

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0529.01 Nicole Myers x4326

HOUSE BILL 18-1298

HOUSE SPONSORSHIP

Pettersen and Bridges,

SENATE SPONSORSHIP

Donovan and Todd,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

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

- and plan implementation;
- ! Prepare or cause to be prepared certain annual audits and annual reports regarding the plan;
 - ! Develop a process to ensure that employers are in compliance with the requirements of the plan and develop a penalty structure for employers who fail, without reasonable cause, to enroll employees in the plan;
 - ! Conduct or cause to be conducted a financial feasibility study to ensure that the plan will be self-sustaining; and
 - ! Conduct an analysis of relevant consumer protections available under federal law and make recommendations to the general assembly regarding additional necessary consumer protections that should be included in legislation implementing the plan.

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

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

The board must design and disseminate employer and employee information packets regarding the plan and the options for employee participation in the plan to all employers that participate in the plan.

If, based on the required financial feasibility study, the board determines that the plan will be self-sustaining and would promote greater retirement savings for private-sector employees, the board must recommend to the general assembly that the plan be implemented. The board may not implement the plan unless the general assembly, acting by bill, directs the board to implement the plan.

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

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

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

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

4 (a) Nearly half of all families in the United States have no
5 retirement assets. Even among those families who are nearing retirement,
6 four out of ten have no retirement assets.

7 (b) Middle-class working-age families whose incomes are at the
8 fiftieth percentile have, on average, only five thousand dollars saved in
9 retirement accounts. The average for families with incomes at the
10 ninetieth percentile is two hundred seventy-four thousand dollars.

11 (c) Only three in ten women aged sixty-five and older and slightly
12 more than four in ten men aged sixty-five and older receive any income
13 from pensions or retirement savings;

14 (d) Most African-American and Hispanic families have no
15 retirement savings. About four out of ten African-American families and
16 one out of four Hispanic families have retirement savings. The median
17 white family with retirement savings has over three times as much saved
18 as the median African-American or median Hispanic family.

19 (e) Coloradans are less prepared for retirement today than in
20 previous decades. Eighty-two percent of Coloradans agree that the nation
21 faces a retirement crisis and seventy-eight percent of Coloradans say that
22 it is getting harder to prepare for retirement.

23 (f) Older workers are working longer and delaying their
24 retirement. Many of today's seniors rely on their children, who are already
25 struggling to raise their own families, or on other social services that are
26 underfunded.

27 (g) Almost five out of ten Coloradans, aged twenty-five to

1 sixty-four, working in the private sector lack access to a retirement plan
2 at work;

3 (h) Colorado's younger workers are disproportionately affected,
4 with forty-nine percent of workers between the age of twenty-five and
5 twenty-nine, forty-five percent of workers between the age of thirty and
6 thirty-four, and forty-eight percent of workers between the age of
7 thirty-five and thirty-nine, lacking access to a retirement plan at work;

8 (i) Minority workers in Colorado are also disproportionately
9 affected, with forty-nine percent of African-American workers and
10 fifty-six percent of Hispanic workers lacking access to a retirement plan
11 at work;

12 (j) Colorado's lowest wage workers are also less likely to have
13 access to a workplace retirement savings plan. Seventy-six percent of
14 Colorado's workers in the lowest income quintile and fifty-two percent of
15 Colorado's workers in the second lowest income quintile have no access
16 to a retirement plan at work.

17 (k) The major reason why many workers do not participate in
18 retirement savings plans is their employers do not offer them. Experts on
19 retirement recommend that the best way to increase retirement savings is
20 to offer a workplace savings plan to all workers and enroll them
21 automatically with the right to opt out.

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

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

6 (n) Colorado needs a remedy to the retirement security crisis so
7 that Coloradans can look forward to a retirement free from financial
8 anxiety or hardship; and

9 (o) Coloradans have a history of creating unique solutions to the
10 challenges that the state faces. The state has an opportunity to craft a plan
11 for the future that can ensure all Coloradans have the ability to save for
12 retirement.

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

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

19 **ARTICLE 54.3**

20 **Colorado Secure Savings Plan Act**

21 **24-54.3-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 54.3
22 IS THE "COLORADO SECURE SAVINGS PLAN ACT".

23 **24-54.3-102. Definitions.** AS USED IN THIS ARTICLE 54.3, UNLESS
24 THE CONTEXT OTHERWISE REQUIRES:

25 (1) "BOARD" MEANS THE COLORADO SECURE SAVINGS PLAN
26 BOARD OF TRUSTEES ESTABLISHED IN SECTION 24-54.3-104.

27 (2) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO IS EIGHTEEN YEARS

1 OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER FOR AT LEAST ONE
2 HUNDRED TWENTY DAYS, AND WHO EARNS WAGES SUBJECT TO INCOME
3 TAX PURSUANT TO SECTION 39-22-104.

4 (3) "EMPLOYER" MEANS A PERSON OR ENTITY ENGAGED IN A
5 BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE
6 STATE, WHETHER FOR PROFIT OR NOT-FOR-PROFIT, THAT EMPLOYS THE
7 NUMBER OF EMPLOYEES SPECIFIED IN SUBSECTION (3)(a) OR (3)(b) OF THIS
8 SECTION. "EMPLOYER" DOES NOT INCLUDE A PERSON OR ENTITY THAT
9 OFFERS EMPLOYEES A QUALIFIED RETIREMENT PLAN AS SPECIFIED IN
10 SUBSECTION (3)(a)(III) OF THIS SECTION. "EMPLOYER" INCLUDES A PERSON
11 OR ENTITY THAT:

12 (a) (I) EMPLOYS THE FOLLOWING NUMBER OF EMPLOYEES IN THE
13 STATE:

14 (A) FOR THE FIRST YEAR OF OPERATION OF THE PLAN, ONE
15 HUNDRED OR MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS
16 CALENDAR YEAR;

