FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Lujan/Tallman	**ORIGINAL DATE**	2/1/23
SHORT TITLE	NM Work and Save Act and Retirement Changes	**BILL NUMBER**	House Bill 166
		ANALYST	Faubion

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	$250.0	Recurring	General Fund- STO

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Duplicates SB194.
Relates to SB185.

Sources of Information

LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
Aging and Long-Term Services Department (ALTSD)
Office of the State Treasurer (STO)

SUMMARY

Synopsis of House Bill 166

House Bill 166 (HB166) seeks to amend the New Mexico Work and Save Act (the Act) to require the automatic enrollment of private employees into the New Mexico Work and Save IRA Program. Covered employers not currently participating in the marketplace would be required to register and participate in the program. Employees of covered employers would be automatically enrolled into a retirement plan and would also retain the option to opt out of the plan.

HB166 would alter the act's definitions to limit "covered employees" to those earning taxable income for at least 180 days from a covered employer. The definition of "covered employer" would 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 under the IRS code.

HB166 requires the Work and Save board to promulgate rules and review those rules at least annually to ensure that fees allowed under the IRA program are, and remain, reasonable.

House Bill 166 appropriates $250 thousand from the general fund to the Office of the State Treasurer for 2 FTE's to administer the Work and Save program.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The appropriation of $250 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

Currently, the Work and Save Executive Director is employed by STO in a government-exempt position and has been funded in STO's budget since the inception of the New Mexico Work & Save Act in 2020. The board would need to fund the Executive Director position and administrative and clerical support for day-to-day operations, running board and committee meetings, and records and document management. Additionally, one additional FTE is needed to perform marketing and outreach functions, including travel, operation of the Work and Save web platform, and all social media accounts.

SIGNIFICANT ISSUES

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 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. A $400 nonrecurring special appropriation was approved for FY22-FY23 for the implementation of the work and save program. STO transferred $157.5 thousand in FY22 and $25 thousand in FY21 from personnel and employee benefits for the Work and Save Program.

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:

> "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 HB166 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 mandate provided in HB166.

In early 2022, the Board received the final results of a three-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 CRR completed a feasibility and modeling study of the current voluntary IRA Program and the proposed employer requirement included in HB166. 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 HB166's mandate, meaning it requires employers to participate. In addition to the 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 a multi-state partnership, New Mexico can expect 122,800 Auto-IRA worker accounts.

In November 2022, the Board issued a Request for Proposals (RFP) for a Program Administrator to operate the IRA Program. Unfortunately, the Board did not receive a single response from a provider willing to contract to provide the program services. One provider, Vestwell, cited the following reasons:

- IRA programs without a statutory requirement that employers must auto-enroll their workers are not economically viable. Administrative start-up costs cannot be recouped in a reasonable amount of time, if at all.
- State IRA programs have been around for almost six years now, and according to experience from those programs, as well as state feasibility studies available, a voluntary employer component will prevent program sustainability.
- All other states (16) operating or preparing to launch have an employer participation requirement, and states like New York, that started out as voluntary have since passed into law the critical employer requirement.
- The necessary uptake (participation rate) by employers under a voluntary structure is doubtful at best. Employers are the critical gate-keepers because they will auto-enroll their employees.
- Even though in these programs, employees can always opt-out, the experience in other states shows that the vast majority will save and not opt-out; this low opt-out rate provides the economic viability the programs need to be sustained.
- With a limited and minimal number of accounts projected, economies of scale cannot be achieved (especially with small states like New Mexico). Pursuing economies of scale will help ensure fees and cost remain reasonable and competitive.
- The current legal landscape strongly indicates that IRA programs without a state law requiring employers to auto enroll their employees, risk triggering ERISA. Without a state requirement, an employer choosing to enroll their employees could be considered a "plan sponsor" and therefore subject to ERISA requirements. One primary purpose of the auto IRA programs is to avoid ERISA's burdensome regulatory scheme and to ensure employers are not considered sponsors or fiduciaries of the plan.
- In providing auto IRA program services for states, Vestwell works with BNY Melon (BNY). BNY holds the funds for all account holders and ensures contributions are credited to the proper accounts. Without being confident that a reasonable number of funded accounts can be projected, BNY sees the uncertainty of the program's success as cost prohibitive.

The Office of the State Treasurer notes the following:

> A large percentage of New Mexico's workforce is employed in the private sector. According to the most recent studies completed by the University of New Mexico's Bureau of Business & Economic Research ("BBER"), together with the Center for Retirement Research ("CRR") at Boston College, New Mexico has approximately 15 thousand private-sector businesses that do not offer their employees a workplace retirement savings plan[1]. Of those 15 thousand businesses, only about 6,500 are "covered employers", meaning only about 6,500 businesses would be required to auto-enroll their workers in the IRA program and to process payroll-deductions for those workers. (At any time, workers may opt-out of the program.) The impact from the 6,500 employers facilitating retirement savings for their workers is incredibly significant because combined, those 6,500 businesses employee more than 70 percent of the state's private-sector workers that currently do not have retirement savings at work: this totals about 310 thousand of the 440 thousand working New Mexicans. The remaining roughly 9,000 small "mom and pop" type businesses employing fewer than five workers, would not be required to participate. The Work and Save IRA program is the state's tool to empower 310 thousand New Mexicans to save for their own retirement at virtually no cost to employers.
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> According to BBER, if the State does not take meaningful action to mitigate the growing retirement savings gap within that workforce, New Mexico can expect to pay an additional $1.9 billion by the year 2035, for assistance and services to the state's retirees who are unable to cover their own living expenses[2].
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> Employer participation is necessary to ensure the program is economically viable and that the Work and Save board has the flexibility to negotiate the lowest possible fees and most advantageous fee structure on an ongoing basis. When state IRA programs were first launched in states such as Illinois and Oregon, fees were based solely on account holder balances. Experience has since shown that a fee-sharing structure that can be modified as balances grow and the number of accounts increase, allows the states to ensure fees remain reasonable and program sustaining.
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> The Work and Save board cites that for the program to be viable, along with the automatic enrollment, it is also necessary to partner in a multi-state partnership to benefit from economies of scale.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

STO asserts that without enactment of HB166, New Mexico Work and Save will be unable to launch a payroll-deduction IRA Program for its private-sector workers who do not have access to a workplace retirement savings option.

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[1] UNM Updated Research: https://nmsto.gov/wp-content/uploads/2022/11/UNMBBER-Retirement-Savings-Gap-Updated-Research-2022-09-20.pptx

[2] UNM BBER Report: https://nmsto.gov/wp-content/uploads/2022/02/Report-W-and-S-Parts-1-and-3-UNMBBER-2021-01-19.pdf

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