

Nevada Employee Savings Trust  
(NVEST)

**Introduction/Background**

Most Americans are not saving enough to pay for their retirement years. Historically workers relied on a combination of retirement income from social security, pension plans and retirement savings. However, today pension plans are increasingly unavailable for private sector employees. In addition, according to the AARP, approximately 57% of private sector employees (557,000 workers) in Nevada work for an employer that does not offer any type of retirement program. Employees of small businesses (fewer than 100 employees) are even less likely (80%) to have a retirement program offer compared to employees of larger businesses (44%). The inability to participate in an employer facilitated retirement program affects workers of all levels of education, and earnings and cuts across all groups.

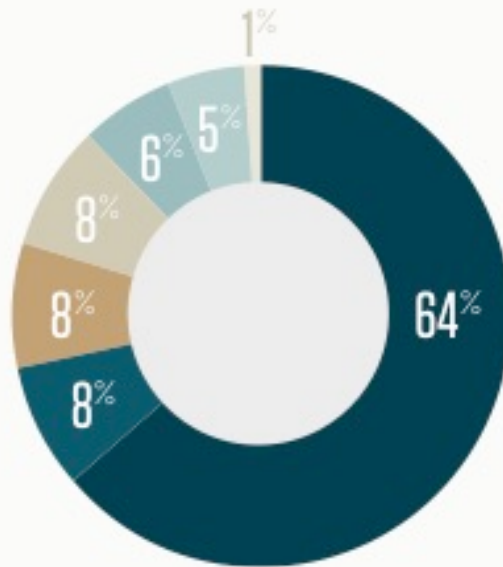
This lack of access to an adequate retirement savings program poses significant challenges to state social safety net programs and a state's fiscal stability. Facilitating a retirement savings program for private sector employees would result in significant cost savings of taxpayer dollars for programs such as Medicaid, Supplemental Security Income, Supplemental Nutrition Assistance and housing assistance programs. For example, according to a May 2017 AARP report the state of Nevada would save approximately \$24 million over 15 years if lower income retirees were able to increase their retirement savings by only \$1,000 more a year while combined federal and state taxpayer dollar savings would be over \$127 million for Nevada.

In addition, a portable retirement savings program for employees could help small business' compete for workers without having to incur the cost of establishing a retirement savings program. Below is a chart from a 2016 Pew Charitable report regarding the perspective of small business employers on the obstacles they see to offering a retirement program to their employees.

Figure 4  
**Small Businesses See Many Barriers to Offering Retirement Plans**  
 Nearly two-thirds cite cost as key obstacle

■ Cost  
 ■ Legal and regulatory requirements  
 ■ Concern about liability  
 ■ Other  
 ■ Complexity  
 ■ Don't know  
 ■ Refused

Source: Main Street Alliance/American Sustainable Business Council Survey  
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Since 2012, more than half of the states have introduced legislation to set up or to study alternatives for states to facilitate and support increased access to an automatic voluntary retirement savings program for workers of employers who do not offer such programs without placing additional burdens on those employers and in a manner that is both cost effective and sustainable.

### Goals/Objectives

In structuring such a program, states have focused on providing the type of fiduciary governance and oversight of a 401(k) plan, using private sector best practices like automatic enrollment, offering a very simple investment menu, and institutional pricing to cut costs, while providing an IRA account that gives employees full portability so they can take their accounts with them wherever they go, whether they work for multiple employers over time, or multiple employers at the same time.

An effective retirement program for private sector employees would accomplish the following important goals:

1. Increase retirement savings and security for workers.  
 Every private sector employee in the state would have access to either an employer sponsored retirement program or an state supported IRA account.

Contributions would be made directly from their paychecks and the IRA account would be fully portable following the employee wherever they chose to work.

2. Allow employees to build their own economic security.

Employees would have their own personal accounts, which would allow them to have ownership in their retirement planning.

3. Minimize administrative and cost burdens for small employers while increasing their competitiveness in the marketplace.

A state supported retirement program would allow small businesses to offer a retirement program to their employees with virtually no administrative burden and no financial risk. Small businesses should be able to focus on running their business, not managing the additional burden of administering a retirement program. Employers would only be obligated to pass through deductions from an employees' paycheck, with no more paperwork than other automatic payroll deductions such as unemployment insurance. Employers are not required to contribute on their employees' behalf.

4. Manage legal and financial risk for Nevada taxpayers and the state of Nevada.

### **Structural Discussion**

The idea behind a state supported retirement program is to provide a simple low cost IRA account that has a limited number of investment options for private sector employees who do not have access to an employer sponsored retirement program. Employees who want more sophisticated investment vehicles could choose to invest their savings elsewhere or roll over their IRA account into another retirement investment vehicle.

