15.0307.02000

FISCAL NOTE
Requested by Legislative Council
01/12/2015

Bill/Resolution No.: HB 1200

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations			$100,000			

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1200 requires the state treasurer to establish and administer a state-run deferred compensation retirement program for private businesses with 100 or fewer employees that do not offer their employees a retirement plan.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB 1200 requires the state treasurer to establish and administer a state-run deferred compensation retirement program that private businesses with 100 or fewer employees and no retirement plan may elect to participate in. The program must comply with federal income tax law so that any compensation deferred by a participating employee is tax deferred for federal income tax purposes. Any compensation deferred from federal income tax is automatically deferred for North Dakota income tax purposes. Distributions from the plan to an employee that are included in federal taxable income may be deducted in computing North Dakota taxable income.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The income tax exemption provisions of the bill may potentially reduce state general fund revenues for the 2015-17 biennium assuming that the program can be made operational and there is participation by employers and employees during the biennium. The amount of the reduction, if any, cannot be determined.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Section 3 of HB 1200 contains an appropriation of $100,000 to the State Treasurer for costs associated with designing and implementing this retirement program.

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Date Prepared: 02/04/2015

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1200

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1200
2/6/2015
23401

☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

A bill relating to creation of a state facilitated retirement program for the private sector; to provide an appropriation; and to provide an effective date

Minutes:

Testimony 1, 2, 3, 4, 5, 6, 7, 8

Vice Chair Rohr: Opened the hearing on HB 1200.

Representative Keiser: We have a problem with personal retirement savings. If people don't save for the future when they are employed, it creates problems for this state. The fastest growing budget in the state is human services, and that budget will overtake education and all the others. There is not one single issue. The problem we have that we are not addressing is relative to life expectancy. The fastest growing group is centenarians, percentage wise. That's 100 years old! The actuaries will come up and testify. The first person who will live to 140 has already been born. Who is going to pay for that? Are we taking money and putting it aside in social security to support that? No. The actuary life expectancy has increased. We will hear data this morning that 30% of our population has no savings. That doesn't mean that the others don't have adequate savings. The state will be involved in managing and paying for this emerging problem. What role does the state have in this? The one person who sat down with me about this problem financially helped with some state based solutions. That doesn't mean a state solution. One is the Renaissance Home Program. Without this program we would have empty store fronts, a tax base that will dwindle, and no brewery. This program is a state based solution with the private sector. The state created some tax incentives. You may not be familiar with the Pace Program. There aren't many projects that have not used the pace interest buy down. That is a state based solution to an economic competition problem that we had that only we could participate in. Eighty percent of our people live within 80 miles of the Red River. The unemployment in the state is below 3%. Those people are not oil. We have created an economic environment for business in this state. The Pace Program has been important to the development in all of our communities. My final example is also a state based solution (testimony 1). The private sector is getting the money, and the financial institutions are getting a new customer. This problem is national. This is in a general fund appropriation and in the appropriations there are great concerns. The state will start a program and they will compete with the private sector. This appropriation is for 100,000 for the biennium. That is not even one FTE. I don't know how anyone could say we are starting a program in competition with the private sector when we don't have enough money for one FTE. Our concept was to put the treasurer in charge. They would have to put together an RFP, come up with rules for a bill that requires that, and then they would go to the private sector and ask if anyone is interested in bidding it. The bill title is a state facilitate retirement plan not a state plan. It talks about the investment products that can be used and the reality is the 457 is really an IRA. The 457 plan gives me the option to make a contribution to a retirement program using my earnings as a legislature. It can be tax deferred or it may not be. I had to make an allocation formula decision and they are managing it. There will be claims about ERISA. If that is true there are many concerns about the 457. I don't think that is true because we have had many discussions with ACLI and the local representation. Our plan we have said will be in the private sector. The private sector will manage it. If you have a current plan you can't participate. If you are an employee and the employer has a plan you can't participate. We don't want to compete with that. We want to address the problem. Our intent in this bill was relatively simple, but as you all know putting it into legislative language is not easy. The private sector doesn't get it. They could argue they have the ability to do this. I am fine if they can but they better do it. Here we are offering an opportunity for payroll deduction in a non-existing formal plan like a 401K. It can be tax deferred on the state level and there are instructions in here for the treasurer or whoever we put it under to work with the IRS through our broker who would put together the package to try and assure that we could get the federal deductions on the pretax basis. My amendment (testimony 2) would hog house the bill and take it into a management study. We want to do anything we can to help our people get into a retirement program in the private sector that would benefit the private sector and ourselves. The problem will not go away.

Representative Mooney: Could you tell me what an ERISA is?

Representative Keiser: It is the acronym for employment, retirement, and income security act. It is one of the good things we did, other than it brings the federal government in. It is the federal government's, contained within ERISA, rules, regulations, and law that deal with the management of retirement programs and the qualifications of retirement programs. If you are a small company and you are in a 401K, the ERISA comes out with new rules and rigs in document form that we have to apply to ours. It is the federal government's regulation of retirement plans. They control things based on issues they look at and the makes changes that you have to meet. Meeting ERISA requirements is critical to the state. If the state were to have its own plan then it would be problematic because then there would be added fiscal to the fiscal note.

Representative Steiner: A private company would go to the state treasurer and their employees would be able to participate and currently they can go to the private sector and set this up as well. You want to go this route why?

Representative Keiser: This does two things. It would have the option for payroll withdrawal. The key is payroll deduction plus this states that they are exempt from state taxes on a pretax basis and that we would work to qualify for federal. That would depend on the plan that is used in the private sector.

Representative Koppelman: If an employer currently is requested by an employee to do a withholding for an IRA they have. Are employers able to do that form them now without a plan like this if it is privately held?

Representative Keiser: I don't know if they could. This is making it possible just as we did with the 457. It would create the forms, that the firm would take on this RFP would have to do. Working with ERISA and the federal government to make sure the forms and everything are qualified. The employer without the coverage would say you go and do it; I am not getting in the middle. Retirement is tricky. There are potential liabilities.

Representative Seibel: Are you envisioning putting this out in a bid process and one private sector company doing it for the entire state or would others be able to do that?

Representative Keiser: No I am not. 457 is not that way. There is a list of PERRS and it our case it would have to be that RFP entity would determine the criteria that would be used to determine whether you can be qualified vender and once that list is made the employee or employer can go to whoever they want.

Representative Schneider: We have been handed an amendment that would turn into legislative study issue. If we pass this amendment your bill never gets a vote up or down. Would you prefer us to consider the bill first and later turn it into a study or is your preference that we amend it right away?

Representative Keiser: We have committees to make that decision.

Representative Johnson: You keep referring back to a 457 plan and you indicated that this has succeeded in other states?

Representative Keiser: It has succeeded in North Dakota. I think a 457 plan is a generic plan but I don't know. It is our state plan.

Representative Johnson: My confusion is that a 457 is for government employees where as a 401K is for private employees. So I thought if it succeeded in other states for non-government employees to be in a government plan then that would answer the question right away if private employees are eligible to compete and participate in a 457. We don't know that question.

Representative Keiser: That questions answers in part Representative Koppelman's question. The 401K is the private sector and 457 is the public sector additional plan. If we were to go forward I think this is about creating our own category. Once through ERISA we would have to do some work. If this is for public employees it cannot be used in this way.

Representative Johnson: The answer to the question was I don't know. Initially there are so many unknowns that this would probably be better as a study. I see that you refer to investment product in the initial portion of this bill and have a list of some things. We don't know what investment vehicle could be used at this point. I think it is premature that instructs the treasurer to develop a plan, when we don't know anything.

Representative Keiser: I disagree with your whole principle because if you do a study you will do the same thing and same with the bill. The purpose of the RFP to the private sector of vending firm who are professional would be to look at what are acceptable products, criteria, and form. All questions are there no matter what you do. Either it will be through the RFP or through the study.

Representative Louser: As I read this I am seeing three benefits. One is the payroll deduction, two is the federal income tax deferment, and three is the exemption of state income tax. The third one may not be a benefit should we ever take the income tax to zero. Am I correct in the assumption that those are the benefits?

Representative Keiser: Yes, that is what we were trying to do. We wanted to create some incentives to use the authority the state has to create incentives to implement a program with some financial assistance from the state. There are a lot of things that have to be considered. There will be man involved.

Kelly Schmidt: Testimony 3

Representative Johnson: These other states that have introduced legislation or contemplated this, is the legislation so specific that they have identified a plan that is available and they are trying to introduce this now as an acceptable retirement plan?

Schmidt: It goes from one extreme to the other. There are some with strictness and then there is our state where we would simply be the vehicle that would provide the opportunities.

Representative Johnson: In these other states that go from one end to the other, there are specific identified plans, ERISA qualified that are eligible for this type of thing?

Schmidt: There are and they are being developed individually as the rules of each plan are developed. It is am implementation process.

Representative Laning: How do you visualize the money flow of this? Would it go through your office? How do you implement a payroll deduction, which will be the only way this would work? Who handles the money and how would it flow?

