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Seventy-first General Assembly
STATE OF COLORADO

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LLS NO. 17-0156.01 Nicole Myers x4326

HOUSE BILL

HOUSE SPONSORSHIP

Pettersen,

SENATE SPONSORSHIP

(None),

BILL TOPIC: "Colorado Secure Savings Plan"

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://www.leg.state.co.us/bills/summaries>.)

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.

*Capital letters 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 moneys 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 moneys in the fund into the fund and pay the administrative costs and expenses for the creation, management, and operation of the plan from moneys 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;

- 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; and
- Conduct or cause to be conducted a financial feasibility study to ensure that the plan will be self-sustaining.

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 Colorado secure savings plan 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 moneys in the fund for the administrative expenses of the plan. The moneys in the fund are not property of the state and cannot be commingled with state moneys.

The board is required to design and disseminate to all employers that are required to or that choose to participate in the plan employer and employee information packets regarding the plan and the options for employee participation 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 is required to recommend to the general assembly that the plan be implemented. The board is not authorize to 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 are required to 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) More than thirty-nine million working-age American

1 households do not have any retirement assets. For near-retirement
2 households, the median retirement account balance is only fourteen
3 thousand five hundred dollars and the average working-age household has
4 a median account balance of only two thousand five hundred dollars.

5 (b) Only one in four women aged sixty-five and older and almost
6 four in ten men aged sixty-five and older receive any income from
7 pensions and retirement savings. Women receive an average of nine
8 thousand dollars per year and men receive an average of fifteen thousand
9 three hundred ninety-six dollars per year.

10 (c) Minority households have too little accumulated wealth to tap
11 for retirement. White households have over seven times as much saved
12 in retirement accounts as Hispanic and African-American households.
13 The median household net worth of Hispanic and African-American
14 households is less than nine percent of the median net wealth of white
15 households, which translates into an average net worth of one hundred
16 thirty-four thousand eight dollars for the average white family, compared
17 to nine thousand two hundred twenty-nine dollars for Hispanic families
18 and eleven thousand one hundred eighty-four dollars for
19 African-American families.

20 (d) Coloradans are less prepared for retirement today than in
21 previous decades, and the overwhelming majority of people in the state
22 are concerned about their ability and their children's ability to retire;

23 (e) 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 (f) 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 (g) 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 (h) Minority workers in Colorado are also disproportionately
9 affected, with forty-nine percent of African-American workers and
10 fifty-seven percent of Hispanic workers lacking access to a retirement
11 plan at work;

12 (i) 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 (j) The major reason 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 (k) 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 (l) 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 (m) 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 (n) 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 IS THE
22 "COLORADO SECURE SAVINGS PLAN ACT".

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

25 (1) "BOARD" MEANS THE COLORADO SECURE SAVINGS PLAN
26 BOARD 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, AND WHO EARNS WAGES
2 SUBJECT TO INCOME TAX PURSUANT TO SECTION 39-22-104, C.R.S.

3 (3) "EMPLOYER" MEANS A PERSON OR ENTITY ENGAGED IN A
4 BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE
5 STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT:

6 (a) (I) EMPLOYS THE FOLLOWING NUMBER OF EMPLOYEES IN THE
7 STATE:

8 (A) FOR THE FIRST YEAR OF OPERATION OF THE PLAN, ONE
9 HUNDRED OR MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS
10 CALENDAR YEAR;

11 (B) FOR THE SECOND YEAR OF OPERATION OF THE PLAN, FIFTY OR
12 MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;
13 AND

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

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

18 (III) HAS NOT OFFERED A QUALIFIED RETIREMENT PLAN,
19 INCLUDING, BUT NOT LIMITED TO, A PLAN QUALIFIED UNDER SECTIONS
20 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), OR 457(b) OF THE FEDERAL
21 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN THE PRECEDING
22 TWO YEARS; OR

23 (b) EMPLOYS FEWER THAN THE NUMBER OF EMPLOYEES SPECIFIED
24 IN SUBSECTION (3)(a)(I) OF THIS SECTION FOR THE APPLICABLE YEAR OF
25 OPERATION OF THE PLAN, HAS NOT OFFERED A QUALIFIED RETIREMENT
26 PLAN AS SPECIFIED IN SUBSECTION (3)(a)(III) OF THIS SECTION, AND THAT
27 CHOOSES TO PARTICIPATE IN THE PLAN.

1 (4) "ENROLLEE" MEANS ANY EMPLOYEE WHO IS ENROLLED IN THE
2 PLAN.

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

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

7 (7) "IRA" MEANS A ROTH INDIVIDUAL RETIREMENT ACCOUNT
8 AUTHORIZED PURSUANT TO SECTION 408A OF THE INTERNAL REVENUE
9 CODE OR, IF AN EMPLOYEE IS INELIGIBLE TO ENROLL IN A ROTH INDIVIDUAL
10 RETIREMENT ACCOUNT BASED ON HIS OR HER INCOME, "IRA" MEANS A
11 TRADITIONAL INDIVIDUAL RETIREMENT ACCOUNT.

12 (8) "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT
13 PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS
14 PROVIDED FOR IN THIS ARTICLE FOR ITS EMPLOYEES WHO ARE ENROLLEES
15 IN THE PLAN.

