F I S C A L   I M P A C T   R E P O R T

SPONSOR Serrato/Tallman **ORIGINAL DATE** 02/03/22 **LAST UPDATED** 02/08/22 **HB** 176

SHORT TITLE Retirement Savings Facilitation Tax Credit **SB**

ANALYST Faubion

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	$203.0	Recurring	STO FTEs - General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
	($6.0)	($54.7)	Up to ($4,200.0)	Up to ($4,200.0)	Recurring	Tax Credit - General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$239.0	$642.0	$800.0	$1,688.0	Nonrecurring	STO – Startup costs – General Fund
	$5.2		$5.2	Nonrecurring	TRD/ITD – General Fund

Parenthesis ( ) indicate expenditure decreases

Duplicates SB 187. Relates to SB 94 and HB 2.

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)
Workforce Solutions Department (WSD)
Office of the State Treasurer (STO)

SUMMARY

Synopsis of Bill

House Bill 176 amends provisions relating to the Work and Save program.

HB176 would enact a new section of the Income Tax Act to create the "Retirement Savings Facilitation Credit." The credit, up to $300 annually and available only for tax years prior to 2028, would be provided to eligible business owners who employ at least one New Mexico resident, who have not provided an employer-sponsored retirement plan prior to July 1, 2022, and who either choose to provide an employer-sponsored retirement plan or who register and participate in the state facilitated Work and Save IRA Program. The credit may be carried over for up to three years, and may be claimed only in proportion to the taxpayer's ownership interest in the relevant business. The New Mexico Work and Save Board would be responsible for adopting rules for certifying that participating businesses meet all eligibility requirements.

HB 176 also seeks to amend the New Mexico Work and Save Act ("the Act"). The bill would alter the definition of "covered employer" to be limited to those entities employing at least five employees, operating for at least two years, and not offering its employees a qualified retirement plan and require all "covered employers" not currently participating in the New Mexico retirement marketplace to register and participate in the Work and Save IRA program. Such employers would be required to enroll their employees, while employees retain their current right to opt out. HB176 seeks to contain the fees and expenses associated with the Work and Save IRA program by imposing rate limitations: during the first five years of operation, fees and expenses would be limited to 1 percent of the total asset values; thereafter, fees and expenses would be capped at .75 percent of asset values.

Lastly, HB176 makes a $203 thousand appropriation from the general fund to fund two additional FTE to administer the Work and Save program.

The effective date of this bill is July 1, 2022.

FISCAL IMPLICATIONS

HB176 would authorize a $300 retirement savings facilitation income tax credit for all participating employers and marketplace participants who did not provide an employer-sponsored retirement plan prior to July 1, 2022. The Workforce Solutions Department's Economic Research Division used Bureau of Labor Statistics, Pew Charitable Trust, and agency data on number of establishments by size and employers offering retirement plans in the state to estimate that 9,800 businesses will be required to participate in the Work and Save program in FY25 as "covered employers". Additionally, if even 10 percent of businesses of fewer than five employees that do not currently offer a retirement plan choose to opt into the program, an additional 4,100 businesses will claim the credit as "eligible employers". Using the assumptions presented above, the high-end cost estimate of the credit is around $4.2 million per year starting in FY25 when the Work and Save Program becomes mandatory for business over five employees. It is highly likely that the fiscal impact will be lower than the high-end estimates presented in the table on page one. STO estimates that only 50 percent of covered employers and 1 percent of eligible employers will participate, resulting in fewer credit disbursements and lower fiscal impact (see Other Substantive Issues). In FY23 and FY24, very few businesses will be eligible to participate due to STO's phased-in implementation plan.

TRD will need to make information system changes and update forms and publications. These changes will be incorporated into annual tax year implementation and cost $5,164 in workload costs for the Information Technology Division (ITD).

STO will require two additional FTE at $203 thousand to administer the program. STO will also require $238 thousand in FY22 to $800 thousand in FY24 for startup costs.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

WSD notes that in 2021, 20,854 establishments, or 34 percent of all establishments in New Mexico, employed five workers or more. About 554,000 New Mexicans work for establishments with five or more employees. According to the Bureau of Labor Statistics, 65 percent of workers in private industry had access to retirement benefits plans while 35 percent did not have access to defined contribution plans. According to Pew Charitable Trusts, 53 percent of the small and midsize businesses surveyed offer a retirement plan, while 47 percent do not.