17 (B) FOR THE SECOND YEAR OF OPERATION OF THE PLAN, FIFTY OR
18 MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;
19 AND

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

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

24 (III) HAS NOT OFFERED A QUALIFIED RETIREMENT PLAN TO ANY
25 EMPLOYEES, INCLUDING, BUT NOT LIMITED TO, A PLAN QUALIFIED UNDER
26 SECTIONS 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), OR 457(b) OF
27 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN THE

1 PRECEDING TWO YEARS; OR

2 (b) EMPLOYS FEWER THAN THE NUMBER OF EMPLOYEES SPECIFIED
3 IN SUBSECTION (3)(a)(I) OF THIS SECTION FOR THE APPLICABLE YEAR OF
4 OPERATION OF THE PLAN, HAS NOT OFFERED A QUALIFIED RETIREMENT
5 PLAN AS SPECIFIED IN SUBSECTION (3)(a)(III) OF THIS SECTION, AND
6 CHOOSES TO PARTICIPATE IN THE PLAN.

7 (4) "ENROLLEE" MEANS ANY EMPLOYEE WHO IS ENROLLED IN THE
8 PLAN.

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

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

13 (7) "IRA" MEANS A ROTH INDIVIDUAL RETIREMENT ACCOUNT
14 AUTHORIZED PURSUANT TO SECTION 408A OF THE INTERNAL REVENUE
15 CODE OR A TRADITIONAL INDIVIDUAL RETIREMENT ACCOUNT, TO BE
16 DETERMINED BY THE BOARD.

17 (8) "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT
18 PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS
19 PROVIDED FOR IN THIS ARTICLE 54.3 FOR ITS EMPLOYEES WHO ARE
20 ENROLLEES IN THE PLAN.

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

24 (10) "PLAN" MEANS THE COLORADO SECURE SAVINGS PLAN
25 CREATED IN THIS ARTICLE 54.3.

26 (11) "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING
27 OF SECTION 219(f)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED

1 BY AN ENROLLEE FROM A PARTICIPATING EMPLOYER DURING THE
2 CALENDAR YEAR.

3 **24-54.3-103. Colorado secure savings plan - established.** A
4 RETIREMENT SAVINGS PLAN IN THE FORM OF AN AUTOMATIC ENROLLMENT
5 PAYROLL DEDUCTION IRA, KNOWN AS THE COLORADO SECURE SAVINGS
6 PLAN, IS HEREBY ESTABLISHED. THIS PLAN IS NOT A DEFINED BENEFIT
7 PENSION PLAN. THE BOARD SHALL ADMINISTER THE PLAN FOR THE
8 PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR
9 PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND
10 PORTABLE MANNER.

11 **24-54.3-104. Colorado secure savings plan board - creation -**
12 **composition.** (1) THERE IS HEREBY CREATED THE BOARD OF TRUSTEES OF
13 THE PLAN, WHICH HAS THE RESPONSIBILITIES, DUTIES, AND AUTHORITIES
14 SET FORTH IN THIS ARTICLE 54.3.

15 (2) THE BOARD CONSISTS OF THE FOLLOWING NINE TRUSTEES:

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

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

19 (c) SEVEN TRUSTEES APPOINTED BY THE GOVERNOR AND
20 CONFIRMED BY THE SENATE AS FOLLOWS:

21 (I) FOUR PUBLIC REPRESENTATIVES WITH EXPERTISE IN
22 INVESTMENT OR RETIREMENT SAVINGS PLAN ADMINISTRATION, INCLUDING
23 THE DAY-TO-DAY OPERATIONS OF PLANS, MAINTAINING INDIVIDUAL
24 ACCOUNTS, AND KEEPING TRACK OF TRANSACTIONS AND ASSETS AT THE
25 INDIVIDUAL PARTICIPANT ACCOUNT LEVEL;

26 (II) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS;

27 (III) A REPRESENTATIVE OF ENROLLEES OR POTENTIAL ENROLLEES;

1 AND

2 (IV) A RETIRED COLORADO RESIDENT.

3 (3) THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES
4 ARE TWO PUBLIC REPRESENTATIVES FOR FOUR YEARS; THE
5 REPRESENTATIVE OF PARTICIPATING EMPLOYERS AND THE RETIRED
6 COLORADO RESIDENT FOR THREE YEARS; AND TWO PUBLIC
7 REPRESENTATIVES AND THE REPRESENTATIVE OF ENROLLEES OR
8 POTENTIAL ENROLLEES FOR TWO YEARS. THEREAFTER, ALL OF THE
9 GOVERNOR'S APPOINTEES ARE APPOINTED FOR TERMS OF FOUR YEARS.

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

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

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

20 (7) TRUSTEES OF THE BOARD SERVE WITHOUT COMPENSATION BUT
21 MAY BE REIMBURSED FOR NECESSARY TRAVEL EXPENSES INCURRED IN
22 CONNECTION WITH THEIR BOARD DUTIES FROM MONEY IN THE FUND.

23 (8) AN INDIVIDUAL SHALL NOT BE OR CONTINUE TO BE A TRUSTEE
24 OF THE BOARD IF THAT INDIVIDUAL HAS BEEN ADJUDICATED OF VIOLATING
25 ANY PROVISIONS OF THIS ARTICLE 54.3 OR HAS BEEN CONVICTED OF A
26 FELONY OR ANY CRIME INVOLVING THE MISAPPROPRIATION OF FUNDS.