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

19 (10) "PLAN" MEANS THE COLORADO SECURE SAVINGS PLAN
20 CREATED IN THIS ARTICLE.

21 (11) "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING
22 OF SECTION 219(f)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED
23 BY AN ENROLLEE FROM A PARTICIPATING EMPLOYER DURING THE
24 CALENDAR YEAR.

25 **24-54.3-103. Colorado secure savings plan - established.** A
26 RETIREMENT SAVINGS PLAN IN THE FORM OF AN AUTOMATIC ENROLLMENT
27 PAYROLL DEDUCTION IRA, KNOWN AS THE COLORADO SECURE SAVINGS

1 PLAN, IS HEREBY ESTABLISHED. THE BOARD SHALL ADMINISTER THE PLAN
2 FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR
3 PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND
4 PORTABLE MANNER.

5 **24-54.3-104. Colorado secure savings plan board - creation -**
6 **composition.** (1) THERE IS HEREBY CREATED THE BOARD OF TRUSTEES OF
7 THE PLAN, WHICH SHALL HAVE THE RESPONSIBILITIES, DUTIES, AND
8 AUTHORITIES SET FORTH IN THIS ARTICLE.

9 (2) THE BOARD SHALL CONSIST OF THE FOLLOWING NINE
10 TRUSTEES:

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

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

14 (c) SEVEN TRUSTEES APPOINTED BY THE GOVERNOR AND
15 CONFIRMED BY THE SENATE AS FOLLOWS:

16 (I) FOUR PUBLIC REPRESENTATIVES WITH EXPERTISE IN
17 INVESTMENT OR RETIREMENT SAVINGS PLAN ADMINISTRATION, INCLUDING
18 THE DAY-TO-DAY OPERATIONS OF PLANS, MAINTAINING INDIVIDUAL
19 ACCOUNTS, AND KEEPING TRACK OF TRANSACTIONS AND ASSETS AT THE
20 INDIVIDUAL PARTICIPANT ACCOUNT LEVEL;

21 (II) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS;

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

23 AND

24 (IV) A RETIRED COLORADO RESIDENT.

25 (3) THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES
26 SHALL BE TWO PUBLIC REPRESENTATIVES FOR FOUR YEARS; THE
27 REPRESENTATIVE OF PARTICIPATING EMPLOYERS AND THE RETIRED

1 COLORADO RESIDENT FOR THREE YEARS; AND TWO PUBLIC
2 REPRESENTATIVES AND THE REPRESENTATIVE OF ENROLLEES OR
3 POTENTIAL ENROLLEES FOR TWO YEARS. THEREAFTER, ALL OF THE
4 GOVERNOR'S APPOINTEES SHALL BE FOR TERMS OF FOUR YEARS.

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

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

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

15 (7) TRUSTEES OF THE BOARD SHALL SERVE WITHOUT
16 COMPENSATION BUT MAY BE REIMBURSED FOR NECESSARY TRAVEL
17 EXPENSES INCURRED IN CONNECTION WITH THEIR BOARD DUTIES FROM
18 MONEYS IN THE FUND.

19 (8) NO PERSON CAN BE OR CAN CONTINUE TO BE A TRUSTEE OF THE
20 BOARD WHO HAS BEEN ADJUDICATED OF HAVING VIOLATED ANY
21 PROVISIONS OF THIS ARTICLE OR WHO HAS BEEN CONVICTED OF A FELONY
22 OR ANY CRIME INVOLVING THE MISAPPROPRIATION OF FUNDS.

23 **24-54.3-105. Standard of conduct - fiduciary duty.** (1) THE
24 TRUSTEES OF THE BOARD, ANY OTHER AGENTS APPOINTED OR ENGAGED BY
25 THE BOARD, AND ALL PERSONS SERVING AS PLAN STAFF SHALL DISCHARGE
26 THEIR DUTIES WITH RESPECT TO THE PLAN SOLELY IN THE INTEREST OF THE
27 PLAN'S ENROLLEES AND BENEFICIARIES AS FOLLOWS:

1 (a) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO
2 ENROLLEES AND BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES
3 OF ADMINISTERING THE PLAN; AND

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

9 =====
10 (2) THE TRUSTEES OF THE BOARD SHALL NOT ENGAGE IN ANY
11 ACTIVITIES THAT MIGHT RESULT IN A CONFLICT OF INTEREST WITH THEIR
12 FUNCTIONS AS FIDUCIARIES FOR THE PLAN.