Schmidt: The money would not go through our office. It would be implemented where we would provide the person with the list of firms that you could go through. If it would be through payroll deduction it would go directly to the retirement fund. It would not go through the state.

Representative Laning: Why isn't that available now to an employer? If an employer agrees to do this payroll deduction through this plan they can do it anyway.

Schmidt: Payroll deduction options are not offered for retirement unless it is an employer sponsor plan. In order to meet the deductions of the federal withholdings or federal tax implications relating to state and federal, you have to meet certain criteria. By doing it yourself, you wouldn't meet the criteria.

Representative Louser: You talked about the extremes. What is the maximum allowable deduction if there is one? Can the employer participate under this plan?

Schmidt: I don't know those answers yet. The plan definitions haven't been developed.

Representative Johnson: Who would be the plan administrator and who is responsible for filing the 5500?

Schmidt: The plan administrator would go out on an RFP. We would work with someone and determine who the overall administrator could be or maybe there could be multiple. Those would be the ones that would do the specifics of the plan.

Representative Johnson: So you have a fun holder, and investment group, plan administrators, and the state. So either the plan administrator or the state would be responsible for filing the 5500.

Schmidt: I don't know the details yet.

Representative Johnson: Who else would be responsible for the costs of administration?

Schmidt: The way I understand it the bill has been drafted so this would be amortized over an extended period of time so those participating in the plan would reimburse the state for the 100,000 dollars. The costs would be the costs of the person participating but the initial 100,000 would be reimbursed to the state.

Representative Johnson: For example, our 401K at work, the employers leave plan administrator and we go through mass mutual and they are the fund holder and investor. I was responsible for the 5500; we paid a quarterly fee to cover the costs of fun holding, I am wondering with all these parties, who fills those roles?

Schmidt: I am not sure.

Representative Mooney: The RFP is what the 100,000 fiscal note is for, right?

Schmidt: Yes.

Josh Askvig: Testimony 4

Representative Dockter: Why would we start a program with the state when we already have the system in place? I deal with this every day. The question they ask on the income tax is 'do you have a retirement plan, if you don't you can deduct it on page 1 of the 1040' we already have these vehicles and to take away from the private sector when we already have a vehicle why would we want to go to this system?

Askvig: We are not trying to take it away from the private sector. We are trying to facilitate them getting plugged in within individuals in the private sector who do retirement accounts. We believe that employers are looking for a way to provide a retirement account. It is advantageous for them in terms of employer recruitment and retention, the want to do it but they are finding it difficult. Other states have looked at other models.

Representative Dockter: We already have these programs. They are still simple and they do have to do some matching. Individuals can go many places to get a vehicle. People need to get more educated and it is a personal responsibility.

Askvig: There are 101,000 North Dakotans that don't have a retirement savings through their work. They are 1300 percent to save if they don't do it through work. I think anything we can do to help facilitate from the small business sector, opportunities put in plans for their employees to save will benefit the state in the long run.

Representative Johnson: You said that after this initial 100,000 there is no cost to the state. Is that correct?

Askvig: Yes

Representative Johnson: The state treasurer is tasked with administering the program. Administering the program suggests long term and that represents a cost. Representative Keiser said no more FTEs if this were to charge the state with hiring somebody for the program. There is a cost with administering. I am unsure as to how this works out with who is responsible for the ongoing administrative costs that the fun holder charges back to the administrator. The philosophy is wonderful but the mechanics are messy.

Askvig: The intent is that the state would set up the RFP and bring on board the firms to administer the program. After that the costs are born by the plan participants, amortized over a certain number of years.

Representative Johnson: I feel like the request is that the state becomes a salesman. That through the treasurer's office we will sell a product that they sell in the public anyway. Maybe they should be selling what is available already better.

Askvig: I would offer two comments. In our conversations with small business they sight costs in complexity as a barrier as to why they are not providing plans, especially those under 100. If the state can help facilitate and through the RFP help aggregate a larger pool of employers and employees that they can capture we believe that it would help bring down the costs. There are many ways to look at this.

Representative Dockter: You brought up a 100 or so employees and that is why simple IRA under IRS code allow up to 100 employees. The make it simple in IRS.

Todd Sattler: Testimony 5

Representative Laning: Have you ever gone to a financial advisor or broker and asked them about a plan?

Sattler: I am aware of what would be involved. I think this is a way to do this much easier than if we did it how it is done now.

Representative Laning: The way I am reading this bill you would still have to write the checks because the payroll deduction will come out of your payroll in some form of another. The money will not flow through the state. To avoid writing the checks is impossible. It is a simple process to meet with a broker and set something up. I don't think you can avoid your direct involvement.

Sattler: I think it would be an automatic deduction and that is not available right now. I also think this is something that state government should be involved. The investment is 100,000 dollars and to me that is something our state should be doing.

Representative Johnson: That is a one-time cost. There are ongoing administrative costs associated with any plan. The ease with which this can be done seems to escape you. Everything is online and it is easy and it is enjoyable. You said you haven't met with a broker yet?

Sattler: I have not.

Tom Ricker: I am with North Dakota FLCIO and I think the key thing here is the payroll deduction. If that is available to the employee they are far more likely to get involved with a 401K program if they can have a payroll deduction. A lot of the small business owners are overwhelmed by the possibility of providing a 401K because of fiduciary responsibility and things like that. It might be easier than many think it is but for the employee aspect, if they don't have a payroll deduction they won't put money away.

Opposition:

Levi Andres: I am with the Bismarck Office of DeVogal Law Firm. I am here on behalf of the American Council Life Insures or the ACLI which is the trade association which represents the life insurance industry and underwrites over 90% of the life insurance premiums in North Dakota. I have provided testimony from John Gerni (testimony 6). ERISA doesn't set up a road block. It is meant to protect employees. The problem is it is extremely complicated. Who has a fiduciary obligation to protect the interest of the employee? If you have an employer who does facilitate deduction, do they have a fiduciary obligation? How about the non-participating employer? How about the broker? We have talked briefly about the liability for any losses suffered and that is a fundamental question you need to ask yourself as well. If somebody is harmed through this system who is responsible? I think the discussion would be more productive if there were a framework of rules that would be understood from the treasurer's office. Is there a cap on administrative costs? We have heard about the self-funding requirement. I don't see that in the test of this bill. I think that is the intent and the idea but who imposes the fees and how is that funded? If the participation early in the program is low, the proportional costs of participating employees could be cost prohibitive. You may not have many people participating and in that sense, if you are going to bear the burden of the program on only those participating is that good public policy for the state? You heard that the only mandate is the mobility mandate that you can transfer these products. I think a key sentence is on page 3, line 1 and 2. It says 'the only requirement of the non-participating employer is to make payroll deductions and remittances as provided under this program, so a non-participating employer is obligated to make deductions out of payroll. I also provided some information of other state's trying this.

Representative Louser: Yesterday we heard from state employees that were advised years ago on retirement plan and they chose that plan. We are now looking at something that says the state is not responsible for any losses and I am wondering in the future we have some private sector employees that come back to a committee and say 'my plan isn't what I thought it was and the state is responsible for allowing me to change into a new plan'. Do you think the language in this bill on page 4, lines 3-5 would be the opportunity for the state to say sorry it is not our problem?

Anders: I would say yes, but only to the extent that a law is good for two years.

Representative Steiner: You mentioned there are only 5 lawyers who understand ERISA in the state?

Andres: I am only aware of a few and I can only name 2.

Representative Steiner: That makes me lean towards the bill, because I don't know how you expect an employer with 8 people to be as qualified to figure out a retirement program if there are only two lawyers in the state who understand ERISA. Perhaps the state needs to provide that information to employers. I think if it is that complicated I can see why you have some support for the bill.

Andres: I think we are talking about 2 different complexities. One is the complexity of an employee to participate in a retirement program and the second is that an employer or fiduciary has to be sure that the plan is administered and in accordance with federal law. The burden on the employee who is trying to get the deductions and save for retirement would not have the obligation to be sure that its own contributions are ERISA compliant, it would be the plan's sponsor who would have those significant obligations to be sure the plan is complaint with federal law. The question you're saying is this is complex. Yes it is, but the aim of the bill is to make this easier for employees to save. If employees are participating in an employer sponsored plan, ERISA will be implicated one way or another. That is not a barrier to somebody saving. It is a barrier to a plan sponsor to administer the plan.

Representative Johnson: I think for the majority of your testimony we will spend 100,000 dollars pursuing this bill to answer those questions to get a plan that is ERISA qualified that will serve the purpose of this bill. Assume that is all true, if ERISA qualified the state has no liability. On the other side then becomes should the state step in to the sales duty or position of whatever fund holder is chosen.

Andres: I would take a few approaches at that. I would like to defer on the 'who is in the best position to provide the products to get them to employees' to the professionals who are working in that every day. That would be my response. ACLI feels we have a bust retirement savings industry that is well positioned and has a profit motive to serve that demand.