27 **24-54.3-105. Standard of conduct - fiduciary duty.** (1) THE

1 TRUSTEES OF THE BOARD, ANY OTHER AGENTS APPOINTED OR ENGAGED BY
2 THE BOARD, AND ALL PERSONS SERVING AS PLAN STAFF SHALL DISCHARGE
3 THEIR DUTIES WITH RESPECT TO THE PLAN SOLELY IN THE INTEREST OF THE
4 PLAN'S ENROLLEES AND BENEFICIARIES AS FOLLOWS:

5 (a) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO
6 ENROLLEES AND BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES
7 OF ADMINISTERING THE PLAN; AND

8 (b) BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND
9 DILIGENCE UNDER THE PREVAILING CIRCUMSTANCES THAT A PRUDENT
10 PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH RELEVANT
11 MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE
12 CHARACTER AND WITH LIKE AIMS.

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

16 **24-54.3-106. Additional duties of the board.** (1) IN ADDITION
17 TO THE OTHER DUTIES AND RESPONSIBILITIES SPECIFIED IN THIS ARTICLE
18 54.3, THE BOARD SHALL:

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

21 (I) IS IN ACCORDANCE WITH BEST PRACTICES FOR RETIREMENT
22 SAVINGS VEHICLES AND IS BASED ON THE RESULTS OF A FINANCIAL
23 FEASIBILITY STUDY, CONDUCTED PURSUANT TO SUBSECTION (1)(u) OF THIS
24 SECTION, TO ENSURE THAT THE PLAN IS SELF-SUSTAINING;

25 (II) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND
26 INVESTMENT PRACTICES;

27 (III) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION

1 FOR PARTICIPATING EMPLOYERS AND ENROLLEES;

2 (IV) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING
3 INVESTMENT FUNDS;

4 (V) ENSURES THE PORTABILITY OF BENEFITS AND CONSIDERS THE
5 TYPE OF IRA OFFERED AS A WAY OF INCREASING THE PORTABILITY OF
6 BENEFITS; AND

7 (VI) PROVIDES FOR THE INVESTMENT AND DEACCUMULATION OF
8 ENROLLEE ASSETS IN A MANNER THAT MAXIMIZES FINANCIAL SECURITY IN
9 RETIREMENT;

10 (b) EXPLORE AND ESTABLISH INVESTMENT OPTIONS PURSUANT TO
11 SECTION 24-54.3-109 THAT OFFER EMPLOYEES RETURNS ON
12 CONTRIBUTIONS AND LIFETIME RETIREMENT INCOME WITHOUT INCURRING
13 DEBT OR LIABILITIES TO THE STATE;

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

21 (d) CONDUCT A REVIEW OF THE PERFORMANCE OF ANY
22 INVESTMENT VENDORS EVERY FOUR YEARS, INCLUDING, BUT NOT LIMITED
23 TO, A REVIEW OF RETURNS, FEES, AND CUSTOMER SERVICE. THE BOARD
24 SHALL MAKE THE RESULTS OF THE REVIEWS CONDUCTED PURSUANT TO
25 THIS SUBSECTION (1)(d) AVAILABLE TO THE PUBLIC.

26 (e) DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS
27 NEEDED TO ADMINISTER THE PLAN AND ASSEMBLE SUCH A STAFF,

1 INCLUDING, AS NEEDED, THE EMPLOYMENT OF STAFF AND THE
2 APPOINTMENT OF A PLAN ADMINISTRATOR. THE BOARD MAY CONTRACT
3 WITH THIRD PARTIES, INCLUDING STATE AGENCIES, TO ASSIST IN
4 ADMINISTERING THE PLAN.

5 (f) INVEST MONEY IN THE FUND TO ACHIEVE COST SAVINGS
6 THROUGH EFFICIENCIES AND ECONOMIES OF SCALE;

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

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

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

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

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

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

11 (l) MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE
12 COSTS AND EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION
13 OF THE PLAN. ALL ADMINISTRATIVE COSTS OF THE PLAN, INCLUDING
14 REPAYMENT OF ANY START-UP MONEY, SHALL BE PAID BY ENROLLEES.
15 ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO SUBSECTION
16 (1)(j) OF THIS SECTION TO IMPLEMENT THE PLAN UNTIL THE PLAN IS
17 SELF-SUSTAINING SHALL NOT BE REPAID UNLESS THAT MONEY WAS
18 OFFERED CONTINGENT UPON A PROMISE OF REPAYMENT.

19 (m) SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN
20 ACCORDANCE WITH LIMITS ESTABLISHED FOR IRAS BY THE INTERNAL
21 REVENUE CODE;

22 (n) FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND
23 EMPLOYEES;

24 (o) FACILITATE COMPLIANCE BY THE PLAN WITH ALL APPLICABLE
25 REQUIREMENTS FOR THE PLAN UNDER THE INTERNAL REVENUE CODE,
26 INCLUDING TAX QUALIFICATION REQUIREMENTS OR ANY OTHER
27 APPLICABLE LEGAL AND ACCOUNTING REQUIREMENTS;

1 (p) CARRY OUT THE DUTIES AND OBLIGATIONS OF THE PLAN IN AN
2 EFFECTIVE, EFFICIENT, AND LOW-COST MANNER;

3 (q) EXERCISE ANY AND ALL OTHER POWERS REASONABLY
4 NECESSARY FOR THE EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND
5 PROVISIONS OF THIS ARTICLE 54.3;

6 (r) DEPOSIT INTO THE FUND ALL GIFTS, GRANTS, DONATIONS, AND
7 FEES THAT ARE USED TO RECOVER ADMINISTRATIVE COSTS. ALL EXPENSES
8 OF THE BOARD SHALL BE PAID FROM THE FUND.