Investment of the funds in the IRA accounts would be handled by a private investment manager who would be contracted based on the outcome of a competitive RFP process. In order to control costs longer term contracts have been used by other states with both record keepers and investment managers. For example, "Oregon Saves" has entered into 10-year contracts terms with both their record keeping vendor (Ascensus) and their investment manager (State Street). (It is interesting to note that the State of Nevada uses both these vendors in its 529 college savings plans and thus has a relationship already established, which may help with contract negotiations over cost should these vendors respond favorably to a state issued RFP.)

Since such a program is likely to accumulate substantial assets over time, the investment fees to the account holders should be low. Auto retirement programs are designed to pay for themselves. However, in the beginning stages program costs will rise more rapidly than revenues. States have generally structured these programs by either borrowing start-up costs from the state's general fund, borrowing start up costs from the state's unclaimed property fund, or entering into a longer term contract with the record keeping or investment managers to provide a fee structure that avoids or minimizes the need to borrow from the assets of the state. States have also allowed initial fees to be higher in short run (around 100

basis points) before dropping, and implemented a default contribution rate of approximately 5-6%, to keep per account costs low.

While the program is set up for automatic enrollment, employee participation is voluntary and employees can opt out at anytime. A November, 2016 analysis by the Georgetown University Center for Retirement Initiatives, however, found that opt out rates, account closures and early withdrawals (if a Roth IRA is used) were not critical to the financial feasibility of such programs even for small states.

Oregon's feasibility study found that a 50% opt out rate and a 50% account closure rate would only increase their start up loan from the state payoff by only a year. According to the Oregon state treasurer, the current opt out rate for "Oregon Saves" is 29%.

Below is a chart of the financial feasibility study results from the Georgetown University analysis that identifies the break-even point and the pay-off date for start-up loans in three states.

**State Auto-IRA Financial Feasibility Study Results**

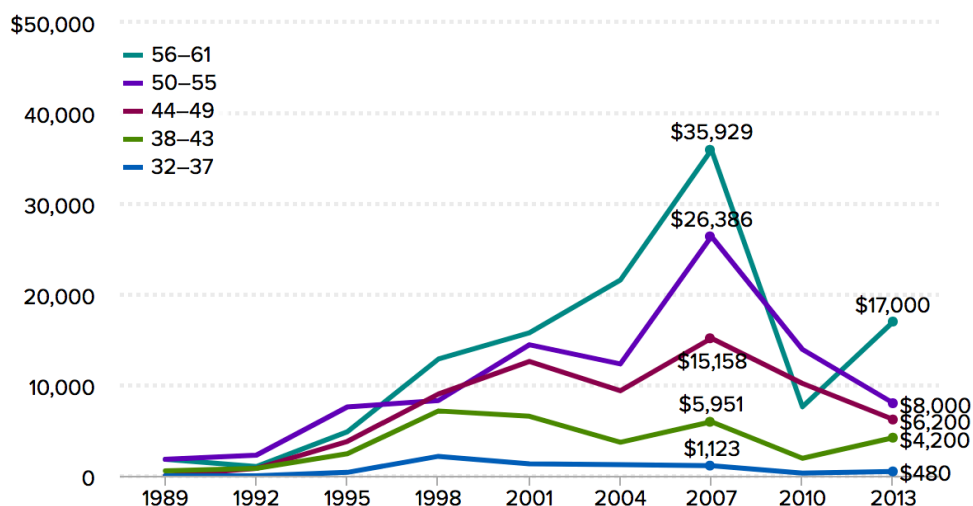
	California	Connecticut	Oregon
<b>Baseline Scenario</b>			
Default contribution rate	5%, no auto-escalation	6%, no auto-escalation	5%, auto-escalation to 10%
Fee assumption	1%	0.5%	1.2%
Break-even horizon	Years 3-4	Years 2-3	Years 4-5
Startup financing payoff	Year 7	Year 6	Year 7
Long-term expense ratio	45 bp (0.45%) in year 10	47 bp in year 10	47 bp in year 10
<b>Alternative Scenario</b>			
Default contribution rate	3%, no auto-escalation	3%, no auto-escalation	3%, no auto-escalation
Break-even horizon	Year 6	Year 4	Year 8
Startup financing payoff	Year 9	Year 8	Year 12

Sources: *Overture Financial 2016, Connecticut Retirement Security Board 2016, Center for Retirement Research 2016.*

Even minimal savings can result in meaningful gains for retirement. For example, if an employee saves only \$1,000 a year for 30 years at 6% return the worker will have saved almost \$84,000. In a family of two working adults, that would mean retirement savings of approximately \$168,000 compared to the median retirement savings of families between the ages of 56 and 61 today, which is \$17,000 as seen in the below chart:

## Most families—even those approaching retirement—have little or no retirement savings

Median retirement account savings of families by age, 1989–2013 (2013 dollars)



**Note:** Scale changed for visibility. Retirement account savings include 401(k)s, IRAs, and Keogh plans.

**Source:** EPI analysis of Survey of Consumer Finance data, 2013.

[Share](#) | [View the underlying data on epi.org.](#)

Economic Policy Institute

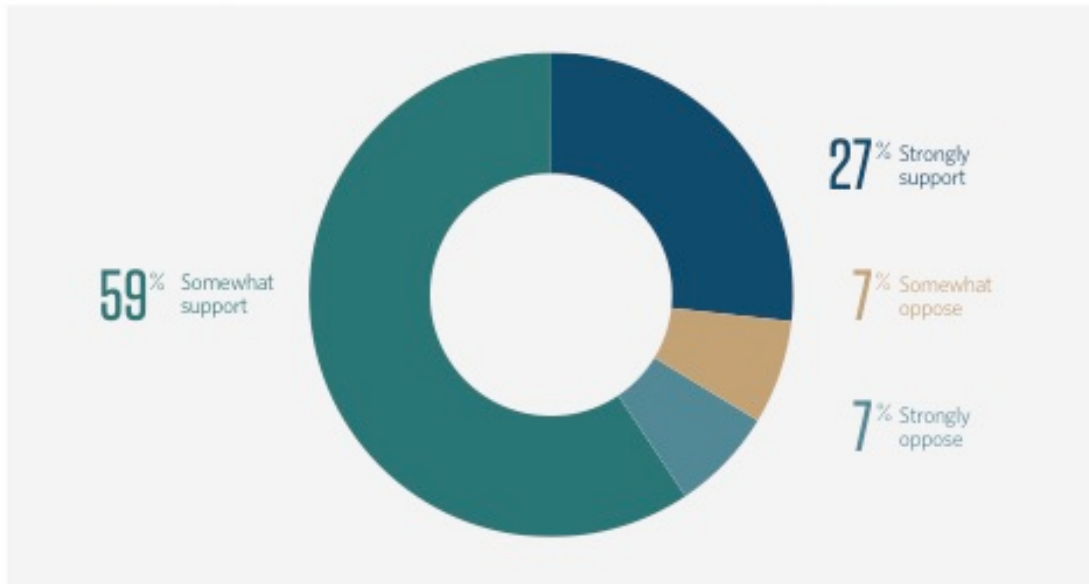
In addition, according to a recent Pew Charitable Trust analysis, an “auto-IRA” can also help workers delay claiming their social security benefit, thus increasing their monthly amount when they do begin to withdraw social security. By way of example, if a worker retiring at 62 would get \$700/month in social security benefits if they began to withdraw social security immediately, but the worker had \$8,400 in an “auto-IRA”, the worker could use the funds in their “auto-IRA” and wait a year to begin withdrawing social security. A delay of a year in the above example would increase the worker’s monthly social security benefit by about \$50/month.

According to a January, 2017 survey by Pew Charitable Trust employers welcome and support these initiatives to help their employees achieve some level of retirement security.

Figure 3

### Small- and Medium-Sized Business Owners' Opinions on Auto-IRA Plans

A large majority supported the concept, while few were strongly opposed



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ed by a Board, but should still be identified and discussed prior to the passage of legislation so that stakeholders have a shared vision of what they are proposing. Specifying design elements and qualifications within legislation can tie the hands of the Board from being able to manage the cost and flexibility of the program.

Finally, A review of other state programs suggests that a minimum of two years is necessary for an auto retirement plan to go from legislation to successful rollout. Some states have phased in the roll out of the program to ensure a smooth implementation to mitigate any burden on the business community.

### Conclusion

Inadequate retirement savings affect many workers in Nevada. From a macroeconomic perspective increasing savings can improve the financial security of our residents, further support a growing economy and decrease the prospective financial strain on taxpayer dollars going forward. An voluntary auto IRA retirement program supported by the state provides private sector employees a simple cost effective way to increase their retirement savings, while imposing little to no administrative burdens on their employers.