13 **24-54.3-106. Additional duties of the board.** (1) IN ADDITION
14 TO THE OTHER DUTIES AND RESPONSIBILITIES SPECIFIED IN THIS ARTICLE,
15 THE BOARD SHALL:

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

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

22 (II) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND
23 INVESTMENT PRACTICES;

24 (III) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION
25 FOR PARTICIPATING EMPLOYERS AND ENROLLEES;

26 (IV) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING
27 INVESTMENT FUNDS;

- 1 (V) ENSURES THE PORTABILITY OF BENEFITS; AND
- 2 (VI) PROVIDES FOR THE INVESTMENT AND DEACCUMULATION OF
- 3 ENROLLEE ASSETS IN A MANNER THAT MAXIMIZES FINANCIAL SECURITY IN
- 4 RETIREMENT;
- 5 (b) EXPLORE AND ESTABLISH INVESTMENT OPTIONS PURSUANT TO
- 6 SECTION 24-54.3-109, THAT OFFER EMPLOYEES RETURNS ON
- 7 CONTRIBUTIONS AND _____ LIFETIME RETIREMENT INCOME WITHOUT
- 8 INCURRING DEBT OR LIABILITIES TO THE STATE;
- 9 _____
- 10 (c) MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE
- 11 ADMINISTRATION OF THE PLAN AND FUND, INCLUDING, BUT NOT LIMITED
- 12 TO, RETAINING AND CONTRACTING WITH RECORD KEEPERS, INVESTMENT
- 13 MANAGERS, PRIVATE FINANCIAL INSTITUTIONS, PUBLIC ENTITIES, OTHER
- 14 FINANCIAL AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES,
- 15 COUNSEL, AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER
- 16 PROFESSIONALS AS NECESSARY;
- 17 (d) CONDUCT A REVIEW OF THE PERFORMANCE OF ANY
- 18 INVESTMENT VENDORS EVERY FOUR YEARS, INCLUDING, BUT NOT LIMITED
- 19 TO, A REVIEW OF RETURNS, FEES, AND CUSTOMER SERVICE. THE BOARD
- 20 SHALL MAKE THE RESULTS OF THE REVIEWS CONDUCTED PURSUANT TO
- 21 THIS SUBSECTION (1)(d) AVAILABLE TO THE PUBLIC.
- 22 (e) DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS
- 23 NEEDED TO ADMINISTER THE PLAN AND ASSEMBLE SUCH A STAFF,
- 24 INCLUDING, AS NEEDED, EMPLOYING STAFF AND APPOINTING A PLAN
- 25 ADMINISTRATOR. THE BOARD MAY CONTRACT WITH THIRD PARTIES,
- 26 INCLUDING STATE AGENCIES, TO ASSIST IN ADMINISTERING THE PLAN.
- 27 (f) CAUSE MONEYS IN THE FUND TO BE _____ INVESTED TOGETHER

1 WITH THE INTENT TO ACHIEVE COST-SAVINGS THROUGH EFFICIENCIES
2 AND ECONOMIES OF SCALE;

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

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

19 (i) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN
20 INDIVIDUAL MAY VOLUNTARILY ENROLL IN AND MAKE CONTRIBUTIONS TO
21 THE PLAN;

22 (j) ACCEPT ANY GIFTS, GRANTS, AND DONATIONS, OR OTHER
23 MONEYS FROM THE STATE, ANY UNIT OF FEDERAL, STATE, OR LOCAL
24 GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR
25 CORPORATION THAT HAS OPERATIONS IN THE STATE TO COVER START-UP
26 COSTS OF THE PLAN. THE BOARD MAY ALSO PURSUE OPTIONS FOR BANK
27 LOANS OR A LINE OF CREDIT TO COVER THE START-UP COSTS OF THE PLAN.

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

7 (l) MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE
8 COSTS AND EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION
9 OF THE PLAN. ALL ADMINISTRATIVE COSTS OF THE PLAN, INCLUDING
10 REPAYMENT OF ANY START-UP MONEYS, _____ SHALL BE PAID _____ BY
11 ENROLLEES. ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO
12 SUBSECTION (1)(j) OF THIS SECTION TO IMPLEMENT THE PLAN UNTIL THE
13 PLAN IS SELF-SUSTAINING SHALL NOT BE REPAID UNLESS THOSE MONEYS
14 WERE OFFERED CONTINGENT UPON THE PROMISE OF SUCH REPAYMENT.

15 _____

16 (m) SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN
17 ACCORDANCE WITH LIMITS ESTABLISHED FOR IRAS BY THE INTERNAL
18 REVENUE CODE;

19 (n) FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND
20 EMPLOYEES;

21 (o) FACILITATE COMPLIANCE BY THE PLAN WITH ALL APPLICABLE
22 REQUIREMENTS FOR THE PLAN UNDER THE INTERNAL REVENUE CODE,
23 INCLUDING TAX QUALIFICATION REQUIREMENTS OR ANY OTHER
24 APPLICABLE LAW AND ACCOUNTING REQUIREMENTS;

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

27 (q) EXERCISE ANY AND ALL OTHER POWERS REASONABLY

1 NECESSARY FOR THE EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND
2 PROVISIONS OF THIS ARTICLE;

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

6 (s) CONSIDER PROCESSES TO IMPLEMENT THE PLAN TO REDUCE THE
7 ACTIONS REQUIRED BY EMPLOYERS;

8 (t) DETERMINE ANY NOMINAL AND REASONABLE ASSISTANCE THAT
9 MAY BE PROVIDED FROM MONEYS IN THE FUND TO BUSINESSES TO OFFSET
10 THE INITIAL COSTS OF ENROLLING EMPLOYEES IN THE PLAN; AND

11 (u) CONDUCT OR CAUSE TO BE CONDUCTED A FINANCIAL
12 FEASIBILITY STUDY TO ENSURE THAT THE PLAN WILL BE SELF-SUSTAINING.