9 (s) CONSIDER PROCESSES TO IMPLEMENT THE PLAN TO REDUCE THE
10 ACTIONS REQUIRED BY EMPLOYERS;

11 (t) DETERMINE ANY NOMINAL AND REASONABLE ASSISTANCE THAT
12 MAY BE PROVIDED FROM MONEY IN THE FUND TO BUSINESSES TO OFFSET
13 THE INITIAL COSTS OF ENROLLING EMPLOYEES IN THE PLAN AND
14 COMPLYING WITH AUDITS AND PLAN IMPLEMENTATION;

15 (u) CONDUCT OR CAUSE TO BE CONDUCTED A FINANCIAL
16 FEASIBILITY STUDY TO ENSURE THAT THE PLAN WILL BE SELF-SUSTAINING;

17 (v) REGULARLY AND AUTOMATICALLY PROVIDE PLAN
18 PARTICIPANTS IMPORTANT INFORMATION ABOUT PLAN FEATURES AND
19 FUNDING;

20 (w) CONDUCT OR CAUSE TO BE CONDUCTED A STUDY ASSESSING
21 THE EFFECTS THAT GREATER FINANCIAL EDUCATION AMONG COLORADO
22 RESIDENTS WOULD HAVE ON INCREASING THEIR RETIREMENT SAVINGS AND
23 MAKE RECOMMENDATIONS FOR IMPROVING THE LEVEL OF FINANCIAL
24 EDUCATION;

25 (x) CONDUCT OR CAUSE TO BE CONDUCTED A STUDY ASSESSING
26 THE EFFECTIVENESS OF A SMALL BUSINESS RETIREMENT MARKETPLACE AS
27 A WAY TO INCREASE THE NUMBER OF COLORADO BUSINESSES THAT OFFER

1 RETIREMENT SAVINGS PLANS FOR THEIR EMPLOYEES AND MAKE A
2 RECOMMENDATION TO THE GENERAL ASSEMBLY REGARDING CREATING A
3 SMALL BUSINESS RETIREMENT MARKETPLACE OPTION.

4 (y) CONDUCT AN ANALYSIS OF ALL RELEVANT FEDERAL CONSUMER
5 PROTECTIONS AVAILABLE UNDER THE FEDERAL "EMPLOYEE RETIREMENT
6 INCOME SECURITY ACT OF 1974", AS AMENDED, AND MAKE
7 RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING ANY
8 ADDITIONAL NECESSARY CONSUMER PROTECTIONS THAT SHOULD BE
9 INCLUDED IN LEGISLATION IMPLEMENTING THE PLAN.

10 **24-54.3-107. Risk management.** THE BOARD SHALL ANNUALLY
11 PREPARE AND ADOPT A WRITTEN STATEMENT OF INVESTMENT POLICY THAT
12 INCLUDES A RISK MANAGEMENT AND OVERSIGHT PROGRAM. THIS
13 INVESTMENT POLICY SHALL PROHIBIT THE BOARD, PLAN, AND FUND FROM
14 BORROWING FOR INVESTMENT PURPOSES. THE RISK MANAGEMENT AND
15 OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN EFFECTIVE
16 RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS OF
17 THE PLAN AND FUND PORTFOLIO, TO ENSURE THAT THE RISKS TAKEN ARE
18 PRUDENT AND PROPERLY MANAGED, TO PROVIDE AN INTEGRATED PROCESS
19 FOR OVERALL RISK MANAGEMENT, AND TO ASSESS INVESTMENT RETURNS
20 AS WELL AS RISKS IN ORDER TO DETERMINE IF THE RISKS TAKEN ARE
21 ADEQUATELY COMPENSATED COMPARED TO APPLICABLE PERFORMANCE
22 BENCHMARKS AND STANDARDS. THE BOARD SHALL CONSIDER THE
23 STATEMENT OF INVESTMENT POLICY AND ANY CHANGES IN THE
24 INVESTMENT POLICY AT A PUBLIC HEARING.

25 **24-54.3-108. Financial services vendors.** (1) THE BOARD SHALL
26 ENGAGE, AFTER AN OPEN BID PROCESS, ONE OR MORE FINANCIAL SERVICES
27 VENDORS TO SERVE AS AN INVESTMENT MANAGER FOR THE PLAN, INVEST

1 ANY OTHER ASSETS OF THE PLAN, AND HANDLE THE RECORD KEEPING FOR
2 THE PLAN. IN SELECTING THE VENDOR OR VENDORS, THE BOARD SHALL
3 TAKE INTO CONSIDERATION AND GIVE WEIGHT TO THE VENDOR'S FEES AND
4 CHARGES IN ORDER TO REDUCE THE PLAN'S ADMINISTRATIVE EXPENSES.

5 (2) THE VENDOR OR VENDORS SHALL COMPLY WITH ALL
6 APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS
7 WELL AS ALL RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE
8 BOARD WITH RESPECT TO THE PLAN AND THE INVESTMENT OF MONEY IN
9 THE FUND, INCLUDING, BUT NOT LIMITED TO, THE INVESTMENT POLICY.

10 (3) THE VENDOR OR VENDORS SHALL PROVIDE SUCH REPORTS AS
11 THE BOARD DEEMS NECESSARY FOR THE BOARD TO OVERSEE EACH
12 INVESTMENT MANAGER'S PERFORMANCE AND THE PERFORMANCE OF THE
13 FUND.

14 (4) THE BOARD MAY AWARD AN INITIAL RECORD KEEPING
15 CONTRACT FOR A TERM OF UP TO TEN YEARS TO PERMIT THE FINANCIAL
16 SERVICES VENDOR OR VENDORS TO RECOVER START-UP COSTS AND INITIAL
17 LOSSES.

18 **24-54.3-109. Investment options.** (1) THE BOARD MAY
19 ESTABLISH THE FOLLOWING INVESTMENT OPTIONS:

- 20 (a) A LOW-RISK INVESTMENT PORTFOLIO; AND
- 21 (b) A TARGET DATE FUND.