***Attached to this document is draft legislation for discussion and review.***

DRAFT

**Title of Act.** This Act may be cited as the **Nevada Employee Savings Trust (NVEST)**

**Preamble**

WHEREAS, the Nevada State Legislature finds that too many Nevadans have no or inadequate savings for retirement, and over 56% of wage and salary workers in Nevada work for an employer who does not offer a retirement plan or program or offer any other easy way to save at work; and

WHEREAS, it is the policy of the State to support Nevada's private-sector workforce, including in particular moderate- and lower-income working households, to voluntarily save for retirement, including by facilitating saving in individual retirement accounts (IRAs) as well as by encouraging employers to adopt retirement savings and other retirement plans for employees in the State; and

WHEREAS, more adequate, portable, low-cost, and consumer-protective retirement savings by Nevada households will enhance their retirement security and ultimately reduce the pressure on State public assistance programs for retirees and other elderly citizens and the potential burden on Nevada taxpayers to finance such programs; and

WHEREAS, the Nevada State Legislature intends to establish a **Nevada Employee Savings Trust (NVEST)** that will use the services of competent and qualified private-sector entities selected by the Nevada Employee Savings Trust Board to administer the Program and manage the funds on behalf of Program participants; and

WHEREAS, Nevada's College Savings Program administered by the Board of Trustees of the College Savings Plans of Nevada, has demonstrated the feasibility of a public-private partnership that outsources investment and administration to assist private citizens of Nevada to save on a voluntary and cost-efficient basis;

NOW, THEREFORE, be it enacted by the Nevada State Legislature that the Laws of Nevada be amended to read as follows:

**Section 1. Definitions. As used in this Act:**

- . (a) "Administrative Fund" shall mean the Nevada Employee Savings Trust Fund established under Section 7
- . (b) "Board" means the Nevada Employee Savings Trust Board established under Section 4
- . (c) "Compensation" means compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by a Covered Employee from a Covered Employer
- . (d) "Contribution Rate" means the percentage of a Covered Employee's Compensation that is withheld from his or her Compensation and paid to the IRA established for the Covered Employee under the Program
- . (e) "Covered Employee" means an individual who is employed by a Covered Employer for at least one hundred and twenty days, who has wages or other compensation that is allocable to the State, and who is at least 18 years of age. For purposes of the investment, withdrawal, transfer, rollover or other distribution of an IRA, the term Covered Employee also includes



the beneficiary of a deceased Covered Employee and an “alternate payee” under State domestic relations law. “Covered Employee” does not include –

- . (A) Any employee covered under the federal Railway Labor Act (45 U.S.C. sec. 151).
  - . (B) Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension trust fund.
  - . (C) Any individual who is an employee of the Federal government, the State or any other State, country or municipal corporation, or any of the State’s or any other State’s units or instrumentalities.
- . (f) “Covered Employer” means an Employer that either:
- . (i) Satisfies all of the following requirements:
    - (A) Has been in business for at least twenty four months; and
    - . (B) Has not maintained a Tax-Favored Retirement Plan (such as a retirement plan under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Internal Revenue Code) for its employees or has not done so in an effective form and operation at any time within the current or two preceding calendar years. If an employer does not maintain a Tax-Favored Retirement Plan for a portion of a calendar year ending on or after the effective date of this title and adopts such a plan effective for the remainder of that calendar year, the employer is exempt from “Covered Employer” status for that remainder of the year; or
    - . (C) Pays the Covered Employer’s employees through a payroll system or service.
  - . (g) “Employer” means a person or entity engaged in a business, profession, trade or other enterprise in the State, whether for profit or not for profit, that employs one or more individuals in the State; provided that a federal or state entity, agency or instrumentality (or any political subdivision thereof) shall not be an Employer .
  - . (h) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended (29 United States Code 1001 et seq.).
  - . (i) “Internal Revenue Code” means the federal Internal Revenue Code of 1986, as amended.
  - . (j) “Investment Adviser” means (i) an investment adviser registered as such under the U. S. Investment Advisers Act of 1940 (“Advisers Act”), or (ii) a bank or other institution exempt from registration under the Advisers Act.
  - . (k) “Investment Fund” means each investment portfolio established by the Board within the Trust for investment purposes.
  - . (l) “IRA” means either an individual retirement account or individual retirement annuity established under Section 408 (traditional) or 408A (Roth) of the Internal Revenue Code.

- . (m) “Participant” means an individual who is contributing to an IRA under the Program or has an IRA account balance under the Program.
- . (n) “Participating Employer” means a Covered Employer that facilitates access for Covered Employees to the Program.
- . (o) “Payroll Deduction IRA” means an arrangement by which an employer facilitates access for employees to contribute to an IRA by means of payroll deduction.
- . (p) “Program” means the Nevada Employee Savings Trust established under this Act
- . (m) “State” means the State of Nevada
- . (o) “Tax-Favored Retirement Plan” means a retirement plan that is tax-qualified under or is described in and satisfies the requirements of subsection 401(a), 401(k), 403(a), 403(b), 408(k)(Simplified Employee Pension), or 408(p)(SIMPLE-IRA) of the Internal Revenue Code.
- . (p) “Total Fees and Expenses” means all fees, costs, and expenses, including but not limited to administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance, annuity associated costs, and other miscellaneous costs.
- . (q) “Trust” means the IRA retirement trust (or annuity contract) established under Section X of this Act.
- . (r) “Trustee” means the trustee of the Trust (including an insurance company issuing an annuity contract) selected by the Board under Section X of this Act.