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

1 **24-54.3-108. Financial services firms.** (1) THE BOARD SHALL
2 ENGAGE, AFTER AN OPEN BID PROCESS, ONE OR MORE FINANCIAL SERVICES
3 FIRMS TO SERVE AS AN INVESTMENT MANAGER FOR THE PLAN, INVEST ANY
4 OTHER ASSETS OF THE PLAN AND HANDLE THE RECORD KEEPING FOR THE
5 PLAN. IN SELECTING THE FIRM OR FIRMS, THE BOARD SHALL TAKE INTO
6 CONSIDERATION AND GIVE WEIGHT TO THE FIRM'S FEES AND CHARGES IN
7 ORDER TO REDUCE THE PLAN'S ADMINISTRATIVE EXPENSES.

8 (2) THE FIRM OR FIRMS SHALL COMPLY WITH ALL APPLICABLE
9 FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS WELL AS ALL
10 RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE BOARD WITH
11 RESPECT TO THE PLAN AND THE INVESTMENT OF MONEYS IN THE FUND,
12 INCLUDING, BUT NOT LIMITED TO, THE INVESTMENT POLICY.

13 (3) THE FIRM OR FIRMS SHALL PROVIDE SUCH REPORTS AS THE
14 BOARD DEEMS NECESSARY FOR THE BOARD TO OVERSEE EACH
15 INVESTMENT MANAGER'S PERFORMANCE AND THE PERFORMANCE OF THE
16 FUND.

17 (4) THE BOARD MAY AWARD AN INITIAL RECORD KEEPING
18 CONTRACT FOR A TERM OF UP TO TEN YEARS TO PERMIT THE FINANCIAL
19 SERVICES FIRM OR FIRMS TO RECOVER STARTUP COSTS AND INITIAL
20 LOSSES.

21 **24-54.3-109. Investment options.** (1) THE BOARD MAY
22 ESTABLISH THE FOLLOWING INVESTMENT OPTIONS:

- 23 (a) A LOW-RISK INVESTMENT PORTFOLIO; AND
- 24 (b) A DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM GROWTH
25 POTENTIAL.

26 (2) THE DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM
27 GROWTH POTENTIAL AND LIFETIME INCOME OPTIONS SHALL BE THE

1 DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO FAIL TO ELECT AN
2 INVESTMENT OPTION UNLESS THE BOARD DESIGNATES BY RULE A NEW
3 INVESTMENT OPTION AS THE DEFAULT PURSUANT TO SUBSECTION (4) OF
4 THIS SECTION.

5 (3) UNDER NO CIRCUMSTANCES SHALL THE BOARD, PLAN, FUND,
6 THE STATE, OR ANY PARTICIPATING EMPLOYER ASSUME ANY LIABILITY FOR
7 INVESTMENT OR ACTUARIAL RISK. THE BOARD SHALL DETERMINE
8 WHETHER TO ESTABLISH SUCH INVESTMENT OPTIONS BASED UPON AN
9 ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL, FEASIBILITY, AND
10 EASE OF IMPLEMENTATION.

11 (4) IF THE BOARD ELECTS TO ESTABLISH A LOW-RISK INVESTMENT
12 PORTFOLIO, THE BOARD SHALL DETERMINE WHETHER SUCH OPTION WILL
13 REPLACE THE DIVERSIFIED PORTFOLIO THAT OFFERS LONG-TERM GROWTH
14 POTENTIAL AS THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO DO
15 NOT ELECT AN INVESTMENT OPTION. IN MAKING SUCH DETERMINATION,
16 THE BOARD SHALL CONSIDER THE COST, RISK PROFILE, BENEFIT LEVEL, AND
17 EASE OF ENROLLMENT IN THE LOW-RISK INVESTMENT PORTFOLIO. THE
18 BOARD MAY AT ANY TIME THEREAFTER REVISIT THIS QUESTION AND,
19 BASED ON AN ANALYSIS OF THESE CRITERIA, ESTABLISH THE LOW-RISK
20 INVESTMENT PORTFOLIO AS THE DEFAULT FOR ENROLLEES WHO DO NOT
21 ELECT AN INVESTMENT OPTION.

22 **24-54.3-110. Colorado secure savings plan fund - creation.**

23 (1) (a) THE COLORADO SECURE SAVINGS PLAN FUND IS HEREBY
24 ESTABLISHED AS A TRUST OUTSIDE OF THE STATE TREASURY. THE BOARD
25 SHALL BE THE TRUSTEE OF THE FUND. _____

26 (b) THE FUND SHALL CONSIST OF MONEYS RECEIVED FROM
27 ENROLLEES AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC

1 PAYROLL DEDUCTIONS, CONTRIBUTIONS TO SAVINGS MADE UNDER THIS
2 ARTICLE, AND ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT
3 TO THIS ARTICLE.