22 (2) THE TARGET DATE FUND AND LIFETIME INCOME OPTIONS MUST
23 BE THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO FAIL TO ELECT
24 AN INVESTMENT OPTION UNLESS THE BOARD DESIGNATES BY RULE A NEW
25 INVESTMENT OPTION AS THE DEFAULT PURSUANT TO SUBSECTION (4) OF
26 THIS SECTION.

27 (3) UNDER NO CIRCUMSTANCES SHALL THE BOARD, PLAN, FUND,

1 STATE, OR ANY PARTICIPATING EMPLOYER ASSUME ANY LIABILITY FOR
2 INVESTMENT OR ACTUARIAL RISK. THE BOARD SHALL DETERMINE
3 WHETHER TO ESTABLISH INVESTMENT OPTIONS PURSUANT TO THIS SECTION
4 BASED UPON AN ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL,
5 FEASIBILITY, AND EASE OF IMPLEMENTATION.

6 (4) IF THE BOARD ELECTS TO ESTABLISH A LOW-RISK INVESTMENT
7 PORTFOLIO, THE BOARD SHALL DETERMINE WHETHER THE PORTFOLIO WILL
8 REPLACE THE TARGET DATE FUND AS THE DEFAULT INVESTMENT OPTION
9 FOR ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION. IN MAKING
10 THE DETERMINATION, THE BOARD SHALL CONSIDER THE COST, RISK
11 PROFILE, BENEFIT LEVEL, AND EASE OF ENROLLMENT IN THE LOW-RISK
12 INVESTMENT PORTFOLIO. THE BOARD MAY AT ANY TIME THEREAFTER
13 REVISIT THIS QUESTION AND, BASED ON AN ANALYSIS OF THESE CRITERIA,
14 ESTABLISH THE LOW-RISK INVESTMENT PORTFOLIO AS THE DEFAULT FOR
15 ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION.

16 **24-54.3-110. Colorado secure savings plan fund - creation.**

17 (1) (a) THE COLORADO SECURE SAVINGS PLAN FUND IS HEREBY
18 ESTABLISHED AS A TRUST OUTSIDE OF THE STATE TREASURY. THE BOARD
19 IS THE TRUSTEE OF THE FUND.

20 (b) THE FUND CONSISTS OF MONEY RECEIVED FROM ENROLLEES
21 AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC PAYROLL
22 DEDUCTIONS, CONTRIBUTIONS TO SAVINGS MADE UNDER THIS ARTICLE
23 54.3, AND ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO
24 THIS ARTICLE 54.3.

25 (c) FOR THE FIRST FIVE YEARS OF THE OPERATION OF THE PLAN,
26 THE BOARD MAY USE UP TO ONE PERCENT OF THE MONEY IN THE FUND TO
27 PAY FOR THE ADMINISTRATIVE COSTS THAT IT INCURS IN THE

1 PERFORMANCE OF ITS DUTIES UNDER THIS ARTICLE 54.3, INCLUDING
2 START-UP ADMINISTRATIVE EXPENSES. IN THE SIXTH YEAR OF THE
3 OPERATION OF THE PLAN AND IN EACH YEAR THEREAFTER, THE BOARD
4 MAY USE UP TO THREE-QUARTERS OF ONE PERCENT OF THE MONEY IN THE
5 FUND FOR SUCH ADMINISTRATIVE PURPOSES.

6 (2) MONEY DEPOSITED IN THE FUND IS NOT PROPERTY OF THE
7 STATE, AND THE FUND IS NOT A DEPARTMENT, INSTITUTION, OR AGENCY OF
8 THE STATE. AMOUNTS ON DEPOSIT IN THE FUND SHALL NOT BE
9 COMMINGLED WITH STATE MONEY AND THE STATE HAS NO CLAIM TO OR
10 AGAINST, OR INTEREST IN, SUCH MONEY.

11 (3) EXCEPT TO THE EXTENT NECESSARY TO ADMINISTER THE PLAN
12 IN ACCORDANCE WITH THE INTERNAL REVENUE CODE AND STATE TAX
13 LAWS, ALL INFORMATION CONTAINED IN THE ACCOUNTS OF INDIVIDUAL
14 ENROLLEES OF THE PLAN, INCLUDING BUT NOT LIMITED TO NAMES,
15 ADDRESSES, TELEPHONE NUMBERS, PERSONAL IDENTIFICATION
16 INFORMATION, AMOUNTS CONTRIBUTED, AND EARNINGS ON AMOUNTS
17 CONTRIBUTED, SHALL BE KEPT CONFIDENTIAL BY THE BOARD AND BY ANY
18 PERSON OR ENTITY WORKING ON BEHALF OF THE BOARD. THIS SECTION
19 DOES NOT APPLY TO THE EXTENT THAT AN INDIVIDUAL ENROLLEE OF THE
20 PLAN EXPRESSLY AGREES IN WRITING THAT CERTAIN INFORMATION
21 CONTAINED IN HIS OR HER ACCOUNT MAY BE DISCLOSED.

22 **24-54.3-111. Employer and employee information packets -**
23 **disclosure forms.** (1) PRIOR TO THE OPENING OF THE PLAN FOR
24 ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO ALL
25 EMPLOYERS AN EMPLOYER INFORMATION PACKET AND AN EMPLOYEE
26 INFORMATION PACKET, WHICH MUST INCLUDE BACKGROUND INFORMATION
27 ON THE PLAN AND APPROPRIATE DISCLOSURES FOR EMPLOYEES.

1 (2) THE BOARD SHALL DETERMINE THE CONTENTS OF BOTH THE
2 EMPLOYEE INFORMATION PACKET AND THE EMPLOYER INFORMATION
3 PACKET.