#### **Nevada Employee Savings Trust Board.**

#### **Section 2. Powers and Duties of the Board.**

The Board shall have the following powers and duties:

- . (a) To design, establish, and operate the Program in accordance with the requirements set forth in Section [X]
- . (b) To collect fees to defray the costs of administering the Program
- . (c) To enter into contracts necessary or desirable for the administration of the Program
- . (d) To hire, retain and terminate third party service providers as the Board deems necessary or desirable for the Program, including, but not limited to, consultants, investment managers or advisors, trustees, custodians, insurance companies, record keepers, administrators, actuaries, counsel, auditors and other professionals, provided that each service provider shall be authorized to do business in the State of Nevada

- . (e) To determine the type[s] of IRAs to be offered, default Contribution Rate, and process for automatic escalation of participant contributions. The board may develop an option for participants to convert contributions into fixed lifetime income streams.
- . (f) To develop and implement an outreach plan to gain input and disseminate information regarding the Program and retirement and financial education in general, to employees, employers and other constituents in the State of the Nevada
- . (g) Determine the number of days by which an Eligible Employer must make the Program available to a Covered Employee upon first becoming an Eligible Employer or Covered Employee
- . (h) A Board member, program administrator, and other staff of the Board shall not --
  - (i) Directly or indirectly have any interest in the making of any investment under the Program or in gains or profits accruing from any such investment.
  - (ii) Borrow any Program-related funds or deposits, or use any such funds or deposits in any manner, for himself or herself or as an agent or partner of others.
  - (iii) Become an endorser, surety, or obligor on investments made under the Program.
- (i) State agencies to assist the Board
  - (i)The office of the State Treasurer shall provide staff support to the Board.
  - (ii) The office of the Lieutenant Governor, The Secretary of State, The Nevada Department of Taxation, The Nevada Department of Employment, Training and Rehabilitation, The Nevada Department of Business and Industry, The Nevada Department of Labor and any other agency of the State of Nevada that enters into an intergovernmental agreement with the Nevada Employee Savings Trust Board to provide outreach, technical assistance or compliance services shall collaborate to provide such outreach, technical assistance or compliance services to the Board
- (j) Delegation by Board of administrative powers and duties to the State Treasurer. The Board may delegate to the State Treasurer any of its administrative powers and duties as specified in this Act, if the Board determines that such delegation is necessary for the efficient and effective administration of the Nevada Employees Savings Trust Fund.

There is hereby created the Nevada Employee Savings Trust Board. The Board shall consist of 7 members as follows:

- (i) The State Treasurer or his or her designee
- (ii) The Lieutenant Governor or his or her designee
- (iii) The following 3 members appointed by the Governor:
  - (A) A representative of employers
  - (B) A representative with experience in the field of investments
  - (C) A representative of an association representing employees.
- (iv) An individual who represents retirees appointed by [Placeholder]
- (v) An individual who is experience in small business appointed by [Placeholder]

The term of office of each member of the Board appointed by the Governor or [Placeholder] shall be four years, but each such member serves at the pleasure of the Governor or [Placeholder], as the case

may be. Board members only may be dismissed during their term for cause. If there is a vacancy by any such member, the Governor or [Placeholder] shall appoint a replacement to serve for such member's unexpired term.

The Lieutenant Governor or his or her designee shall serve as the Chairperson of the Board. A majority of the members of the Board shall constitute a quorum for the transaction of business.

Each member of the Board serves without compensation, except that each member is entitled to receive:

- (i) The per diem allowance and travel expenses provided for state officers and employees generally; and
  - (ii) Reimbursement for any other actual and reasonable expense incurred while performing his or her duties.
- (k) To adopt rules and procedures for the establishment and operation of the Program and to take such other actions necessary or desirable to establish and operate the Program in accordance with the Act.
- (l) Limitation on effect of action by Board. An act or undertaking of the Board does not constitute a debt of the State of Nevada, or any political subdivision thereof, or a pledge of the full faith and credit of the State of Nevada, or of any political subdivision thereof, and is payable solely from the Trust Fund. The Board shall be independent of the State of Nevada and may not impose any obligations on the State, nor may it pledge the credit of the State

### **Section 3. Consumer Protection; Fiduciary Duties.**

- . (a) The Board, the Trustee, and each Investment Adviser or other person which has control of the assets of the Trust shall be a fiduciary with respect to the Trust and IRAs established and maintained under the Program
- . (b) Each Covered Employer shall be required to provide Covered Employees with such information as the Board directs. No Employer acting as such shall be considered a fiduciary with respect to the Trust or an IRA or have fiduciary responsibilities under the Act.
- (c) Each fiduciary shall discharge its duties with respect to the Program solely in the interests of Covered Employees and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of like character and aims

### **Section 4. Nevada Employee Savings Trust Program.**

The Nevada Employee Savings Trust Program shall be designed, established and operated in accordance with the following:

- . (a) Each Covered Employer shall be required to automatically enroll each Covered Employee in the Program. No Employer shall be permitted to contribute to the Program or to endorse or otherwise promote the Program.