4 (c) FOR THE FIRST FIVE YEARS OF THE OPERATION OF THE PLAN,
5 THE BOARD MAY USE UP TO ONE PERCENT OF THE MONEYS IN THE FUND TO
6 PAY FOR THE ADMINISTRATIVE COSTS THAT IT INCURS IN THE
7 PERFORMANCE OF ITS DUTIES UNDER THIS ARTICLE, INCLUDING START-UP
8 ADMINISTRATIVE EXPENSES. IN THE SIXTH YEAR OF THE OPERATION OF THE
9 PLAN AND IN EACH YEAR THEREAFTER, THE BOARD MAY USE UP TO
10 SEVENTY-FIVE ONE HUNDREDTHS PERCENT OF THE MONEYS IN THE FUND
11 FOR SUCH ADMINISTRATIVE PURPOSES.

12
13 (2) MONEYS DEPOSITED IN THE FUND SHALL NOT CONSTITUTE
14 PROPERTY OF THE STATE AND THE FUND SHALL NOT BE CONSTRUED TO BE
15 A DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE. AMOUNTS ON
16 DEPOSIT IN THE FUND SHALL NOT BE COMMINGLED WITH STATE FUNDS AND
17 THE STATE SHALL NOT HAVE ANY CLAIM TO OR AGAINST, OR INTEREST IN,
18 SUCH FUNDS.

19 (3) EXCEPT TO THE EXTENT NECESSARY TO ADMINISTER THE PLAN
20 IN ACCORDANCE WITH THE INTERNAL REVENUE CODE AND THE STATE TAX
21 LAWS, ALL INFORMATION CONTAINED IN THE ACCOUNTS OF INDIVIDUAL
22 ENROLLEES OF THE PLAN, INCLUDING BUT NOT LIMITED TO NAMES,
23 ADDRESSES, TELEPHONE NUMBERS, PERSONAL IDENTIFICATION
24 INFORMATION, AMOUNTS CONTRIBUTED, AND EARNINGS ON AMOUNTS
25 CONTRIBUTED, SHALL BE KEPT CONFIDENTIAL BY THE BOARD AND BY ANY
26 PERSON OR ENTITY WORKING ON BEHALF OF THE BOARD. THIS SECTION
27 SHALL NOT APPLY IF AN INDIVIDUAL ENROLLEE OF THE PLAN EXPRESSLY

1 AGREES IN WRITING THAT CERTAIN INFORMATION CONTAINED IN HIS OR
2 HER ACCOUNT MAY BE DISCLOSED.

3

4 **24-54.3-111. Employer and employee information packets -**
5 **disclosure forms.** (1) PRIOR TO THE OPENING OF THE PLAN FOR
6 ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO ALL
7 EMPLOYERS AN EMPLOYER INFORMATION PACKET AND AN EMPLOYEE
8 INFORMATION PACKET, WHICH SHALL INCLUDE BACKGROUND
9 INFORMATION ON THE PLAN AND APPROPRIATE DISCLOSURES FOR
10 EMPLOYEES.

11 (2) THE BOARD SHALL DETERMINE THE CONTENTS OF BOTH THE
12 EMPLOYEE INFORMATION PACKET AND THE EMPLOYER INFORMATION
13 PACKET.

14 (3) THE EMPLOYEE INFORMATION PACKET SHALL INCLUDE A
15 DISCLOSURE FORM THAT EXPLAINS THE FOLLOWING:

16 (a) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING
17 CONTRIBUTIONS TO THE PLAN;

18 (b) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE
19 PLAN;

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

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

23 (e) THE PROCESS TO WITHDRAW RETIREMENT SAVINGS;

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

25 (g) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD
26 CONTACT FINANCIAL ADVISORS, THAT PARTICIPATING EMPLOYERS ARE
27 NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE, AND THAT

1 PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR DECISIONS EMPLOYEES
2 MAKE PURSUANT TO THIS ARTICLE;

3 (h) THAT THE PLAN IS NOT AN EMPLOYER-SPONSORED RETIREMENT
4 PLAN;

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

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

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

9 (4) THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE A
10 FORM FOR AN EMPLOYEE TO NOTE HIS OR HER DECISION TO OPT OUT OF
11 PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE WITH A LEVEL OF
12 EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT OF THE
13 EMPLOYEE'S WAGES.

14 (5) PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE
15 INFORMATION PACKET TO EMPLOYEES UPON LAUNCH OF THE PLAN.
16 PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION
17 PACKET TO NEW EMPLOYEES AT THE TIME OF HIRING, AND NEW EMPLOYEES
18 MAY OPT OUT OF PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE
19 WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT
20 OF THE EMPLOYEE'S WAGES AT THAT TIME.

21 **24-54.3-112. Plan implementation - authorization. If AFTER**
22 **CONDUCTING OR CAUSING TO BE CONDUCTED A FINANCIAL FEASIBILITY**
23 **STUDY THE BOARD FINDS AND DETERMINES THAT THE PLAN WILL BE**
24 **SELF-SUSTAINING AND WOULD PROMOTE GREATER RETIREMENT SAVINGS**
25 **FOR PRIVATE SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND**
26 **PORTABLE MANNER, THE BOARD SHALL RECOMMEND TO THE GENERAL**
27 **ASSEMBLY THAT THE PLAN BE IMPLEMENTED. THE BOARD SHALL NOT**

1 IMPLEMENT THE PLAN UNLESS THE GENERAL ASSEMBLY, ACTING BY BILL,
2 DIRECTS THE BOARD TO IMPLEMENT THE PLAN. IF THE BOARD IS DIRECTED
3 TO IMPLEMENT THE PLAN, IT SHALL BEGIN IMPLEMENTATION ON A DATE
4 DETERMINED BY THE GENERAL ASSEMBLY IN SUCH BILL.