4 (3) THE EMPLOYEE INFORMATION PACKET MUST INCLUDE A
5 DISCLOSURE FORM THAT EXPLAINS THE FOLLOWING:

6 (a) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING
7 CONTRIBUTIONS TO THE PLAN;

8 (b) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE
9 PLAN;

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

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

13 (e) THE PROCESS TO WITHDRAW RETIREMENT SAVINGS;

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

15 (g) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD
16 CONTACT FINANCIAL ADVISORS, THAT PARTICIPATING EMPLOYERS ARE
17 NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE, AND THAT
18 PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR DECISIONS EMPLOYEES
19 MAKE PURSUANT TO THIS ARTICLE 54.3;

20 (h) THAT THE PLAN IS NOT AN EMPLOYER-SPONSORED RETIREMENT
21 PLAN;

22 (i) THAT INVESTMENTS ARE NOT GUARANTEED BY THE STATE;

23 (j) FINANCIAL EDUCATION INFORMATION CONCERNING THE
24 IMPORTANCE OF SAVING AND PLANNING FOR RETIREMENT; AND

25 (k) ANY OTHER INFORMATION DEEMED NECESSARY BY THE BOARD.

26 (4) THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE A
27 FORM FOR AN EMPLOYEE TO NOTE HIS OR HER DECISION TO OPT OUT OF

1 PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE WITH A LEVEL OF
2 EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT OF THE
3 EMPLOYEE'S WAGES.

4 (5) PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE
5 INFORMATION PACKET TO EMPLOYEES UPON LAUNCH OF THE PLAN.
6 PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION
7 PACKET TO NEW EMPLOYEES AT THE TIME OF HIRING, AND NEW EMPLOYEES
8 MAY OPT OUT OF PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE
9 WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT
10 OF THE EMPLOYEE'S WAGES AT THAT TIME.

11 **24-54.3-112. Plan implementation - authorization.** IF, AFTER
12 CONDUCTING OR CAUSING TO BE CONDUCTED A FINANCIAL FEASIBILITY
13 STUDY IN ACCORDANCE WITH SECTION 24-54.3-106 (1)(u), THE BOARD
14 FINDS AND DETERMINES THAT THE PLAN WILL BE SELF-SUSTAINING AND
15 WOULD PROMOTE GREATER RETIREMENT SAVINGS FOR PRIVATE-SECTOR
16 EMPLOYEES IN A CONVENIENT, LOW-COST, AND PORTABLE MANNER, THE
17 BOARD SHALL RECOMMEND TO THE GENERAL ASSEMBLY THAT THE PLAN
18 BE IMPLEMENTED. THE BOARD SHALL NOT IMPLEMENT THE PLAN UNLESS
19 THE GENERAL ASSEMBLY, ACTING BY BILL, DIRECTS THE BOARD TO
20 IMPLEMENT THE PLAN. IF THE BOARD IS DIRECTED TO IMPLEMENT THE
21 PLAN, IT SHALL BEGIN IMPLEMENTATION ON A DATE SPECIFIED BY THE
22 GENERAL ASSEMBLY IN THE BILL.

23 **24-54.3-113. Plan implementation - enrollment.** (1) EXCEPT AS
24 OTHERWISE PROVIDED IN SECTION 24-54.3-119, THE BOARD SHALL ENSURE
25 THAT THE PLAN IS FULLY IMPLEMENTED AND THAT ENROLLMENT OF
26 EMPLOYEES BEGINS WITHIN TWENTY-FOUR MONTHS OF THE DATE THAT
27 THE BOARD WAS AUTHORIZED TO BEGIN IMPLEMENTING THE PLAN AS

1 SPECIFIED IN THE BILL ENACTED BY THE GENERAL ASSEMBLY PURSUANT TO
2 SECTION 24-54.3-112.

3 (2) EACH EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT
4 RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EACH EMPLOYEE TO
5 PARTICIPATE IN THE PLAN AS FOLLOWS:

6 (a) FOR AN EMPLOYER THAT EMPLOYS ONE HUNDRED OR MORE
7 EMPLOYEES AT ANY TIME DURING THE CALENDAR YEAR IMMEDIATELY
8 PRECEDING THE YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER
9 SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS
10 ARRANGEMENT WITHIN NINE MONTHS AFTER THE IMPLEMENTATION DATE
11 OF THE PLAN;

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

18 (c) FOR AN EMPLOYER THAT EMPLOYS FIVE OR MORE EMPLOYEES
19 AT ANY TIME DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE
20 THIRD YEAR IN WHICH THE PLAN IS OPERATING OR IN ANY SUCCEEDING
21 YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL ESTABLISH
22 A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT WITHIN TWO
23 YEARS AND NINE MONTHS AFTER THE IMPLEMENTATION DATE OF THE
24 PLAN.

25 (3) EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PLAN
26 EACH OF THEIR EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION
27 IN THE PLAN AND SHALL PROVIDE PAYROLL DEDUCTION RETIREMENT

1 SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON BEHALF
2 OF SUCH EMPLOYEES, THE MONEY DEDUCTED INTO THE PLAN. ANY
3 EMPLOYER MAY, BUT IS NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION
4 RETIREMENT SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS
5 TO PARTICIPATE IN THE PLAN.

6 (4) ENROLLEES MAY SELECT A LEVEL OF CONTRIBUTION INTO THE
7 FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR AS
8 A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S
9 TAXABLE YEAR UNDER SECTION 219(b)(1)(A) OF THE INTERNAL REVENUE
10 CODE. ENROLLEES MAY CHANGE THEIR LEVEL OF CONTRIBUTION AT ANY
11 TIME, SUBJECT TO RULES PROMULGATED BY THE BOARD. IF AN ENROLLEE
12 FAILS TO SELECT A LEVEL OF CONTRIBUTION, THEN HE OR SHE SHALL
13 CONTRIBUTE FIVE PERCENT OF HIS OR HER WAGES TO THE PLAN, SO LONG
14 AS SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL
15 CONTRIBUTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE
16 AMOUNT FOR THE ENROLLEE'S TAXABLE YEAR UNDER SECTION
17 219(b)(1)(A) OF THE INTERNAL REVENUE CODE.