- . (b) Unless the Covered Employee chooses otherwise, he or she shall be automatically enrolled in the Program and contributions shall be withheld from such Covered Employee's Compensation at a rate set by the Board unless the Covered Employee elects not to contribute or to contribute at a different rate.
- . (c) The IRAs shall qualify for favorable federal income tax treatment under Section 408 and 408A (as appropriate) of the Internal Revenue Code
- . (d) The Board may establish intervals after which a Covered Employee must reaffirm intent to opt out of the Program
- . (e) Each Covered Employer shall deposit Covered Employees' withheld contributions under the Program with the Trustee in such manner as is determined by the Board, provided that the Employer shall deliver the amounts withheld to the Trustee in good order within [ten] business days after the date such amounts otherwise would have been paid to the Covered Employee
- . (f) The Board shall determine the rules and procedures for withdrawals, distributions, transfers and rollovers of IRAs and for the designation of IRA beneficiaries.
- . (g) The board shall determine a method for non-covered employers and employees to participate in the Program, if allowed under federal law.
- . (h) The Board shall report annually to the Governor and the State Legislature detailing the Board's activities and the Program's operations and shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Trust to [the governor, the controller, and the Legislature] The annual audit shall be conducted by an independent certified public accountant.
- . (i) The Board shall cause to be furnished to each Covered Employer:
  - (i) Information regarding the Program;
  - (ii) Required disclosures to be furnished to Covered Employees
  - (iii) Such disclosures shall include:
    - a. A description of the benefits and risks associated with making contributions under the Program
    - b. Instructions about how to obtain additional information about the Program
    - c. A description of the federal and state income tax consequences of an IRA, which may consist of or include the disclosure statement required to be distributed by the Trustee under the Internal Revenue Code and the Treasury Regulations thereunder
    - d. A statement that Covered Employees seeking financial advice should contact their own financial advisors and that Covered Employers are not in a position to provide financial advice and that Covered Employers are not liable for decisions Covered Employees make under the Act
    - e. A statement that the Program is not an employer-sponsored retirement plan
    - f. A statement that neither the Program nor the Covered Employee's IRA established under the Program is guaranteed by the State

- g. A statement that neither a Covered Employer nor the State will monitor or has an obligation to monitor the Covered Employee's eligibility under the Internal Revenue Code to make contributions to an IRA or to monitor whether the Covered Employee's contributions to the IRA established for the Covered Employee under the Program exceed the maximum permissible IRA contribution; that it is the Covered Employee's responsibility to monitor such matters; and that neither the State nor the Covered Employer will have any liability with respect to any failure of the Covered Employee to be eligible to make IRA contributions or any contribution in excess of the maximum IRA contribution

(iv) Information, forms and/or instructions to be furnished to Covered Employees at such times as the Board determines that provide the Covered Employee with the procedures for:

- . (A) Making contributions to the Covered Employee's IRA established under the Program, including a description of the automatic enrollment rate, the automatic escalation rate and frequency and the right to elect to make no contribution or to change the Contribution Rate under the Program
- . (B) Making an investment election with respect to the Covered Employee's IRA established under the Program, including a description of the default investment fund
- . (C) Making transfers, rollovers, withdrawals and other distributions from the Covered Employee's IRA
- . (i) Each Covered Employer shall deliver or facilitate the delivery of the items set forth in Section X and X to each Covered Employee at such time and in such manner as determined by the Board.
- . (j) The Program shall be designed and operated in a manner that will cause it not to be an employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974

#### **Section 5. Nevada Employee Savings Trust Administrative Fund.**

- a) (a) The Nevada Employee Savings Trust Administrative Fund is hereby established in the State Treasury as a non-appropriated fund separate and apart from the Trust. The Board shall use moneys in the Administrative Fund to pay for administrative expenses it incurs in the performance of its duties under the Act. The Administrative Fund may receive any grants or other moneys designated for the Administrative Fund from the State, or any unit of federal or local government, or any other person. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund
- b) The Nevada Employee Savings Trust Administrative Fund consists of –
  - i. Moneys appropriated to the Administrative Fund by the State legislature;
  - ii. Moneys transferred to the Administrative Fund from the Federal government, other State agencies, or local governments;