Representative Mooney: I am seeing that 80% of full time workers have access to employers sponsored retirement programs and then 80% of accessed plans participate. 80% of those people participate in those plans is essentially what we are saying. Going back to earlier testimony, it comes back to the fact that we have a gap. There is an amendment that is in place for a study process. Would your position be to support the idea of a study?

Andres: We would be glad to participate in that process.

Norbert Mayer: Testimony 7

Loren Chapel: I spent almost 40 years working with the public sector on establishing retirement plans and counseling employees on finding out what their risk tolerance is and how much a month they should be contributing. I get the impression, they talk about state facilitating the plan and yet in the final analysis there is going to be an RFP where it was mentioned 1 or 2 providers would support this enrollment. That flies in the face of state facilitated it is more having the state move into it and somebody at the state deciding, from the RFP, which companies will be involved with this. Right now, all the companies are involved with it, and to limit access doesn't seem to be the American way. The bottom line is I do a lot with small employers. In the last few years they have grown to more than 100 employees so I have helped the switch from an IRA to a 401K. The simple IRA is the preferred choice for most employers but our participation is usually 100%. In the large employers it is close to 90%. The 3% that is mandated by the simple IRA, you have to do a 3% match in three out of a rolling 5 years. You can do 1% or 2% but eventually you have to do 3% for at least three years. If it were not for the match, the participation would drop dramatically. The people who do not have an employer matching retirement plan or the single employer (farmer, contractor, etc...) they have a SEP simplified employee pension that they can contribute up to 25% of their earnings into a retirement plan. The 401K is available to almost all employers. If the state goes to the IRS to get this plan approved they will be saying there is an IRA out there. As individual retirement plan that anybody who doesn't have an employer retirement plan or earns significantly less they can still do their employer plan and their IRA. There was some question whether an employer could do payroll deduction for an IRA. Yes they can. We send a list bill to the employer and they fill out who all enrolled and asked to have contributions taken out. It is not a big deal but there is still administration. When a person doesn't participate in a simple IRA we ask the employer for that employee's personal final, get the form that says you want to participate at 3 or 5 or 8 percent, get it signed by the employee who wants to do nothing so that you have proof that he denied the plan and they don't come back to you in a few years and say 'I want to be on that it was never offered'. There is a liability that employers have to make sure that everybody is getting what they want. I have been involved in the 457 for years and frankly there were larger number of participating financial companies from the beginning. The market was trimmed because reports had to be sent to the state every 6 months to find out how many assets the state had because 457 plans are technically an asset of the state. Financial products are fine tuned for costs and many companies thought with the reports every 6 months it is not profitable. The state refused to hire a third party administrator to do and pay for that work. They expected if you want to play in 457 market you have to do this. Many said out we go and now we have preferred providers in the 457 plan. If you don't know who to talk to the people who work at PERRs will say this is what we recommend. That is not competition and our entire country was put together on competition of one financial advisor competing against another financial advisor. I would like to address one issue that is being overlooked. Our competition when we talk about retirement plans to the employees, is not which IRA, which simple IRA, should I do a SEP, it isn't competing against others, we are competing against Harley Davidson, Casinos, motor homes, boats, vacations, etc... I have a hard time believing that if the state puts a plan like this together an IRA you can do on your own payroll deducted by your employer I think it will fall on deaf years. It is an approach that no one is asking for in the private sector. The employee pool is empty. Finding mew employees qualified is very tough. Employers know it isn't just about salary anymore. They know it is about benefits. Employers know if you want to hire and retain good employees you need to have benefits. This has been around 100 years. You can lead a horse to water but you can't make them drink. You could mandate it but there are too many correlations there. Offer an incentive. It won't fly any other way.

Chairman Kasper: In the year since you have been doing retirement plan enrollments, even when an employer matches and you sit down with the employee to discuss their opportunity, how they plan works, and the great employer match, is there a percentage of those employees for whatever reason still refuse to enroll even though they have been offered the opportunity and have a great benefit to do so?

Chapel: Human nature is what it is. Thankfully the earnings have gone up and they can say that oil doesn't impact the eastern state. I have news for you, it impacts the entire state. People are encouraged by the younger generation who are scared to do death about retirement. Now a days people are starting retirement early. 401K is the defined benefit pension. When I started in this business 57% of Americans were covered by a defined benefit pension plan. Today it is 17%. Big companies have frozen their pension plans. 401K is now the retirement plan. These young people understand if I am going to be able to retire I need to put something into retirement and make the dollars work so I don't have to depend on social security.

Chairman Kasper: There are employees who say no.

Chapel: Life style choices. I don't know how you would change that. Education and motivation but bring out a new plan won't do it.

Representative Louser: This bill would allow for the portability of a plan. If I am an employer and I am not participating and I hire somebody in a private sector who brings their plan with them I am now being required to do a payroll deduction as a non-participating employer. Am I now subject to ERISA regulations?

Chapel: The way it sounds to me, no, because if that new employee that came to you was in a 401 K previously he would be required to change it to an IRA. To my understanding this bill is about being able to establish technically an individual retirement account that you can take with you. People are doing that now.

Andy Peterson: Testimony 8

Rick Clayber: President of the CEO of the North Dakota Bankers Association, we just want to go on record as opposed to the original introduction of the bill but we do support the movement to a study.

Chairman Kasper: Closed the hearing on HB 1200.

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1200
2/6/2015
23403

☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

A bill relating to creation of a state facilitated retirement program for the private sector; to provide an appropriation; and to provide an effective date

Minutes:

Chairman Kasper: opened discussion on HB 1200.

Representative Dockter: The amendment is for a study but I don't think a study would be necessary because we don't have all the information. There are too many questions and we have enough products in place in the private sectors. It is the choice of the people where they put their money. I would resist the amendment.

Representative Laning: I would agree. The employers still would have to deduct from the pay as mentioned in our testimony. I am fully supported of employees getting into a retirement investment plan but they are available. The best way is through an employer payroll deduction and whether they like it or not if they are interested in their employees getting a break they will have to get involved of at least allowing a payroll deduction. All of those are available and more.

Representative Dockter: Not everyone is out spending money. There are folks that are not paid enough to save. The problem is with the employer. People sometimes can't afford to save. That is an employer thing.

Representative Mooney: It is a complicated issue. I would resist the resistance of the amendment based on the idea as Representative Keiser put it that those people are destined for our coughers at some point in time due to not helping them. Bringing a study group together would make a positive impact.

Chairman Kasper: If this bill said it will work with the private sectors to develop ways to encourage employees to save and if this bill said we will work to educate employees and employers why you ought to save I would have a different feel for this but the bottom line is this is a state socialized plan that will compete with the private sector the way this bill is written. We have many people offering and are in these plans. This bill would allow the treasurer to pick winners.

Representative Louser: I was thinking what a study may produce. I think the real questions are about the benefits, payroll deductions, implications, regulations, etc... I think if the study came back and said there were implications with federal programs or regulation that we would not proceed and if there are implications then there are already investment opportunities anyways and the state wouldn't need to participate. The conclusion I have decided even a study would result in not needing or not wanting the program. I would resist the study as well. I would move a do not pass.

Representative Dockter: Second

Representative Laning: I like the suggestion but maybe we should have just amended to produce a study that we think is appropriate rather than ignore the suggested one.

Chairman Kasper: In my experience, even though I indicated that, there are many circumstances why people don't save.

Representative Louser: Just to read from the employer's side on the MYRA website. There are three sections that say no cost to the employer, a good fit for employee, and a smart way to help your employee save. From the employer standpoint MYRA is free and it is easy for employers to make it available for employees. You don't administer, match, or contribute to employee accounts. All you do is tell them.

Chairman Kasper: Who is doing the investing in that account? Does it say? Where do the funds go? There again as he's looking. Here's the problem with the MYRA account. You are dealing with a mysterious entity where you don't know where they are at, you are not dealing with a person who can give you advice on investing, and you heard yesterday that defined contribution dilemma where employees indicated they were not given the proper type of advice. A proper way to plan for your retirement is having someone you can trust that will give you good advice and that generally means someone locally. Find where the money goes yet?

Representative Louser: Nothing that would help the discussion here. Looks like in some cases you are sending the money to US treasury so far but I don't know. I think you can pick your investment program.