TRD notes that workplace retirement plans are an important instrument of financial security for workers in their later years. Yet more than 40 percent of New Mexicans lack access to an employer-based retirement savings plan. The New Mexico Work and Save Act attempts to address this by providing employers with a retirement savings plan and allowing for a voluntary savings program for the private sector and non-profit employees and the self-employed. The income tax credit proposed in this legislation may provide an incentive to the 66 percent of employers not already required to register in the marketplace and aid in bringing employer-based retirement savings plans to more New Mexicans. It is unknown whether the amount of proposed credit will be sufficient to persuade employers to register and follow the process established in the Work and Save Act. Since the program is not functional at present, it is also unclear if a tax incentive is necessary to promote participation by the employers or if the employers would participate regardless of the credit.

During the 2020 regular session, the Legislature, with a unanimous vote in the Senate and all but one vote in the House, adopted Laws 2020, Chapter 7 (House Bill 44) which created the Work and Save Program to allow for a voluntary savings program for private sector and nonprofit employees, as well as for self-employed individuals, through a retirement savings plan purchased through a web-based marketplace maintained by the agency. According to the fiscal impact analysis provided by STO during the 2020 regular session, costs associated with the new program could be absorbed in the existing operating budget and self-sustained by fees charged to participating financial service firms. In FY22, $150 thousand of recurring funds were appropriated for the Work and Save program and approximately $540 thousand of vacancy savings have been identified for programmatic use over FY22 and FY23.

Although the Work and Save Program is not expected to launch until July 1, 2024 which is the start of FY25, employers may still claim the tax credit if they register as a marketplace participant and establish a plan through the New Mexico retirement plan marketplace.

STO notes the following:

HB176 amends the IRA Program provisions of the New Mexico Work and Save Act to align in a manner consistent with other states offering payroll deduction IRA programs. The Act directs the nine-member governing board to create two state-operated retirement savings programs for private-sector workers: 1) The Retirement Plan Marketplace; and, 2) the Payroll Deduction IRA Program. H176 will revise provisions relating *only* to the IRA Program.

The bill requires a limited number employers of the State's private-sector employers who do not offer a workplace retirement plan to register—free of charge—and to allow their workers to participate in the IRA Program by uploading their worker roster to the third-party program administrator. The IRA Program is not sponsored nor administered by the employer. Additionally, federal law prohibits an employer from matching or contributing any funds to a worker's IRA account. The employer's sole role is to deduct from a worker's pay, along with other normally processed withholdings, the worker's contributions to their IRA account. The employer remits the deducted contributions through a bank transfer to the program administrator, much like they remit other payroll withholdings.

The provisions of HB176 are necessary to align New Mexico's IRA Program with all other states' programs and, most importantly, to allow New Mexico to partner with Colorado in the first-in-the nation, multi-state Auto IRA Program, tentatively called "*Partnership for a Dignified Retirement"*. Together with Colorado, New Mexico will be able to leverage economies of scale to reduce fees and costs. Reductions will occur because of the increased number of eligible account holders the partnership can offer to the third-party program administrator and investment managers. Additionally, the partnership Auto IRA program will launch sooner (about a year and a half sooner than without the partnership). This is a result of the shared resources of the partnership. Launching sooner is significant in reaching self-sustaining status as required under the act. It means the program will become cash-flow positive sooner, thereby meeting the legislative mandate that the IRA Program become self-sustaining within five years of full implementation. Partnering with Colorado in a multi-state partnership is a time-sensitive and necessary opportunity for New Mexico to build a successful self-sustaining IRA Program.

The following IRA Program changes are provided in HB176:

1) HB176 creates a $300 annual tax credit for tax years 2022 through 2027. The tax credit is available only to private-sector employers who do not already offer a qualified retirement plan; who register with the Work and Save IRA Program; and who offer the program to their workers through automatic enrollment with an opt-out provision. The Work and Save

IRA program is *not* an employer sponsored plan and is *not* run by the employers. Under HB176, it is projected that only 20 employers will be eligible in tax year 2022 because the program will be rolled out in phases, with the first phase open only to about 20 businesses selected to participate in the testing phase in October 2022. The actual rollout of the remaining 4 phases in 6-month intervals is projected to being in January 2023 and be completed in 2024.