5 **24-54.3-113. Plan implementation - enrollment.** (1) EXCEPT AS
6 OTHERWISE PROVIDED IN SECTION 24-54.3-119, THE BOARD SHALL ENSURE
7 THAT THE PLAN IS FULLY IMPLEMENTED AND THAT ENROLLMENT OF
8 EMPLOYEES BEGINS WITHIN TWENTY-FOUR MONTHS OF THE DATE THAT
9 THE BOARD WAS AUTHORIZED TO BEGIN IMPLEMENTING THE PLAN AS
10 SPECIFIED IN THE BILL ENACTED BY THE GENERAL ASSEMBLY PURSUANT TO
11 SECTION 24-54.3-112.

12 (2) EACH EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT
13 RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EACH EMPLOYEE TO
14 PARTICIPATE IN THE PLAN AS FOLLOWS:

15 (a) FOR AN EMPLOYER THAT EMPLOYS ONE HUNDRED OR MORE
16 EMPLOYEES AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY
17 PRECEDING THE YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER
18 SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS
19 ARRANGEMENT WITHIN NINE MONTHS AFTER THE IMPLEMENTATION DATE
20 OF THE PLAN;

21 (b) FOR AN EMPLOYER THAT EMPLOYS FIFTY OR MORE EMPLOYEES
22 AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY PRECEDING THE
23 SECOND YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL
24 ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT
25 WITHIN ONE YEAR AND NINE MONTHS AFTER THE IMPLEMENTATION DATE
26 OF THE PLAN; AND

27 (c) FOR AN EMPLOYER THAT EMPLOYS FIVE OR MORE EMPLOYEES

1 AT ANY TIME DURING THE CALENDER YEAR IMMEDIATELY PRECEDING THE
2 THIRD YEAR IN WHICH THE PLAN IS OPERATING OR IN ANY SUCCEEDING
3 YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL ESTABLISH
4 A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT WITHIN TWO
5 YEARS AND NINE MONTHS AFTER THE IMPLEMENTATION DATE OF THE
6 PLAN.

7 (3) EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PLAN
8 EACH OF THEIR EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION
9 IN THE PLAN AND SHALL PROVIDE PAYROLL DEDUCTION RETIREMENT
10 SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON BEHALF
11 OF SUCH EMPLOYEES, THESE FUNDS INTO THE PLAN. ANY EMPLOYER MAY,
12 BUT IS NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION RETIREMENT
13 SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS TO
14 PARTICIPATE IN THE PLAN.

15 (4) ENROLLEES MAY SELECT A CONTRIBUTION LEVEL INTO THE
16 FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR AS
17 A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S
18 TAXABLE YEAR UNDER SECTION 219(b)(1)(A) OF THE INTERNAL REVENUE
19 CODE. ENROLLEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY
20 TIME, SUBJECT TO RULES PROMULGATED BY THE BOARD. IF AN ENROLLEE
21 FAILS TO SELECT A CONTRIBUTION LEVEL, THEN HE OR SHE SHALL
22 CONTRIBUTE FIVE PERCENT OF HIS OR HER WAGES TO THE PLAN, PROVIDED
23 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL
24 CONTRIBUTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE
25 AMOUNT FOR THE ENROLLEE'S TAXABLE YEAR UNDER SECTION
26 219(b)(1)(A) OF THE INTERNAL REVENUE CODE.

27 (5) ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE

1 PERMITTED INVESTMENT OPTIONS SPECIFIED IN SECTION 24-54.3-109.
2 ENROLLEES MAY CHANGE THEIR INVESTMENT OPTION AT ANY TIME,
3 SUBJECT TO RULES PROMULGATED BY THE BOARD. IN THE EVENT THAT AN
4 ENROLLEE FAILS TO SELECT AN INVESTMENT OPTION, THAT ENROLLEE
5 SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED BY THE BOARD
6 AS THE DEFAULT PURSUANT TO SECTION 24-54.3-109. IF THE BOARD HAS
7 NOT SELECTED A DEFAULT INVESTMENT OPTION PURSUANT TO SECTION
8 24-54.3-109, THEN AN ENROLLEE WHO FAILS TO SELECT AN INVESTMENT
9 OPTION SHALL BE PLACED IN THE DIVERSIFIED PORTFOLIO THAT OFFERS
10 LONG-TERM GROWTH POTENTIAL.

11 (6) FOLLOWING INITIAL IMPLEMENTATION OF THE PLAN PURSUANT
12 TO THIS SECTION, AT LEAST ONCE EVERY YEAR, PARTICIPATING
13 EMPLOYERS SHALL DESIGNATE AN OPEN ENROLLMENT PERIOD DURING
14 WHICH EMPLOYEES WHO PREVIOUSLY OPTED OUT OF THE PLAN MAY
15 ENROLL IN THE PLAN.