A Roll Call Vote Was Taken: Yes 8, No 3, Absent 3 (Koppelman, Seibel, Wallman)

Motion carries

Representative Kasper will carry the bill

Date: 2-6-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1200

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: ____________________

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ ____________

Motion Made By Louser Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman	—	—
Rep. Karen Karls	X				
Rep. Ben Koppelman	—	—			
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	—	—			
Rep. Vicky Steiner	X				

Total (Yes) 8 No 3

Absent 3

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1200: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO NOT PASS** (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1200 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1200

#1
1200
2-6-15

3803

457 DEFERRED COMPENSATION PLAN ENROLLMENT/CHANGE FORM

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
SFN 3803 (Rev. 12-2014)

NDPERS • PO Box 1657 • Bismarck, • North Dakota 58502-1657
(701) 328- 3900 • 1-800-803-7377 • Fax 701-328-3920

PART A PARTICIPANT INFORMATION

Name (Last, First, Middle)	NDPERS Member ID
Last Four Digits of Social Security Number	Date of Birth
Organization Name	NDPERS Organization ID

PART B PROVIDER INFORMATION

Name of Company **(Required)**	
Agent Name **(Required)**	Telephone Number

PARTC CHECK ALL THAT APPLY

- ☐ 1. New Application
- ☐ 2. Increase Deduction
- ☐ 3. Decrease Deduction
- ☐ 4. Suspend Deduction (Includes going from full-time to part-time)
- ☐ 5. Change Employer: From: ____________________ To: ____________________
- ☐ 6. Age 50 or older: Annual Catch-up
- ☐ 7. Regular 3 Year Catch-up --**457 Deferred Compensation Catch-up Worksheet Certification SFN 51501 MUST accompany this form**
- ☐ 8. Provider Change **YOU MUST complete 2 Participant Agreement forms:**
  1. One for the new provider & √ 'New Application' 2. One to stop contributions to old provider & √ 'Suspend Deduction'
- ☐ 9. Change in Agent only (Complete Part A, B & F)
- ☐ 10. USERRA Missed Contributions
- ☐ 11. Lump sum Sick & Annual Leave **(Form due at NDPERS by the 15th of the month preceding payout date)**

PART D CALCULATION OF MAXIMUM ALLOWABLE DEDUCTION

Must be completed if you checked 1, 2, 6, 7, 8, 10, or 11 in Part C

A. Annual Gross Pay $__________
B. Less Employer Retirement Contributions made under a IRC 414(h) arrangement (use most recent pay stub) $__________
C. Includable Compensation (subtract B from A) $__________
D. Maximum Annual Allowable Deduction:
D 1. Lesser of 100% of Includable Compensation or annual maximum limit (see annual limits on back of form)
Enter the lesser of D 1 but not less than the minimum annual deduction of $300.00 ($25.00) per month $__________
E. Age 50 + catch-up (see annual limits on back of form) $__________
F. Total D + E $__________
G. Pay Period Deduction (F divided by number of pay periods in calendar year) $__________

PART E SALARY REDUCTION AUTHORIZATION.

Must be completed if you checked 1, 2, 6, 7, 8, 10, or 11 in Part C

Authorization for deductions must be made in the month prior to the pay period in which the income is earned.

I authorize my employer to reduce my salary in the amount of $______________ for the pay period beginning date **(not date paid)** ________________.
(The signature date in Part F must be in the month prior to the pay period date entered here.) (month, day, year)

With regard to this agreement, the Participant acknowledges the following (read and initial each statement):

_______ I understand that my salary will be reduced each pay period by the amount authorized above. The deduction can not be changed or stopped without an authorized participant agreement form returned to payroll from NDPERS.

_______ I understand the accumulated deferred salary is credited to my account and is not available to me or my beneficiary(ies) until I separate from service, unless, I should experience an unforeseeable emergency and a distribution is approved by the NDPERS Board. .

_______ I acknowledge that the Retirement Board makes no recommendation as to any provider and understand that the Retirement Board does not warrant or guarantee the investment performance of any provider.

_______ I understand that all compensation deferred under the Plan, and all earnings accruing thereof, shall be held for the exclusive benefit of myself or my Beneficiary, until such time as it is made available to me pursuant to the terms of the Plan.

_______ I understand that this agreement includes the beneficiary forms as executed with and maintained by my provider.

PART F PARTICIPANT AUTHORIZATION

I verify that the foregoing statements are true and correct to the best of my knowledge and belief, and are subject to the laws and penalties governing any misrepresentations and fraud.

______________________________ ______________
Participant Authorization Date

(This date must be in the month prior to the date entered in Part E)

15.0307.02001
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 3, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1200

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of a state-facilitated retirement program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE-FACILITATED RETIREMENT PROGRAM. During the 2015-16 interim, the legislative management shall consider studying the feasibility and desirability of establishing a state-facilitated employee retirement investment program for private sector employees. As part of this study, the state treasurer shall make reports to the legislative management on the status of similar programs in other states. The legislative management shall report its findings and recommendation, together with any legislation required to implement the recommendation, to the sixty-fifth legislative assembly."

Renumber accordingly

STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
Kelly L. Schmidt, State Treasurer

#3
1200
2-6-15

Presented to House GVA
In Support of HB 1200
Kelly Schmidt
State Treasurer

Just a year ago, the Wall Street Journal ran a story on its front page about the retirement savings crisis. Entitled "Workers Saving Too Little to Retire," the article noted that fifty-seven percent of U.S. workers surveyed reported less than $25,000 in total household savings for retirement.

Another study conducted by the Government Accountability Office, in March 2012, found nearly 42 million workers, or about one third of all nationwide private-sector employees, work for employers with fewer than 100 employees, and recent federal data suggest many of these workers lack access to work-based retirement benefits. In North Dakota, nearly 40% of private wage and salary workers, ages 18-64, do not have access to an employer offered retirement plan.

The same study found many of the small employers felt overwhelmed by the number of plan options, plan administration requirements, and fiduciary responsibilities. Small employers also cited other challenges in sponsoring a plan, including a lack of financial resources, time and personnel.

Without an employer sponsored plan, it is easier to save for our children's education then for our own retirement. That frame work has been established with the 529 saving plan. We can provide the same opportunity with retirement savings with HB 1200. This would give employers an opportunity to provide a benefit to their employees.

Several states including Indiana, New Hampshire and Kentucky have now introduced legislation in the first weeks of 2015. This brings the total number of states that are or have considered studying or implementing state sponsored plans to more than 20. Massachusetts, California and Illinois continue to work on implementing their new laws.

As Chair of the State Financial Officers Foundation, a non-partisan organization of state treasurers and chief financial officers, I can share with you many states are looking to offer an opportunity to encourage retirement savings. We support these initiatives because we know a financially secure citizenry equates to a financially strong state.

This plan would provide a turnkey, user friendly opportunity for employers to provide a retirement vehicle with low cost and low risk. A plan that leaves room for the private sector to craft their own solutions. These plans are about personal responsibility. This is just providing the vehicle. My hope is this will be the beginning of great a discussion, not an end to a short conversation, because I have never met a 60 year old who said "I wish I had saved less for retirement".

600 E. Boulevard Ave, Dept. 120 • Bismarck, North Dakota 58505-0600
Phone: 701.328.2643 • Fax: 701.328.3002 • www.nd.gov/ndtreas/

#4.1
1200
2-6-15

Real Possibilities in

North Dakota

HB 1200 – SUPPORT STaRT
Friday, February 6, 2015
House Government and Veterans Affairs Committee

Josh Askvig – AARP ND
jaskvig@aarp.org or 701-989-0129

Chairman Kasper, members of the House Government and Veterans Affairs Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. We stand in support of HB 1200.

Dr. Ethel Percy Andrus, a retired educator and AARP's founder, became an activist in the 1940s when she found a retired teacher living in a chicken coop because she could afford nothing else. Dr. Andrus couldn't ignore the need for health and financial security in America and set the wheels in motion for what would become AARP. We are a nonprofit, nonpartisan membership organization with 85,000 members in North Dakota and 38 million nationwide. We understand the priorities and dreams of people 50-plus and are committed to helping them live life to the fullest, including here in North Dakota.

As the story above illustrates, AARP is rooted in its work on enhancing retirement security. Recent data on retirement security illustrate why. Our nation and its working families face an unprecedented crisis: a vast retirement savings deficit, estimated to be as much as $6.6 trillion, or about $57,000 per household. Nationally, the median retirement account balance is $3,000 for all working-age households and $12,000 for near-retirement households.[1]

1. National Institute on Retirement Security, "The Retirement Savings Crisis: Is it Worse than We Think?" June 2013. Available online: http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf

Additionally, while Social Security does provide a baseline of income for retirees, it is not enough to ensure people can live independently as they get older. As the attached handout shows, the average monthly Social Security benefit in North Dakota is $1,152 per month. Also, of the North Dakota residents over 65 receiving Social Security, 34 percent of them rely on Social Security as their only source of income. Consider further that 61 percent of North Dakotans over the age of 65 rely on Social Security for 50 percent or more of their income.

So what does the picture of retirement look like in North Dakota? Attached is a summary of some polling AARP did in November 2014. We surveyed 800 North Dakota voters age 45 and older. Over half are anxious about having enough money to live comfortably in retirement. Nearly one-third of those surveyed do not have access to any type of workplace savings plan and more than two-thirds of employees without access to a workplace savings plan would take advantage if offered. Additionally, over half support a proposal to offer access to a North Dakota managed retirement plan, such as HB1200—or as we call it, the Save Towards a Retirement Today (STaRT) bill.

