

# HOUSE BILL REPORT

## ESSB 5826

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### As Passed House - Amended:

April 10, 2015

**Title:** An act relating to creating the Washington small business retirement marketplace.

**Brief Description:** Creating the Washington small business retirement marketplace.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Mullet and Benton).

### Brief History:

#### Committee Activity:

Appropriations: 3/23/15, 3/25/15 [DPA].

#### Floor Activity:

Passed House - Amended: 4/10/15, 57-40.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Creates the Washington Small Business Retirement Marketplace (Marketplace), which provides self-employed individuals and employers with fewer than 100 employees the opportunity to participate in retirement plans.
- Requires the Department of Commerce (Commerce) to contract with private sector entities to establish the Marketplace and establish protocols for participation.
- Requires the Marketplace to offer all private firms and plans that meet the requirements of the Marketplace to participate.
- Requires the Director of Commerce to report to the Legislature every two years on the effectiveness and efficiency of the program.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Wilcox, Assistant Ranking Minority Member; Cody, Dunshee, Hansen, Hudgins, Jinkins, Kagi, Lytton, Magendanz, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan and Tharinger.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 9 members: Representatives Chandler, Ranking Minority Member; Buys, Condotta, Fagan, Haler, G. Hunt, MacEwen, Taylor and Van Werven.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Parker, Assistant Ranking Minority Member; Dent and Schmick.

**Staff:** David Pringle (786-7310).

**Background:**

Private employers take a wide variety of approaches to pension plans. Some provide their employees with pension benefits that share characteristics with the state retirement plans administered by the Department of Retirement Systems, and some provide no pension plan at all to their employees. Private employers may also provide employees the opportunity to participate in a wide variety of other retirement plans, such as 401(k) plans, which are plans named after the section of the federal Internal Revenue Code that they implement.

Private employers offering pension plans to their employees must comply with an extensive body of federal law and regulation, the Employee Retirement Income Security Act, commonly referred to as the ERISA. Governmental plans operated by a government for its own employees are generally exempt from ERISA rules. For a private employer, however, in order to qualify for the significant tax benefits available for both employers and employees, the employer must maintain adequate recordkeeping, fairness, and funding in their pension plans as specified by the ERISA. The income tax related portions of the ERISA are regulated by the federal Internal Revenue Service, and other portions by the United States Department of Labor.

The my Retirement Account (myRA) program has been recently developed as a type of Roth Individual Retirement Account (Roth IRA) by the United States Department of the Treasury as a simple retirement savings vehicle. Contributions to a myRA are invested in special United States Treasury securities that earn interest at a variable rate linked to the investments in the federal employee government securities fund. Like a Roth IRA, money is deposited into a myRA after tax, and may be withdrawn without tax or penalty five years after contribution and attainment of age 59 and a half. Employers may participate in a payroll deduction program to allow employees to contribute directly to a myRA account.

Privately employed individuals participate in Social Security, and also have other federally regulated personal retirement investment opportunities such as the Individual Retirement Account (IRA), accounts funded with pretax dollars, and many others. Banks, investment firms, and financial planners advise and assist individuals in planning and investing for retirement.

The Washington State Department of Commerce (Commerce) is charged with promoting sustainable community and economic vitality in Washington. Commerce administers a diverse portfolio of more than 100 programs and several state boards and commissions, with duties related to economic development, housing, and administration of grants and loans, and contracts on a wide variety of related subjects.

**Summary of Amended Bill:**

The Washington Small Business Retirement Marketplace (Marketplace) is created, which provides Washington self-employed individuals and employers with fewer than 100 employees the opportunity to participate in retirement plans. Participation in the plan is voluntary for employers, and the program may be supported by private, federal, or state funds.

Commerce is required to contract with a private sector entity to establish the Marketplace, and to develop a website and marketing materials. The Marketplace is required to offer at least four products, including options that include and do not include employer contributions, and both target date-type funds and balanced funds. These options must include simple IRA-type programs and myRA. Qualified plans selected by Commerce to offer products on the Marketplace may not charge participating employers an administrative fee for approved Marketplace plans, and may not charge enrollees more than 100 basis points in total annual fees. The Department of Financial Institutions is required to annually, or upon request of Commerce, review retirement account products for eligibility for inclusion in the Marketplace, however review does not include confirmation that products comply with federal laws or regulations.

The Director of Commerce is required to approve all firms and plans for participation in the Marketplace that meet a new definition of "approved plans." Private sector financial firms that may participate in the Marketplace includes holders of certificates of authority. The development of a protocol for the qualifications of private sector financial services firms that seek to participate in the Marketplace is done through a contract between Commerce and a private entity, rather than by Commerce, with rules adopted by Commerce to ensure the protocol does not provide unfair advantage to the entity that establishes the protocol.

The Director of Commerce shall adopt rules for the operation of the Marketplace, but rules must be proposed by January 1 of the year of implementation, and the rules shall not be adopted until after the end of the regular session of the Legislature of that year. Commerce shall not expose the state to any potential liability under the ERISA as an employer or through operation of the Marketplace. The Director of Commerce is required to report to the Legislature every two years on the effectiveness and efficiency of the program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Small businesses face high costs in providing options for their employees to save for retirement. At least \$1,000 per year in administrative costs seems to be typical. This includes simple options like retirement date plans. The state sets up the relationship in this bill, then steps out of the picture, leaving it between the employee and the private investment

entity. This is basically setting up a website and some marketing. Everything is voluntary. Eighty percent of those working for small businesses don't have a payroll deduction option for retirement savings. A striking amendment is being worked on to improve this. This proposal is unique as it connects, rather than directs, and improves connections between investment businesses and customers. This also doesn't set the state up as a competitor. The current system is not working, and there is a giant retirement savings gap.

(In support with amendment(s)) In working on this proposal with the sponsor, it is becoming a proposal deserving of support. Additional clarification that programs like life insurance products designed for retirement are eligible for inclusion is important, as well as support for industry-standard fees. Is the Director of Commerce the right person to select and remove plans from the Marketplace? It would also be a good idea to have the Legislature review the rules for Marketplace operation.

(Opposed) None.

**Persons Testifying:** (In support) Senator Mullet, prime sponsor; Bill Stauffacher, Securities Industry and Financial Market Association; and Mary Clogston, AARP Washington.

(In support with amendment(s)) Mel Sorensen, American Council of Life Insurers and National Association of Insurance Financial Advisers; and Gary Smith, Independent Business Association.

**Persons Signed In To Testify But Not Testifying:** None.