18 (5) ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE
19 PERMITTED INVESTMENT OPTIONS SPECIFIED IN SECTION 24-54.3-109.
20 ENROLLEES MAY CHANGE THEIR INVESTMENT OPTION AT ANY TIME,
21 SUBJECT TO RULES PROMULGATED BY THE BOARD. IN THE EVENT THAT AN
22 ENROLLEE FAILS TO SELECT AN INVESTMENT OPTION, THAT ENROLLEE
23 SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED BY THE BOARD
24 AS THE DEFAULT PURSUANT TO SECTION 24-54.3-109. IF THE BOARD HAS
25 NOT SELECTED A DEFAULT INVESTMENT OPTION PURSUANT TO SECTION
26 24-54.3-109, THEN AN ENROLLEE WHO FAILS TO SELECT AN INVESTMENT
27 OPTION SHALL BE PLACED IN THE TARGET DATE FUND.

1 (6) FOLLOWING INITIAL IMPLEMENTATION OF THE PLAN PURSUANT
2 TO THIS SECTION, AT LEAST ONCE EVERY YEAR, PARTICIPATING
3 EMPLOYERS SHALL DESIGNATE AN OPEN ENROLLMENT PERIOD DURING
4 WHICH EMPLOYEES WHO PREVIOUSLY OPTED OUT OF THE PLAN MAY
5 ENROLL IN THE PLAN. AN EMPLOYEE WHO OPTS OUT OF THE PLAN WHO
6 SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE PARTICIPATING
7 EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY
8 ONLY ENROLL DURING THE PARTICIPATING EMPLOYER'S DESIGNATED OPEN
9 ENROLLMENT PERIOD OR, IF PERMITTED BY THE PARTICIPATING EMPLOYER,
10 AT AN EARLIER TIME.

11 (7) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO
12 ESTABLISH ANY TYPE OF EMPLOYER-SPONSORED RETIREMENT PLAN, SUCH
13 AS A DEFINED BENEFIT PLAN OR 401(k) PLAN, SIMPLIFIED EMPLOYEE
14 PENSION PLAN, OR SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES
15 PLAN, OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION
16 IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT RETIREMENT SAVINGS
17 ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PLAN.

18 (8) AN EMPLOYEE MAY TERMINATE HIS OR HER PARTICIPATION IN
19 THE PLAN AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD.

20 **24-54.3-114. Payments.** (1) EMPLOYEE CONTRIBUTIONS
21 DEDUCTED BY THE PARTICIPATING EMPLOYER THROUGH PAYROLL
22 DEDUCTIONS SHALL BE PAID BY THE PARTICIPATING EMPLOYER TO THE
23 FUND OR THE IRA CUSTODIAN USING ONE OR MORE PAYROLL DEPOSIT
24 RETIREMENT SAVINGS ARRANGEMENTS ESTABLISHED BY THE BOARD
25 PURSUANT TO SECTION 24-54.3-106 (1)(h) EITHER:

26 (a) ON OR BEFORE THE LAST DAY OF THE MONTH FOLLOWING THE
27 MONTH IN WHICH THE COMPENSATION WOULD HAVE OTHERWISE BEEN

1 PAYABLE TO THE EMPLOYEE IN CASH; OR

2 (b) BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD
3 FOR MAKING SUCH PAYMENTS BUT NOT LATER THAN THE DUE DATE FOR
4 THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD
5 RELATING TO COLLECTION OF INCOME TAX ON WAGES OR FOR THE DEPOSIT
6 OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE
7 SYSTEM FOR THE PAYROLL PERIOD TO WHICH SUCH PAYMENTS RELATE.

8 **24-54.3-115. Duty and liability - state.** (1) THE STATE HAS NO
9 DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT
10 SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE PLAN. ANY
11 FINANCIAL LIABILITY FOR THE PAYMENT OF RETIREMENT SAVINGS
12 BENEFITS IN EXCESS OF FUNDS AVAILABLE UNDER THE PLAN SHALL BE
13 BORNE SOLELY BY THE ENTITIES WITH WHOM THE BOARD CONTRACTS TO
14 PROVIDE INSURANCE TO PROTECT THE VALUE OF THE PLAN.

15 (2) NO STATE BOARD, COMMISSION, AGENCY, OR ANY OFFICER OR
16 EMPLOYEE THEREOF IS LIABLE FOR ANY LOSS OR DEFICIENCY RESULTING
17 FROM PARTICULAR INVESTMENTS SELECTED UNDER THIS ARTICLE 54.3.

18 **24-54.3-116. Duty and liability - participating employers.**
19 (1) PARTICIPATING EMPLOYERS HAVE NO LIABILITY FOR AN EMPLOYEE'S
20 DECISION TO PARTICIPATE IN, OR OPT OUT OF, THE PLAN OR FOR THE
21 INVESTMENT DECISIONS OF THE BOARD OR OF ANY ENROLLEE.

22 (2) A PARTICIPATING EMPLOYER IS NOT A FIDUCIARY, OR
23 CONSIDERED TO BE A FIDUCIARY, OVER THE PLAN. A PARTICIPATING
24 EMPLOYER DOES NOT BEAR RESPONSIBILITY FOR THE ADMINISTRATION,
25 INVESTMENT, OR INVESTMENT PERFORMANCE OF THE PLAN. A
26 PARTICIPATING EMPLOYER IS NOT LIABLE WITH REGARD TO INVESTMENT
27 RETURNS, PLAN DESIGN, AND BENEFITS PAID TO PLAN ENROLLEES.