Couple this information with the fact that it is estimated that over 101,000 North Dakota workers are employed by businesses that do not have a pension or retirement plan.[2] And further, that research has shown that employees who have access to retirement savings through work are 1300 percent more likely to save. It is clear that workers are not prepared for retirement, and as baby boomers continue to retire, we will see this crisis grow. AARP believes states working with the private sector should work towards commonsense solutions that help individuals build retirement savings so more people can have the freedom to live independently throughout their lives.

HB 1200, the STaRT bill, aims to make it easier for small businesses to establish a basic retirement savings option for employees. By finding ways for workers to save for

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[2] AARP Public Policy Institute tabulation of the U.S. Census Bureau's Current Population Survey, March Supplement (2011-2013).

retirement, it means that fewer North Dakotans would need to rely on future public safety net services that cost the state taxpayers.

Facts on HB 1200:

* **STaRT accounts promote self-reliance:** Giving workers a simple way to save for retirement will mean fewer North Dakotans will need to rely on public safety net services, which will save taxpayer dollars.
* **Accounts are voluntary:** Employers will have the choice to offer STaRT plans as an option for their employees, and employees would have the choice to participate or not.
* **Accounts are portable:** Employees can continue to save in their STaRT accounts if they change jobs.
* **No on-going costs or risk for the state:** STaRT is self-sustaining, and will be 100 percent participant funded after initial start-up costs. The State is not responsible for participant gains or losses in the market.
* **Exclusively for private sector workers:** STaRT funds can't be comingled with public pension dollars, and cannot add to the state's public pension liability.

Today, a secure retirement is out of reach for thousands of North Dakotans, especially those who work for small businesses. AARP ND is eager to move a state solution forward on this important issue, and fully supports HB 1200.

However, AARP ND also understands that this new approach may have many questions. It should be noted, as our attached one-pager outlines, that there are numerous states working on similar ideas. If the committee is inclined, we would also support the idea of studying this during the next interim. We would welcome further discussions with those in the financial services industry and others to find common ground to support enhancing personal responsibility and retirement security.

We support HB 1200 and urge this committee to give it a DO PASS Recommendation.

T. 4

STaRT:
Save Toward a Retirement Today

Today, a secure retirement is out of reach for thousands of North Dakotans, especially those who work for small businesses. We need a commonsense approach that helps encourage private savings so more people can have the freedom to live independently throughout their lives.

* Data shows that the median retirement savings for private sector individuals is $3,000 for working age households.[1]
* The average monthly Social Security benefit in North Dakota is $1,152 per month. While Social Security is a critical piece of the puzzle, it is not enough to ensure people can live independently as they get older.[2]
* Over 101,000 North Dakota workers are employed by businesses that do not have a pension or retirement plan.[3]
* Nationwide, more than 57 million working-age households, or 45 percent, do not own any retirement account assets, whether in a pension plan, an employer-sponsored 401(k) or an IRA.[4]

Commonsense Approach

Save Toward a Retirement Today (STaRT) makes it easier for small businesses to establish a basic retirement savings option for employees. Research shows people are more likely to save if they can do so through their work.

Businesses would have the option of enrolling their employees in simple retirement funds. Employees would have a choice of whether to participate. Accounts would be portable so a person could continue to save if they change jobs.

STaRT Accounts:

* Promote self-reliance
* Voluntary
* Portable
* No ongoing costs or risk for the state
* Exclusively for private sector workers

Pass STaRT today!

Benefits of STaRT Accounts

* **STaRT accounts promote self-reliance:** Giving workers a simple way to save for retirement will mean fewer North Dakotans will need to rely on public safety net services, which will save taxpayer dollars.
* **Accounts are voluntary:** Employers will have the choice to offer STaRT plans as an option for their employees, and employees would have the choice to participate or not.
* **Accounts are portable:** Employees can continue to save in their STaRT accounts if they change jobs.
* **No on-going costs or risk for the state:** STaRT is self-sustaining, and will be 100% participant funded after initial start-up costs. The State is not responsible for participant gains or losses in the market.
* **Exclusively for private sector workers:** STaRT funds can't be comingled with public pension dollars, and cannot add to the state's public pension liability.

Support for STaRT

More than a dozen other states have considered legislation of this kind in the past few years. Other states working on this initiative include: Nebraska, Kansas, Indiana, North Carolina, Virginia, West Virginia, Wisconsin, and others.

References

1. National Institute on Retirement Security, "The Retirement Savings Crisis: Is it Worse than We Think?" June 2013. Available online: http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf
2. Gary Koenig & Lina Walker, Why Social Security and Medicare Are Vital to Older Americans in North Dakota, AARP Public Policy Institute Fact Sheet, August 2013. Available online: http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2014/ssqf/Social-Security-2014-North-Dakota-Quick-Facts-AARP-res-gen.pdf
3. AARP Public Policy Institute tabulation of the U.S. Census Bureau's Current Population Survey, March Supplement (2011-2013).
4. *Ibid*

AARP®
Real Possibilities

For more information contact:
Josh Askvig, Advocacy Director
AARP North Dakota
jaskvig@aarp.org

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Social Security

2014 North Dakota Quick Facts

1 in 6 North Dakota residents receive Social Security

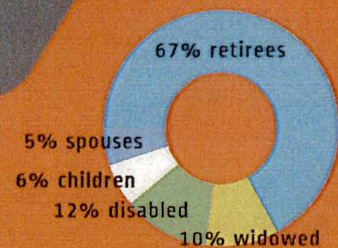
In 2012, North Dakota's population was about 700,000, with 101,000 being age 65+

122,104 number of North Dakota beneficiaries

92% of North Dakota residents ages 65+ receive Social Security

1 in 6 North Dakota residents receive Social Security

North Dakota Social Security Beneficiaries



Social Security generates $2.5 billion dollars in economic output for North Dakota

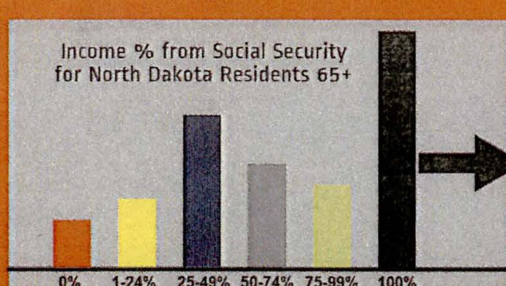
In 2012, North Dakota residents received $1.6 billion dollars from Social Security

$1,152 average monthly Social Security benefit

$13,821 average yearly Social Security benefit

Social Security lifts 28,000 North Dakotan retirees from poverty

Nearly 42% of the state's 65+ population would have incomes below the poverty line if they did not receive Social Security



34% rely solely on Social Security

AARP Real Possibilities

Source: 2014 Social Security Quick Facts www.aarp.org/2014socialsecurityquickfacts

Contact: AARP Research, Brittne Nelson bnelson@aarp.org

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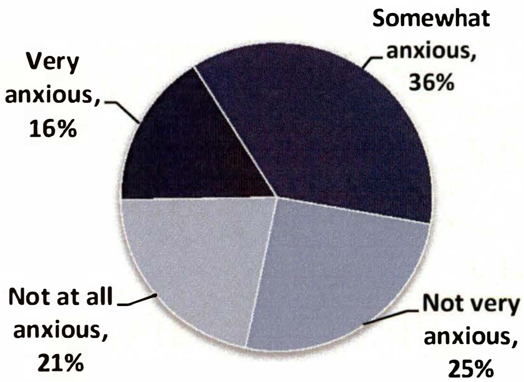
RETIREMENT SAVINGS: FINANCIAL SECURITY AMONG NORTH DAKOTA VOTERS 45 AND OLDER

AARP Real Possibilities

Most North Dakota voters 45 and older think they are doing about the same or better than expected financially. However, nearly one-third (32%) of respondents are generally worried about not being able to save enough money. North Dakota has the twelfth highest population of 65 and older residents in the nation, retirement matters for North Dakota[1].

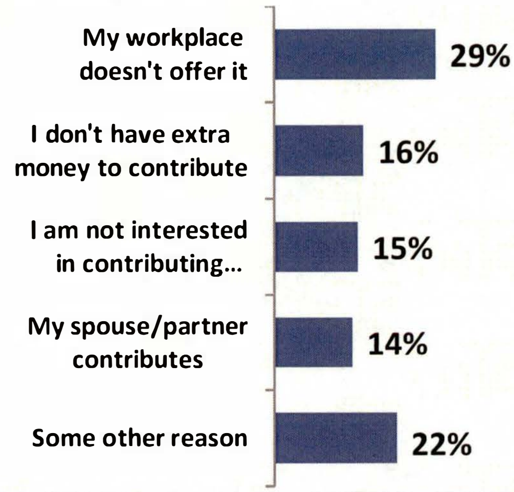
ANXIOUS ABOUT RETIREMENT

Over half are anxious about having enough money to live comfortably in retirement



WORKPLACE SAVINGS PLAN

Nearly one-third of employers do not offer any type of workplace savings.