16 (7) AN EMPLOYEE WHO OPTS OUT OF THE PLAN WHO
17 SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE PARTICIPATING
18 EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY
19 ONLY ENROLL DURING THE PARTICIPATING EMPLOYER'S DESIGNATED OPEN
20 ENROLLMENT PERIOD OR, IF PERMITTED BY THE PARTICIPATING EMPLOYER,
21 AT AN EARLIER TIME.

22 (8) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO
23 ESTABLISH ANY TYPE OF EMPLOYER-SPONSORED RETIREMENT PLAN, SUCH
24 AS A DEFINED BENEFIT PLAN OR 401(k), SIMPLIFIED EMPLOYEE PENSION
25 (SEP) PLAN, OR SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES
26 (SIMPLE) PLAN, OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL
27 DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT RETIREMENT

1 SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE
2 PLAN.

3 (9) AN EMPLOYEE MAY TERMINATE HIS OR HER PARTICIPATION IN
4 THE PLAN AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD.

5 **24-54.3-114. Payments.** (1) EMPLOYEE CONTRIBUTIONS
6 DEDUCTED BY THE PARTICIPATING EMPLOYER THROUGH PAYROLL
7 DEDUCTIONS SHALL BE PAID BY THE PARTICIPATING EMPLOYER TO THE
8 FUND OR THE IRA CUSTODIAN USING ONE OR MORE PAYROLL DEPOSIT
9 RETIREMENT SAVINGS ARRANGEMENTS ESTABLISHED BY THE BOARD
10 PURSUANT TO SECTION 24-54.3-106 (1) (h) EITHER:

11 (a) ON OR BEFORE THE LAST DAY OF THE MONTH FOLLOWING THE
12 MONTH IN WHICH THE COMPENSATION WOULD HAVE OTHERWISE BEEN
13 PAYABLE TO THE EMPLOYEE IN CASH; OR

14 (b) BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD
15 FOR MAKING SUCH PAYMENTS, BUT NOT LATER THAN THE DUE DATE FOR
16 THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD
17 RELATING TO COLLECTION OF INCOME TAX ON WAGES OR FOR THE DEPOSIT
18 OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE
19 SYSTEM FOR THE PAYROLL PERIOD TO WHICH SUCH PAYMENTS RELATE.

20 **24-54.3-115. Duty and liability - state.** (1) THE STATE SHALL NOT
21 HAVE ANY DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY
22 RETIREMENT SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE
23 PLAN. ANY FINANCIAL LIABILITY FOR THE PAYMENT OF RETIREMENT
24 SAVINGS BENEFITS IN EXCESS OF FUNDS AVAILABLE UNDER THE PLAN
25 SHALL BE BORNE SOLELY BY THE ENTITIES WITH WHOM THE BOARD
26 CONTRACTS TO PROVIDE INSURANCE TO PROTECT THE VALUE OF THE PLAN.

27 (2) NO STATE BOARD, COMMISSION, AGENCY, OR ANY OFFICER OR

1 EMPLOYEE THEREOF IS LIABLE FOR ANY LOSS OR DEFICIENCY RESULTING
2 FROM PARTICULAR INVESTMENTS SELECTED UNDER THIS ARTICLE.

3 **24-54.3-116. Duty and liability - participating employers.**

4 (1) PARTICIPATING EMPLOYERS SHALL NOT HAVE ANY LIABILITY FOR AN
5 EMPLOYEE'S DECISION TO PARTICIPATE IN, OR OPT OUT OF, THE PLAN OR
6 FOR THE INVESTMENT DECISIONS OF THE BOARD OR OF ANY ENROLLEE.

7 (2) A PARTICIPATING EMPLOYER SHALL NOT BE A FIDUCIARY, OR
8 CONSIDERED TO BE A FIDUCIARY, OVER THE PLAN. A PARTICIPATING
9 EMPLOYER SHALL NOT BEAR RESPONSIBILITY FOR THE ADMINISTRATION,
10 INVESTMENT, OR INVESTMENT PERFORMANCE OF THE PLAN. A
11 PARTICIPATING EMPLOYER SHALL NOT BE LIABLE WITH REGARD TO
12 INVESTMENT RETURNS, PLAN DESIGN, AND BENEFITS PAID TO PLAN
13 ENROLLEES.

14 **24-54.3-117. Audit and reports.** (1) THE BOARD SHALL PREPARE
15 OR CAUSE TO BE PREPARED, THE FOLLOWING ON AN ANNUAL BASIS:

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

19 (b) A REPORT THAT INCLUDES, BUT IS NOT LIMITED TO, A
20 SUMMARY OF THE BENEFITS PROVIDED BY THE PLAN, THE NUMBER OF
21 ENROLLEES IN THE PLAN, THE PERCENTAGE AND AMOUNTS OF INVESTMENT
22 OPTIONS AND RATES OF RETURN FOR THE PLAN, AND SUCH OTHER
23 INFORMATION THAT IS RELEVANT TO MAKE A FULL, FAIR, AND EFFECTIVE
24 DISCLOSURE OF THE OPERATIONS OF THE PLAN AND THE FUND; AND

25 (c) AN AUDIT TO BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC
26 ACCOUNTANT CHOSEN BY THE BOARD THAT SHALL INCLUDE, BUT IS NOT
27 LIMITED TO, DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF

1 OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER
2 PERSONS FOR THE ADMINISTRATION OF THE PLAN DURING THE PREVIOUS
3 CALENDAR YEAR.