2) HB176 provides for two FTE for staff to carry out the provisions of the Work and Save Act, including the design and implementation of the Act's two retirement savings programs: the Retirement Plan Marketplace (the online portal connecting employers with board-approved retirement plan financial service providers, projected to launch prior to the July 1, 2024 deadline) and the IRA Program (the board-approved portable Auto IRA payroll deduction program for workers of private-sector employers not offering a workplace retirement plan). STO currently provides two FTEs for the programs. Along with the two additional FTE, H176 provides an appropriation of $203 thousand for the salaries and benefits of the FTEs for one financial analyst and one outreach coordinator. The experience in other states indicates that participation among both employers and workers is increased with the employer requirement, accompanied by a strong marketing campaign.

3) HB176 requires private-sector employers who: do not offer a workplace retirement plan, who have five or more workers, and who have been in business for at least 24 months, to register for the Work and Save IRA Program. There is no cost for registration. Once registered, employers will upload their worker payroll roster information to the IRA program administrator, a third-party record keeper who retains custody of the workers' accounts and handles all future worker-initiated options. These include opting out of the program, opting back into the program, changing contribution rates, and changing investment options. The program administrator functions are analogous to the current state-facilitated deferred compensation program "PERA SmartSave" for which Voya is the program administrator.

New Mexico is the only state with a voluntary payroll deduction IRA. Requiring employers with five or more workers to participate in the IRA Program aligns with the statutes in all other states currently offering or planning to offer an IRA program. Twelve states have either implemented or are in the process of implementing Auto IRA programs, and 33 states are studying the program or have introduced legislation to start a program.[1]

The employer registration requirement will impact only New Mexico's private-sector employers who do not offer a workplace retirement plan. Private sector employers with fewer than five workers are *not* required to participate; however, voluntary participation is permitted.

ADMINISTRATIVE IMPLICATIONS

The Work and Save Board is required to certify eligibility of the tax credit to include in an

[1] *See* AARP State Facilitates Retirement Savings Interactive Map: https://www.aarp.org/ppi/state-retirement-plans/savings-plans/

application to TRD for each business that applies for the credit. It is unclear whether the Work and Save Board has the capacity to handle an estimated 13.9 thousand certifications.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. The Taxation and Revenue Department would be charged with annual reporting of the number of taxpayers awarded the credit and the aggregate amount of credits approved to the Revenue Stabilization and Tax Policy Committee and Legislative Finance Committee.

RELATIONSHIP

House Bill 2, the General Appropriation Act of 2022, contains a $400 thousand special appropriation for the Work and Save program with a contingency that it can only be used for voluntary programs.

TECHNICAL ISSUES

TRD notes that page 2, line 16 indicates that the taxpayer must apply for the credit to TRD, after getting certified by the New Mexico Work and Save Board under the aegis of the State Treasurer's Office (STO). A memorandum of understanding (MOU) may be needed to facilitate an exchange of certification data between STO and TRD.

OTHER SUBSTANTIVE ISSUES

STO notes the following:

> In October 2021 New Mexico and Colorado entered into a Memorandum of Cooperation (MoC) which states that the partners would work together through March 2022 with a shared goal to:
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> > "design, build and maximize access to a simple, portable and sustainable retirement savings program for private-sector workers, and to achieve these goals by jointly attracting and engaging financial service providers offering affordable retirement savings options and program administrators providing user-friendly, efficient and cost-effective record keeping and administrative services…"
>
> The MoC provides that New Mexico will take the steps to include a mandate in its IRA Program. The collaboration has been ongoing. If HB176 is not enacted, New Mexico is unlikely to be accepted as a partner with Colorado because the partnership relies on the projected likely participation rate that can be achieved under the provisions of HB176 (the soft mandate).
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> In early 2022, the Board received the final results of a 3-Part Research and Modeling Study commissioned by the Board, funded by AARP and conducted by UNM's Bureau of Business & Economic Research, and the Center for Retirement Research (CRR) at Boston College. The CCR completed a feasibility and modeling study of the current voluntary IRA Program and the proposed employer requirement included in HB176. With the requirement,

CRR projects that New Mexico can expect a 50 percent employer participation rate (1 percent with a voluntary program). The projected employer participation rate of 50 percent is based on HB 176's soft mandate," meaning it requires employers to participate, but there is no penalty or enforcement mechanism for non-compliance. In addition to the soft mandate, CRR based its employer participation rate on the experiences in Oregon, the Auto IRA state most similar to New Mexico. As a result, CRR further indicates that without the requirement, New Mexico can expect to have only 2,460 accounts open as of the 10th year of the program's operation. In contrast, with the requirement and the CO-NM partnership, New Mexico can expect 122,800 Auto-IRA worker accounts. Additionally, the startup and operating costs will be reduced based on shared expenses and resources, and a shorter launch period.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

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