WORKPLACE ACCESS

More than two-thirds without access to a workplace savings plan would take advantage if offered

29%

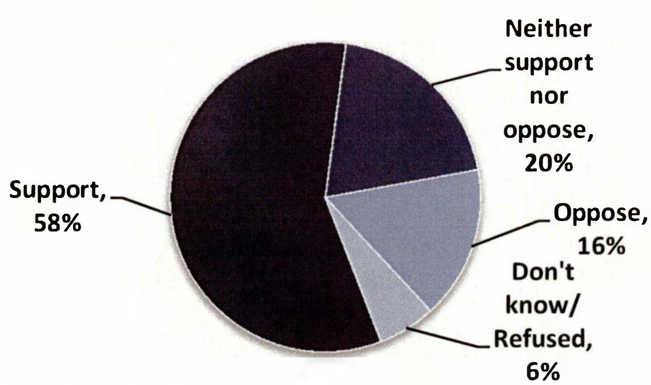
do not have access to <u>any</u> workplace retirement savings plan

67%

of those without access to a workplace savings plan for retirement would be likely to take advantage of a plan if offered

RETIREMENT PLAN PROPOSAL

Over half support a proposal to offer access to a North Dakota managed retirement plan.



1. North Dakota's Aging Population: Profile and Trends of Seniors Ages 65 and Older, NDSU, Ramona Danielson, June 2013

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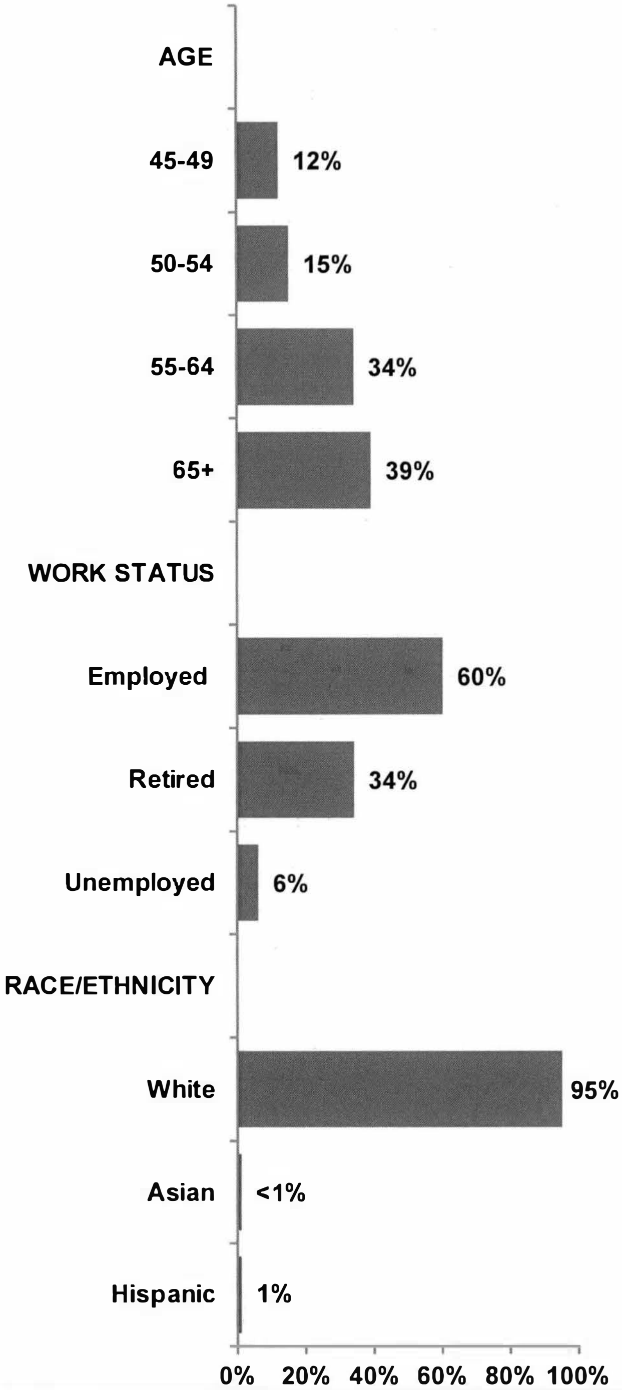
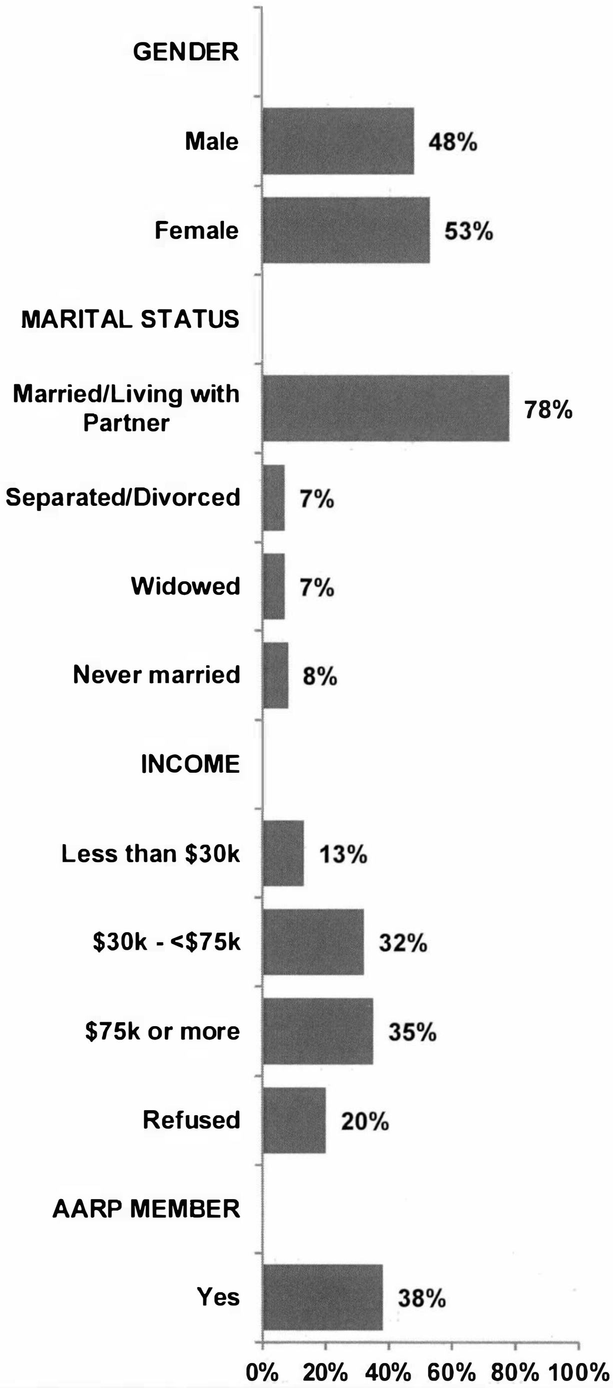
DEMOGRAPHICS





Methodology

AARP North Dakota commissioned a telephone survey of 800 North Dakota voters age 45 and older to learn about their experiences and perceptions concerning issues of financial security. This report highlights results from voters interviewed between November 6 and November 16, 2014. The data in this report has been weighted by age, gender and geographic county of residence to reflect the North Dakota population of voters age 45 and older. The survey has a margin of error of ±3.5 percent.

AAARP Public Policy Institute

Spotlight

Retirement Saving Policy

The Impact of ERISA on State-Sponsored Retirement Plan Designs

Robert J. Toth Jr.
Law Office of Robert J. Toth, Jr., LLC

A state-sponsored retirement savings plan could help millions of private-sector workers who are not covered by an employer plan build financial security. Several features will help a plan become more effective and produce more secure retirements. This report discusses how states can create a retirement saving plan that complies with ERISA or falls outside its scope. Using those structures, states can help employees of small businesses save their own money without imposing a burden on their employers.

State-sponsored retirement savings programs can range from requiring automatic enrollment in an individual retirement account (IRA) to offering a full-fledged 401(k) retirement plan.

Any type of retirement savings program proposed by a state needs to take into account how its design is affected by the federal law governing employee benefits (ERISA, or the Employee Retirement Income Security Act of 1974). The reason is states may seek to create an ERISA-covered retirement plan for private-sector employers—and regulation of those plans is reserved to the federal government.

ERISA and State-Based Retirement Savings Plans

ERISA protects the retirement assets of millions of Americans so that funds placed in retirement plans during their working lives will be there when they retire. However, ERISA also imposes fiduciary responsibilities that are increasingly complex and well beyond the understanding of many small employers. ERISA imposes neither an omnipotent nor monolithic set of rules. It instead offers a pathway that states can use to design an effective retirement savings program without imposing major regulatory burdens on employers. States can design those programs either as a non-ERISA plan or as an ERISA-covered arrangement. If the state chooses an ERISA plan, it can structure the plan to delegate compliance with those responsibilities either to itself or to a professional organization capable of providing that service rather than imposing them on the small business.