4 (2) ONE YEAR AFTER THE INCEPTION OF THE PLAN, AND ON SUCH
5 DATE EACH YEAR THEREAFTER, THE BOARD SHALL SUBMIT THE REPORTS
6 AND THE AUDIT REQUIRED IN THIS SECTION TO THE GOVERNOR, THE STATE
7 CONTROLLER, THE STATE TREASURER, AND THE GENERAL ASSEMBLY.

8 (3) IN ADDITION TO ANY OTHER STATEMENTS OR REPORTS
9 REQUIRED BY LAW, THE BOARD SHALL PROVIDE ANNUAL REPORTS TO
10 PARTICIPATING EMPLOYERS, REPORTING THE NAMES OF EACH ENROLLEE
11 EMPLOYED BY THE PARTICIPATING EMPLOYER AND THE CONTRIBUTION
12 AMOUNTS MADE BY THE PARTICIPATING EMPLOYER ON BEHALF OF EACH
13 EMPLOYEE DURING THE REPORTING PERIOD, AS WELL AS ANNUAL REPORTS
14 TO ENROLLEES, REPORTING CONTRIBUTIONS AND INVESTMENT INCOME
15 ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PLAN
16 ACCOUNTS FOR THE REPORTING PERIOD. SUCH REPORTS MAY INCLUDE ANY
17 OTHER INFORMATION REGARDING THE PLAN AS DEEMED NECESSARY BY
18 THE BOARD.

19 **24-54.3-118. Penalties.** (1) THE BOARD SHALL DEVELOP A
20 PROCESS AND CONTRACT WITH THIRD PARTIES, WHICH MAY INCLUDE
21 STATE AGENCIES, TO ENSURE THAT BUSINESSES ARE IN COMPLIANCE WITH
22 THE REQUIREMENTS OF THIS ARTICLE.

23 (2) THE BOARD SHALL DETERMINE A PENALTY STRUCTURE FOR
24 EMPLOYERS WHO FAIL, WITHOUT REASONABLE CAUSE, TO ENROLL
25 EMPLOYEES IN THE PLAN WITHIN THE TIME SPECIFIED IN SECTION
26 24-54.3-113; EXCEPT THAT UNDER NO CIRCUMSTANCE SHALL THE
27 PENALTY IMPOSED ON AN EMPLOYER EXCEED TWO HUNDRED FIFTY

1 DOLLARS FOR EACH EMPLOYEE FOR EACH CALENDAR YEAR OR PORTION OF
2 A CALENDAR YEAR DURING WHICH AN EMPLOYEE WAS NEITHER ENROLLED
3 IN THE PLAN NOR HAD OPTED OUT OF PARTICIPATING IN THE PLAN.

4 (3) THE BOARD SHALL DEVELOP A PROCESS FOR EMPLOYEES TO
5 REPORT EMPLOYER NON-COMPLIANCE WITH THE PROVISIONS OF THIS
6 ARTICLE. AN EMPLOYER SHALL NOT TAKE DISCIPLINARY ACTION OR
7 OTHERWISE RETALIATE AGAINST AN EMPLOYEE WHO REPORTS, IN
8 ACCORDANCE WITH THE PROCESS ESTABLISHED BY THE BOARD, HIS OR HER
9 EMPLOYER'S NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

10 **24-54.3-119. Delayed implementation.** IF THE BOARD DOES NOT
11 OBTAIN ADEQUATE MONEYS TO IMPLEMENT THE PLAN WITHIN THE TIME
12 SPECIFIED IN SECTION 24-54.3-113, THE BOARD MAY DELAY THE
13 IMPLEMENTATION OF THE PLAN.

14 **24-54.3-120. Federal considerations.** (1) THE BOARD MAY NOT
15 IMPLEMENT THE PLAN IF THE IRA ARRANGEMENTS OFFERED UNDER THE
16 PLAN FAIL TO QUALIFY FOR THE FAVORABLE FEDERAL INCOME TAX
17 TREATMENT ORDINARILY ACCORDED TO IRAS UNDER THE INTERNAL
18 REVENUE CODE OR IF IT IS DETERMINED THAT THE PLAN IS AN EMPLOYEE
19 BENEFIT PLAN AND STATE OR EMPLOYER LIABILITY IS ESTABLISHED UNDER
20 THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT", 29
21 U.S.C. SEC. 1001 ET SEQ.

22 (2) THE BOARD SHALL ENSURE THAT THE PLAN COMPLIES WITH
23 ANY APPLICABLE LABOR REGULATIONS PROMULGATED BY THE FEDERAL
24 DEPARTMENT OF LABOR.

25 **SECTION 3. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2016 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.