated from the [~~covered~~]
19 participating employer's assets, but not later than the
20 fifteenth day of the month following the month in which the
21 covered employee's contribution amounts are withheld from the
22 covered employee's paycheck, the failure to remit those
23 contributions on a timely basis shall be subject to the same
24 sanctions as employer misappropriation of employee wage
25 withholdings."

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1 SECTION 4. Section 58-33-10 NMSA 1978 (being Laws 2020,
2 Chapter 7, Section 10, as amended) is amended to read:

3 "58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO
4 WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules to
5 implement the New Mexico work and save IRA program that:

6 A. establish the processes by which ~~[a covered]~~ an
7 employer ~~[may choose to voluntarily enroll]~~ registers in the
8 New Mexico work and save IRA program ~~[and become]~~ as a
9 participating employer;

10 B. establish the processes for program participants
11 to enroll in and contribute to New Mexico work and save IRA
12 program payroll deduction individual retirement accounts,
13 including elections by covered employees, withholding by
14 participating employers of program participants' payroll
15 deduction contributions from wages and remittance for deposit
16 to the program participants' individual retirement accounts and
17 voluntary enrollment and contributions by self-employed
18 persons;

19 C. establish the processes for withdrawals,
20 rollovers, conversions and direct transfers from individual
21 retirement accounts in the interest of facilitating portability
22 and maximization of benefits;

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

25 E. require education of and outreach to covered

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1 employers, covered employees and the public regarding the
2 New Mexico work and save IRA program. The rules shall specify
3 the content, frequency, timing and means of required
4 disclosures from the New Mexico work and save IRA program to
5 covered employees, covered employers, program participants and
6 participating employers and other interested parties. These
7 disclosures shall include:

8 (1) the benefits associated with tax-favored
9 retirement saving;

10 (2) the potential advantages and disadvantages
11 associated with contributing to individual retirement accounts
12 through the New Mexico work and save IRA program;

13 (3) the eligibility rules for individual
14 retirement accounts;

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

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

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

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

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

6 (9) statements that the New Mexico work and
7 save IRA program, the board, board members or board employees,
8 a covered employer or the state does not offer tax, investment
9 or other financial advice, and that the program participant
10 should contact appropriate professional advisors, and that only
11 the program participant is liable for decisions the program
12 participant makes in relation to the New Mexico work and save
13 IRA program;

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

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

22 (12) that the program participant is solely
23 responsible for investment performance, including market gains
24 and losses, and that individual retirement accounts and rates
25 of return are not guaranteed by the New Mexico work and save

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1 IRA program, the board, individual board members, board
2 employees, covered employers or the state or any of its
3 officers or employees;

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

8 (14) how to obtain additional information
9 about the New Mexico work and save IRA program."

10 SECTION 5. Section 58-33-11 NMSA 1978 (being Laws 2020,
11 Chapter 7, Section 11, as amended) is amended to read:

12 "58-33-11. PROTECTION FOR ~~[COVERED]~~ PARTICIPATING
13 EMPLOYERS.--

14 A. The New Mexico work and save IRA program is not
15 an employer-sponsored plan. A ~~[covered]~~ participating employer
16 does not bear responsibility for:

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

20 (2) the performance of a specific savings
21 option selection made by a program participant and facilitated
22 through the New Mexico work and save IRA program;

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

25 (4) the administration, investment, investment

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1 returns or investment performance of an IRA savings option
2 facilitated through the New Mexico work and save IRA program,
3 including interest rate or other rate of return on a
4 contribution or individual retirement account balance;

5 (5) the design or administration of the New
6 Mexico work and save IRA program or the benefits paid to or the
7 earnings or losses of program participants;

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

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

18 B. No ~~[covered]~~ participating employer shall be or
19 shall be considered to be a fiduciary under the New Mexico work
20 and save IRA program."

21 SECTION 6. APPROPRIATION.--Two hundred three thousand
22 dollars (\$203,000) is appropriated from the general fund to the
23 office of the state treasurer for expenditure in fiscal year
24 2023 to fund two additional full-time-equivalent positions to
25 administer the provisions of the New Mexico Work and Save Act.

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1 Any unexpended or unencumbered balance remaining at the end of
2 fiscal year 2023 shall revert to the general fund.

3 SECTION 7. APPLICABILITY.--The provisions of Section 1 of
4 this act apply to taxable years beginning on or after January
5 1, 2022.

6 SECTION 8. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2022.