ERISA comes into play in two ways when a state considers establishing a state-sponsored plan:

- ERISA *prohibits* a state from *requiring* a private employer to offer its employees an ERISA-covered savings program. Therefore, any state-mandated program needs to be designed in

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such a way that it avoids being considered as falling under ERISA.

- ERISA *permits* a state to *voluntarily* offer a centralized retirement plan for small employers, but only if the specifics of that arrangement comply with ERISA's terms. That compliance includes following ERISA's rules related to the offering of centralized plan arrangements to multiple, unrelated employers.

IRA-Based Programs

A state savings program that mandates employer participation needs to be designed in a very particular way to avoid being considered an ERISA plan. The reason is state law cannot require an employer to adopt an ERISA plan.

An IRA program, including one with automatic enrollment (the Auto-IRA), can avoid being considered an ERISA plan if it is designed to meet the IRA exemptions from ERISA coverage, or if it is designed in such a way to demonstrate that it is the type of program that Congress never intended to be covered by ERISA's preemption clause.

ERISA's IRA Exemption

An Auto-IRA will not be considered an ERISA plan if it meets the following ERISA regulatory requirements:[1]

- No contributions are made by the employer or employee association.
- Participation is completely voluntary for employees or members (which requires special attention for the Auto-IRA, as discussed below).
- The sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program to employees or members, to collect contributions through payroll deductions or dues checkoffs, and to remit them to the sponsor.
- The employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

A program's design needs to pay particular attention to the requirement that the IRA program be "completely voluntary" in order to qualify for the exemption. The test for being completely voluntary is whether or not the *employer* (rather than the state) is requiring the contribution.[2]

If the employer is viewed as exercising its authority as an employer to require employees to participate in the program as a condition of employment, the "voluntary" requirement of the exemption may not be met. For example, the "voluntary" requirement is violated if the employer requires employees to be automatically enrolled in the plan unless they explicitly opt out.

However, if the program is designed so that the state is imposing the automatic-enrollment requirement, and it is not an employer-imposed condition of employment, the "voluntary" requirement of the second bullet point should be met. **That is, any Auto-IRA design should specify in the statute that the state is requiring employees to contribute to the state-sponsored IRA unless they opt out, rather than enabling an employer to require the contribution.** The employer's sole involvement would be to honor that election and send the money to the state-sponsored IRA.

ERISA Nonpreemption of State Program

An Auto-IRA can be exempt from ERISA- even if it fails to meet the terms of the IRA exemption if its design can fairly be cast as falling outside ERISA's congressionally intended scope. The reason is ERISA's scope is limited to (a) *plans* that are (b) *sponsored* by (c) an *employer*. Substantial litigation has taken place on that scope of ERISA's coverage. Most relevant is litigation contesting the state's imposition of health care coverage on employers.[3]

The cases focused, in large part, on those three points of ERISA's scope. The guidance that those cases give us is that the employer's involvement in an Auto-IRA program should be limited to certain, simple administrative tasks, which do not amount to an employer's offering a retirement plan to its employees. The properly designed Auto-IRA program is merely a payroll practice of the employer. A payroll practice is outside ERISA's scope, and thus it is not preempted by ERISA.

Ultimately, a thorough review of ERISA demonstrates that the only mandatory employer savings program available to a state is an Auto-IRA, and then only if it has the elements discussed above. State governance of any other mandatory program that involves private employer contributions, or any significant measure of private employer involvement in a plan, will be prohibited by ERISA.

Voluntary, Centralized Retirement Arrangements

States that want to sponsor an ERISA plan that includes more features than are available under an Auto-IRA can establish a centralized retirement plan arrangement. Participation by an employer would be strictly voluntary. States can offer such a plan to—but not require adoption by—private employers within the state.

The U.S. Department of Labor has ruled that centralized arrangements covering unrelated employers cannot be viewed simply as a single "multiple-employer plan."[4] Instead, the Labor Department legally views them as each participating employer sponsoring its own individual retirement plan. In addition, the Internal Revenue Code effectively makes it impermissible[5] for a state to adopt a government plan for its private employers. Any centralized, voluntary state program needs to be designed in such a way to accommodate those rules.

That objective can be accomplished through a program that effectively aggregates the administrative and investment responsibilities of employers into a single, nonplan arrangement that has the effect of acting like a single plan. By explicit statutory fiat, such a program could require each participating employer separately to adopt the common, state-sponsored administrative document and investment platform as a condition of participating in the program. A statutory condition of participating in the arrangement would be that each employer individually delegates to the state or its designee its ERISA responsibilities for maintaining a plan. The employer retains only the responsibility to periodically review the state's delegated activity.

That type of arrangement is already beginning to be offered in the retirement plan marketplace, as employers look to find both scale and expert support in maintaining their retirement plans. By using that structure, a state program can be designed as a full-scale 401(k)-type plan, or as a retirement plan that is generally regarded as more favorable to smaller employers (such as Simplified Employee Pension IRAs, SIMPLE IRA plans, and SIMPLE 401(k) plans).

Either way, the state's offering of such aggregated arrangements can be a useful way in which to expand retirement plan coverage for small employers. It does so by providing those employers with the advantages of scale and of access to the expertise needed to maintain a retirement plan, which may otherwise be unavailable to them.

Endnotes

1 Found at 29 CFR 2510.3-2(d).

2 At least one federal court has stated that, when reading the IRA regulations, the regulations "delineate ERISA's coverage of IRAs by setting limits on an employer or employee association's degree of involvement in the IRA itself." *Charles Schwab & Co. v. Debickero*, 593 F.3d 916 (9th Cir. 2010).

3 The two leading cases are *Golden Gate Restaurant Association v. San Francisco*, 546 F.3d 639 (9th Cir. 2008) and *Retail Industry Leaders Association v. Fielder*, 475 F.3d 180, 183 (4th Cir. 2007).

4 The Labor Department opined in ERISA Advisory Opinion 2012-04A that multiple, unrelated employers can join a single plan only if a common, employment-related bond exists between the employers, and that those employers directly or indirectly control that plan.

5 That option would have been attractive for the state because government plans are exempt from ERISA. However, the IRS has imposed strict limits on the percentage of nongovernment employees that a government plan can cover.

Spotlight 9, October 2014

AARP Public Policy Institute,
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Spotlight

#5
1200
2-6-15

HB 1200 – SUPPORT STaRT
Friday, February 6, 2015
House Government and Veterans Affairs Committee
Todd Sattler – Laughing Sun Brewing Company

Chairman Kasper, members of the House Government and Veterans Affairs Committee, I am Todd Sattler, co-owner of Laughing Sun Brewing Company, and I stand in support of HB 1200.

As a small business owner, I am concerned for the well-being and financial security of my employees. Currently, the small business I co-own does not have a retirement savings option. The STaRT Act would make it affordable and easier to offer a plan to my employees so that they are able to save as they work and still live comfortably when they retire.

In North Dakota and on a national scale, most small businesses do not offer employees a retirement savings plan at work. In fact, over 101,000 workers in North Dakota are not offered a pension or savings plan from their employers. As a result, employees are unprepared for retirement and do not have a financial safety net for when they no longer work full-time. While some employees may rely or plan to rely on Social Security benefits when they retire, that is not an ideal or even a realistic option considering that the average Social Security benefit in North Dakota is only $1,152 per month. That is not enough money to ensure that people live comfortably as they get older.

A retirement savings plan is critical, especially for those who work in small businesses. Laughing Sun Brewing Company is no exception. If my employees had the option to save money through their work, I believe a majority of them would. The STaRT Act would give them that chance to save for retirement through their jobs and have the freedom to live independently as they age and prepare for retirement.

I support HB 1200 and urge this committee to give it a DO PASS RECOMMENDATION.

#6.1
1200
2-6-15

ACLI
Financial Security. For Life.

TESTIMONY OF ACLI

HOUSE BILL NO. 1200

HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

FEBRUARY 6, 2015

Thank you for the opportunity to comment on HB 1200. I write this testimony on behalf of the American Council of Life Insurers (ACLI), which is a trade association of life insurers that supports 75 million American families that rely on life insurers' products for financial and retirement security.

We are appreciative of Rep. Keiser introducing HB 1200 as we have a common goal of improving retirement security for all. Helping small businesses and their employees save for retirement is our priority. Many of our members specifically offer retirement plans to small employers, yet not all small employers offer retirement plans to their employees for a number of reasons.

According to the U.S. Department of Labor's Bureau of Labor Statistics, almost 80% of full-time workers have access to employer-sponsored retirement plans, and more than 80% with access to plans, participate in them. When one includes all part-time and seasonal workers, 68% have access to employer-sponsored plans, and 79% of them participate. All employers in North Dakota already have access to private sector defined contribution plans, such as 401(k) and 403(b) plans. Employers also have the ability to provide less costly "simple IRA's" to their employees. In addition to what is available through employer sponsored plans, all individual workers have access to IRAs or annuities through their local bank or credit union, or through mutual fund companies, life insurers and thousands of licensed securities brokers and agents. The costs associated with each of these options vary and are embedded in products that could accommodate all North Dakotans.