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

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

6 (b) A REPORT THAT INCLUDES, BUT IS NOT LIMITED TO, A
7 SUMMARY OF THE BENEFITS PROVIDED BY THE PLAN, THE NUMBER OF
8 ENROLLEES IN THE PLAN, THE PERCENTAGE AND AMOUNTS OF INVESTMENT
9 OPTIONS AND RATES OF RETURN FOR THE PLAN, AND SUCH OTHER
10 INFORMATION THAT IS RELEVANT TO MAKE A FULL, FAIR, AND EFFECTIVE
11 DISCLOSURE OF THE OPERATIONS OF THE PLAN AND THE FUND; AND

12 (c) AN AUDIT TO BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC
13 ACCOUNTANT CHOSEN BY THE BOARD THAT SHALL INCLUDE, BUT IS NOT
14 LIMITED TO, DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF
15 OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER
16 PERSONS FOR THE ADMINISTRATION OF THE PLAN DURING THE PREVIOUS
17 CALENDAR YEAR.

18 (2) ONE YEAR AFTER THE INCEPTION OF THE PLAN, AND ON OR
19 BEFORE SUCH DATE EACH YEAR THEREAFTER, THE BOARD SHALL SUBMIT
20 THE REPORTS AND THE AUDIT REQUIRED IN THIS SECTION TO THE
21 GOVERNOR, THE STATE CONTROLLER, THE STATE TREASURER, AND THE
22 GENERAL ASSEMBLY.

23 (3) IN ADDITION TO ANY OTHER STATEMENTS OR REPORTS
24 REQUIRED BY LAW, THE BOARD SHALL PROVIDE ANNUAL REPORTS TO
25 PARTICIPATING EMPLOYERS, REPORTING THE NAMES OF EACH ENROLLEE
26 EMPLOYED BY THE PARTICIPATING EMPLOYER AND THE CONTRIBUTION
27 AMOUNTS MADE BY THE PARTICIPATING EMPLOYER ON BEHALF OF EACH

1 EMPLOYEE DURING THE REPORTING PERIOD, AS WELL AS ANNUAL REPORTS
2 TO ENROLLEES, REPORTING CONTRIBUTIONS AND INVESTMENT INCOME
3 ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PLAN
4 ACCOUNTS FOR THE REPORTING PERIOD. THE REPORTS MAY INCLUDE ANY
5 OTHER INFORMATION REGARDING THE PLAN AS DEEMED NECESSARY BY
6 THE BOARD.

7 **24-54.3-118. Penalties.** (1) THE BOARD SHALL DEVELOP A
8 PROCESS AND CONTRACT WITH THIRD PARTIES, WHICH MAY INCLUDE
9 STATE AGENCIES, TO ENSURE THAT BUSINESSES ARE IN COMPLIANCE WITH
10 THE REQUIREMENTS OF THIS ARTICLE 54.3.

11 (2) THE BOARD SHALL DETERMINE A PENALTY STRUCTURE FOR
12 EMPLOYERS WHO FAIL, WITHOUT REASONABLE CAUSE, TO ENROLL
13 EMPLOYEES IN THE PLAN WITHIN THE TIME SPECIFIED IN SECTION
14 24-54.3-113. THE STRUCTURE SHOULD INCLUDE ONLY A WARNING FOR THE
15 INITIAL OFFENSE AND GRADUALLY INCREASE THE AMOUNT OF THE
16 PENALTIES OVER TIME BASED ON THE NUMBER OF AND NATURE OF THE
17 VIOLATIONS; EXCEPT THAT THE PENALTY IMPOSED ON AN EMPLOYER
18 SHALL NOT EXCEED TWO HUNDRED FIFTY DOLLARS FOR EACH EMPLOYEE
19 FOR EACH CALENDAR YEAR OR PORTION OF A CALENDAR YEAR DURING
20 WHICH THE EMPLOYEE WAS NEITHER ENROLLED IN THE PLAN NOR HAD
21 OPTED OUT OF PARTICIPATING IN THE PLAN.

22 (3) THE BOARD SHALL DEVELOP A PROCESS FOR EMPLOYEES TO
23 REPORT EMPLOYER NONCOMPLIANCE WITH THE PROVISIONS OF THIS
24 ARTICLE 54.3. AN EMPLOYER SHALL NOT TAKE DISCIPLINARY ACTION OR
25 OTHERWISE RETALIATE AGAINST AN EMPLOYEE WHO REPORTS, IN
26 ACCORDANCE WITH THE PROCESS ESTABLISHED BY THE BOARD, HIS OR HER
27 EMPLOYER'S NONCOMPLIANCE WITH THIS ARTICLE 54.3.

1 **24-54.3-119. Delayed implementation.** IF THE BOARD DOES NOT
2 OBTAIN ADEQUATE MONEY TO IMPLEMENT THE PLAN WITHIN THE TIME
3 SPECIFIED IN SECTION 24-54.3-113, THE BOARD MAY DELAY THE
4 IMPLEMENTATION OF THE PLAN.

5 **24-54.3-120. Federal considerations.** (1) THE BOARD SHALL NOT
6 IMPLEMENT THE PLAN IF THE IRA ARRANGEMENTS OFFERED UNDER THE
7 PLAN FAIL TO QUALIFY FOR THE FAVORABLE FEDERAL INCOME TAX
8 TREATMENT ORDINARILY ACCORDED TO IRAS UNDER THE INTERNAL
9 REVENUE CODE OR IF IT IS DETERMINED THAT THE PLAN IS AN EMPLOYEE
10 BENEFIT PLAN AND STATE OR EMPLOYER LIABILITY IS ESTABLISHED UNDER
11 THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT", 29
12 U.S.C. SEC. 1001 ET SEQ.

13 (2) THE BOARD SHALL ENSURE THAT THE PLAN COMPLIES WITH
14 ANY APPLICABLE LABOR REGULATIONS PROMULGATED BY THE FEDERAL
15 DEPARTMENT OF LABOR.

16 **SECTION 3. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2018 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.