- iii. Moneys from the payment or application, account, administrative, or other fees and the payment of other moneys due the Board;
- iv. Any gifts, donations, or grants made to the State for deposit in the Administrative Fund;
- v. Moneys collected for the Administrative Fund from contributions to, or investment returns or assets of, the Program or other moneys collected by or for the Program or pursuant to arrangements established under the Program to the extent permitted under Federal and State law; and
- vi. Earnings on moneys in the Administrative Fund.
- vii. The Board shall accept any grants, gifts, appropriations, or other moneys from the State, any unit of federal, State, or local government, or any other person, firm, partnership, corporation, or other entity solely for deposit into the Administrative Fund, whether for investment or administrative expenses.
- viii. To enable or facilitate the start-up and continuing operation, maintenance, administration, and management of the Program until the Program accumulates sufficient balances and can generate sufficient funding through fees assessed on Program accounts for the Program to become financially self-sustaining, (i) the Board may borrow from the State, any unit of federal, State, or local government, or any other person, firm, partnership, corporation, or other entity working capital funds and other funds as may be necessary for this purpose, provided that such funds are borrowed in the name of the Program and Board only and that any such borrowings shall be payable solely from the revenues of the Program; and/or (ii) the Board may enter into long-term procurement contracts with one or more financial providers that provide a fee structure that would assist the Program in avoiding or minimizing the need to borrow or to rely upon general assets of the State.
- ix. Subject to appropriation, the State may pay administrative costs associated with the creation, maintenance, operation, and management of the Program and Trust until sufficient assets are available in the Administrative Fund for that purpose. Thereafter, all administrative costs of the Administrative Fund, including any repayment of start-up funds provided by the State, shall be repaid only out of moneys on deposit therein. However, private funds or Federal funding received in order to implement the Program until the Administrative Fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment.
- x. The Board may use the moneys in the Administrative Fund solely to pay the administrative costs and expenses of the Program and the administrative costs and expenses the Board incurs in the performance of its duties under this title.

#### **Section 6. Nevada Employee Savings Trust Fund.**

There is hereby created as an instrumentality of the State a Trust to be known as the Nevada Employee Savings Trust Fund

(a) The Board shall appoint an institution qualified to act as trustee of IRA trusts or insurance company issuing annuity contracts under Section 408 of the Internal Revenue Code and licensed to do business in the State of Nevada to act as Trustee

- . (b) The assets of IRAs established for Covered Employees shall be allocated to the Trust and may be combined for investment purposes. Trust assets shall be managed and administered for the exclusive purposes of providing benefits to Covered Employees and defraying reasonable expenses of administering, maintaining, and managing investments, of the IRAs and the Trust, including the expenses of the Board under Section X.
- . (c) The Board shall establish within the Trust one or more Investment Funds, each pursuing an investment strategy and policy established by the Board. The underlying investments of each Investment Fund shall be diversified so as to minimize the risk of large losses under the circumstances. The Board may, at any time and from time to time, add, replace, or remove any Investment Fund
- . (d) The Board may allow Covered Employees to allocate assets of their IRAs among such Investment Funds and in such case, the Board also may designate an Investment Fund as a default investment for the IRAs of Covered Employees who do not make an investment choice
- . (e) Subject to Section X the Board, in consultation with such third-party professional investment advisers, manager, or consultants as it may retain, shall select the underlying investments of each Investment Fund. Such underlying investments may include, without limitation, shares of mutual funds and exchange-traded funds, publicly traded equity and fixed-income securities, and other investments available for investment by the Trust. No Investment Fund shall invest in any bond, debt instrument or other security issued by the State.
- . (f) The Board may, in its discretion, retain an Investment Adviser to select and manage the investments of an Investment Fund on a discretionary basis, subject to the Board's ongoing review and oversight
- . (g) The Trustee shall be subject to directions of the Board under Section X or an Investment Adviser under Section X and shall otherwise have no responsibility for the selection, retention, or disposition of Trust investments or assets
- . (h) The assets of the Trust shall at all times be preserved, invested, and expended solely for the purposes of the Trust and no property rights therein shall exist in favor of the State or any Covered Employer. Trust assets shall not be transferred or used by the State for any purposes other than the purposes of the Trust or funding the expenses of operating the Program. Amounts deposited with the Trustee shall not constitute property of the State and shall not be commingled with State funds and the State shall have no claim to or against, or interest in, the Trust assets
- . (i) The assets of the Trust shall at all times be held separate and apart from the assets of the State. None of the State, the Program, the Board, any Board member nor any Employer shall guaranty any investment, rate of return, or interest on amounts held in the Trust, an Investment Fund, or any IRA. None of the State, the Program, the Board, any Board member nor any Employer shall be liable for any losses incurred by Trust investments or otherwise by any Covered Employee or other person as a result of participating in the Program