The intent of HB 1200 is admirable. It attempts to set up a clearinghouse or a portal for products to be offered to those who don't have a retirement savings plan. However, it goes a little further than just setting up such a clearinghouse. There are a few plans described in HB 1200 that may subject small employers to the costs, risks and responsibilities of ERISA regulation. As many of you know, ERISA is a federal law that protects all private sector employees who are offered benefit plans from their employer. When ERISA is triggered, employers must meet stringent fiduciary and compliance requirements aimed at protecting the employee. Under HB 1200, ERISA could be triggered when an agreement is made between the state and the employer to extend a workplace retirement plans to employees. Under federal law, when an employer "establishes or maintains" a retirement plan for its employees, ERISA will apply to that plan. The bill suggests that an employer may provide a contribution to the plan, which would definitely trigger ERISA regulation. Employer contributions are not allowed to an IRA. We are concerned that these significant responsibilities will not be disclosed to the employer under HB 1200.

6.2

HB 1200 also suggests that the state, the treasurer, and the employer would not be liable for any loss suffered or for any change in value of an investment product under the program. Then who is accountable? Whether we like it or not, liability is a reality in the financial world especially when ERISA applies. To suggest that the neither the state nor the participating employer would be liable for a plan that is offered on a state sponsored website to private sector workers would be disingenuous at best.

We commend Rep. Keiser for introducing HB 1200. He is attempting to develop a partnership between the private sector and the state by having the state serve as a facilitator in promoting retirement plans. But there are still many questions that need to be answered. We need to address those questions before moving ahead with this bill. In the meantime, there are ways to educate the consumer on the value of saving for retirement. The treasurer's office has done a nice job in educating consumers on its website for 529 plans. Incorporating similar concepts for retirement planning on the website would be a good start.

John Gerni
Senior Manager
State Government Affairs

6.3

#1200
2-6-15

ACLI
Financial Security. For Life.

Overview of State-Run Retirement Plans for Private Sector Employees

Despite legislative activity in 14 states in 2014, the fact remains that no state has implemented a state-run retirement plan for private workers. These plans have been rejected because of the significant costs, complexities, risks and potential liabilities to the state and private employers, and because there is already a vibrant private market for these plans.

History

Beginning in 2007, a number of states, (Connecticut, Maryland, Tennessee and Washington) conducted studies of a potential state-run retirement plan for private sector employees. These publicly available studies consistently point to **legal and tax obstacles** to such plans, as well as the significant setup and ongoing **costs and liabilities**. From 2009 to 2012, Washington, West Virginia, California, Connecticut and Illinois **rejected** bills creating state-run IRA or pension programs. In 2012, Massachusetts passed a limited plan for small non-profit employer but it has **not been implemented**.

2012

In California, SB 1234 would have implemented a mandatory state-run pension plan for private small businesses who do not offer such a plan. The bill was opposed by all major private employer groups in California and the **state's Finance Department**, which cited potential "multi-billion dollar liabilities" for the state. Governor Brown insisted on protective provisions that block implementation of such a plan unless three conditions are met: 1) The plan **must be self-sustaining** and thus not create any costs or liabilities for the state; 2) The plan **must not be subject to ERISA**, which governs all private retirement plans; and 3) The plan **must receive favorable tax treatment** from the IRS. These amendments turned the California bill into a **feasibility study**, which has been underway since January 1, 2013 and which is now expected to cost at least $1 million and last until the end of 2015.

2013

Connecticut - State-run IRA plan, S. 54, and study legislation, S. 885, **failed** to pass.
Illinois – State-run IRA plan legislation, S. 2400 and H. 2461, **failed** to move out of committees.
Indiana – State-run 401k plan bill, S. 380, **failed** in committee.
Maine – State-run 401k bill, S. 337, **rejected** by committee vote.
Maryland – "Secure Choice" plan legislation, H. 1318 and S. 1051, **failed** to pass.
Oregon – "Secure Choice" Plan (HB 3436) was **rejected**. Bill became an objective task force study.

2014

Arizona – "Secure Choice" legislation, HB 2063, introduced. **Failed.**
Colorado – HB 1377, to study/ recommend creation of Colorado Secure Retirement Plan. **Failed.**
Connecticut – Secure Choice legislation, SB 249, **failed.** Feasibility **study** passed in budget bill
Illinois – "Secure Choice" legislation, HB 4595 **(failed), SB 2758 approved by Senate, failed in House.**
Indiana – State-run plan legislation, S.66, **failed** in the fiscal committee.
Louisiana – SB 283 creates a "private entity" – the Louisiana Retirement Savings Plan. **Failed.**
Maine – "Secure Choice" plan, H.1054/LD 1473, **unanimously rejected** by joint committee (1/21/14).
Maryland – "Secure Choice" legislation, SB 921/HB 1251, **failed. Gov. O'Malley convened task force.**
Minnesota – "Secure Choice" legislation, HB 2419/SB 2078, **failed.** Objective **study** passed in HB 2536.
Ohio – State-run IRA plan legislation, S. 199. **Failed.**
Vermont – Objective study of retirement savings, S. 193, **failed. Study** passed in budget bill.
Washington – State-run plan bills, SB 6294 and HB 2474, **failed.** Funding for interim study **failed.**
West Virginia – State-run "VERA" plan bill, HB 4375, **failed. General study** resolution approved.
Wisconsin –State-run plan legislation HB 838 and SB 611, Retirement Savings Board Study. **Failed.**

LAST REVIEW: October 2014

#7
1200
2-6-15

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TESTIMONY IN OPPOSITION TO HB1200
February 6, 2015
8:30 am

HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE
JIM KASPER, CHAIR

Chairman Kasper and members of the House Government and Veterans Affairs Committee:

My name is Norbert Mayer and I represent the ND Association of Insurance and Financial Advisors.

While we agree that not enough people are setting aside adequate amounts of money for their retirement, we do not agree that the plan proposed in HB1200 is a viable solution.

Our ND Citizens need to be sold and educated on the idea of setting aside adequate amounts of money for retirement. They need to learn that with inflation, a retirement at their current standard of living is going to require a great deal more money per month than what they are earning today. If you go back and recall your own salary from your first job you would no doubt find that it will easily take six to ten times that salary to retire. Inflation continues in retirement, therefore that retirement salary needs to grow even larger.

The key in planning is to determine how much needs to be set aside and how that needs to be invested so that the benefits of compounded earnings can work

7.2

for you. A commonly used rule of thumb is the rule of 72. By dividing 72 by your rate of return you can find the number of years it takes to double the initial investment. If you invest $500 at a 1% return in 72 years you will have $1,000. If your rate of return averages 6% every 12 years that amount will double and in 48 years you will have $8,000 or $32,000 in 72 years.

To accomplish these goals our North Dakotans need to establish a relationship with a good financial advisor, just as they do with their doctor, auto mechanic etc. and that financial advisor needs to be compensated.

There are a number of good plans available for individuals to save on their own or through their employer.

We do not believe that this plan will motivate and educate our ND Citizens to save adequate amounts for retirement. We also feel that it duplicates other simple and cost efficient retirement plans that are currently available. For these reasons and others still to be presented we ask that you vote for a do not pass recommendation.

Now with your permission Chairman Kasper, I want to ask our NAIFA-ND Associate to share with your committee the plans already available.

2-6-15
1200 #8

GNDC
Greater North Dakota Chamber

Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce
HB 1200
February 6, 2015

Mr. Chairman and members of the committee, my name is Andy Peterson; I am the President and CEO of the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in opposition to HB 1200.

Why is HB 1200 a bad idea?
It creates liability risk for North Dakota and for Employers:
If North Dakota were to become the first state to try to establish a plan for private employees, it would expose itself – and its employers – to significant liability and potential costs. Under ERISA, there is fiduciary responsibility and liability. ERISA was intended to protect plan participants by requiring certain non-discriminatory contributions, certain investment options, and other requirements including the timing of the depositing of the money. All of these are actions that someone is responsible for. This could be the State or it could be the Employer. It is not only very difficult to avoid ERISA preemption, but it is not necessarily in the individual's best interest.

It is anti-competition: North Dakota would be the only state to enter into direct, subsidized competition with its own financial advisors and local companies. Since the non-state entities would need to follow all the compliance and oversight required by ERISA and applicable state laws, the State would be at an unfair competitive advantage.

It is unnecessary: there is a new retirement account available directly that charges no fees and has no minimums and is guaranteed by the federal government. MyRA is up and running. It has a website, and is accepting participants. Give it a chance!

This is no other state that runs a retirement plan for private sector employees. Why? Because retirement accounts for non-government employees must comply with federal law in all respects, which puts a state – normally operating under the very different rules that apply to government-employee plans – at a very real risk of liability and cost. In addition, it is much more complex to put a plan in place then it seems at first glance, including dealing with documentation, tax implications, and beneficiary designations, among other issues.

Thank you for the opportunity to appear before you today in opposition to HB 1200. I would be happy to answer any questions

Champions for Bus ess

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