- . (j) The provisions of the Nevada Uniform Securities Act shall not apply to the Trust, any Investment Fund, or any interest held by an IRA in the Trust or such Investment Fund
- . (k) The Trust and each Investment Fund shall not be subject to taxation under Nevada's Taxation Laws

**Section 7. Confidentiality of Participant and Account Information.** Individual account information relating to accounts under the Program and relating to individual Participants (including but not limited to names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions, and earnings) is confidential and must be maintained as confidential –

- (1) Except to the extent necessary to administer the Program in a manner consistent with this title, the tax laws of this state, and the Internal Revenue Code; or Unless the individual who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

**Section 8. Protection from Liability for Employers.**

- (1) A Covered Employer or other employer is not and shall not be liable for or bear responsibility for --
  - (a) An employee's decision to participate in or opt out of the Program;
  - (b) Participants' or the Board's investment decisions;
  - (c) The administration, investment, investment returns, or investment performance of the Program, including without limitation any interest rate or other rate of return on any contribution or account balance, provided they played no role;
  - (d) The Program design or the benefits paid to Participants;
  - (e) Individuals' awareness of or compliance with the conditions and other provisions of the tax laws that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;
  - (f) Any loss, failure to realize any gain, or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the Program.
- (2) No Covered Employer or other employer shall be, or shall be considered to be, a fiduciary in relation to the Program or Trust or any other arrangement under the Program.

**Section 9. Protection from Liability for the State.**

- (1) The State, the Board, each member of the Board or other State official, other State boards, commissions, or agencies, any member, officer, or employee thereof, and the Program --
  - (a) have no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are eligible to

- make tax-favored contributions to IRAs, in what amount, and in what time frame and manner,
- (b) have no duty, responsibility, or liability to any party for the payment of any benefits under the Program, regardless of whether sufficient funds are available under the Program to pay such benefits,
  - (c) do not and shall not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance, and
  - (d) are not and shall not be liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits, incurred by any person as a result of participating in the Program.
- (2) The debts, contracts, and obligations of the Program or the Board are not the debts, contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the Program or the Board.

#### **Section 10. Audits and Annual Reports.**

- (1) The Board shall cause an accurate account of all of the Program's, Trust's, and Board's activities, operations, receipts, and expenditures to be maintained. Each year, a full audit of the books and accounts of the Board pertaining to those activities, operations, receipts and expenditures, personnel, services, or facilities shall be conducted by a certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not State employees for the administration of the Program. For the purposes of the audit, the auditors shall have access to the properties and records of the Program and Board and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the Program.
- (2) By August 1 of each year, the Board shall submit to the Governor, the Controller, and the State Legislature an audited financial report, prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts, and expenditures of the Program and Board during the preceding calendar year. The report shall also include projected activities of the Program for the current calendar year.
- (3) The Board shall prepare an annual report on the operation of the program to be available to all citizens and provided to appropriate state officials.

**Section 11. Construction.** This Act shall be construed liberally in order to effectuate its legislative intent. The purposes of this Act and all of its provisions with respect to powers granted shall be interpreted broadly to effectuate the Act's intent and purposes.

**Section 12. Effective Date of the Program.** This Act takes effect on the date on which it is signed into law.

- (1) The Board shall establish the Program so that individuals can begin contributing under the Program not later than July 1, 2021.

- (2) The Board may in its discretion phase in the Program so that the ability to contribute first applies on different dates for different classes of individuals, including employees of employers of different sizes or types and individuals who are not employees (self-employed, independent contractors, etc.). However, any such staged or phased-in implementation schedule must be substantially completed not later than twenty-four months after commencement of implementation.
- (3) The Board shall not implement the Program if and to the extent that it determines that the Program is preempted by ERISA. Accordingly, if and as needed, the Board shall implement the Program in a severable fashion to the extent practicable: if and to the extent that the Board determines:
- (a) That a portion or aspect of the Program is preempted by ERISA, the Board shall not implement that portion or aspect of the Program but shall proceed to implement the remainder of the Program to the extent practicable; or
  - (b) That some but not all of the Payroll Deduction IRA arrangements or other arrangements under the Program are or would be employee benefit plans under ERISA, the Board shall proceed to implement the Program with respect to the other arrangements under the Program to the extent practicable.

**Section 13. Severability.** The provisions of this Act and this title shall be severable and, if any of these provisions is held to be unconstitutional or invalid, the validity of the remaining provisions of this Act and this title will not be affected.