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HB 3436

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Ways and Means Subcommittee on General Government

I am Elise Brown representing the Securities Industry and Financial Markets Association (SIFMA). SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Its mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth.

In Oregon, there is already a robust and highly competitive market for retirement savings alternatives. Fairly priced retirement savings options, including 401(k), 403(b), 401(a) and 457(b) plans as well as SIMPLE, SEP, and traditional and Roth IRAs are readily available. SIMPLE and SEP-IRAs are particularly good low cost options for small employers. When an employer does not provide a plan, IRAs are readily available at most financial institutions in Oregon.

There is no reason for the State to enter into competition with Oregon financial services companies who employ thousands of workers in the State and already provide these services, at no direct cost to the State. If a board is created, we hope it will focus on ensuring that state laws support and encourage additional private sector retirement plan coverage as well as employer and employee awareness.

However, we believe there are many challenges the Legislature should consider before moving forward with the creation of such a board. The primary challenges that would be created by this bill are the liability that would be shouldered by the State in establishing such a retirement plan for non-public workers, burdens of additional costs because economy of scale does not exist when dealing with many small private employers, and the competition the State would enter into with the private market. We encourage you to explore how to enhance the existing market rather than create a program which competes against it or replaces it.

No other state runs a retirement plan for non-public workers. In California last year, a bill was signed into law that established a series of steps toward creating a similar retirement program for private sector employees. That law has not been implemented, and has yet to meet several significant substantive, procedural and regulatory hurdles before it can move towards implementation. These hurdles include conducting a study regarding the feasibility of such a plan; seeking and receiving favorable guidance from both the federal Department of Labor and the Internal Revenue Service; securing start-up funding and - once all these steps are achieved - gaining specific approval of the legislature to move forward, among other requirements.

Please see attachments detailing several studies and an explanation of ERISA requirements, which would place Oregon in jeopardy for significant compliance costs and financial liability.

Thank you for your consideration of the issues raised above. We do believe the current system could use additional support from the state and federal government to encourage more employers to offer these plans and to educate employees about the benefits of early and regular saving for retirement. SIFMA would be happy to work with the state on such efforts.

For further information, please contact Marin Gibson of SIFMA at (212) 313-1317 or

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ERISA Basics

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for pension plans in private industry. It does not apply to governmental plans created for governmental employees. It is enforced by the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA). ERISA requires that those who establish plans must meet certain minimum standards, including:

- Requiring plans to regularly provide participants with information about the plan features and funding;
- Setting minimum standards for participation, vesting, benefit accrual and funding;
- Requiring accountability of plan fiduciaries;
- Giving participants the right to sue for benefits and breaches of fiduciary duty.

In defining employee pension benefit plan, that includes any plan, fund, or program which either provides retirement income to employees or results in a deferral of income by employees.

Additional obligations under ERISA include meeting the fiduciary responsibilities (which the State would be liable for complying with), which include:

- Liability for failure to file the necessary IRS forms and accounting mistakes;
- Liability for any complications of complying with annual non-discrimination testing;
- Liability for a breach of fiduciary duty under ERISA, which includes liability for paying unreasonable plan expenses and monitoring all the investment options offered or utilized within the plan and making timely adjustments as determined necessary; and
- Liability for ensuring that no prohibited transactions are occurring, including monitoring for conflicts between a plan and a party in interest.

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Two State Studies on Costs

Other states have undertaken studies on the costs of state-run retirement programs for non-public workers. The Washington State Department of Retirement Services conducted a study and found that, once certain service thresholds have been reached, a state-administered 401k would likely involve an administrative fee of $200-$800 per participant; private sector administered payroll deduction or individual IRA options would result in administrative fees of $20-$60 and investment fees of .02-.13%. Thus the states would, after a period of time subsidizing the program, end up offering a product to non-public employees that costs the same as or substantially more than that currently being offered by the private sector.

Another study, authored by the Maryland Supplemental Retirement Plans (MSRP), concluded that a Voluntary Employee Accounts Program would require a state subsidy of between $300,000 and $500,000 a year for at least 5 to 7 years. After a certain threshold has been reached, the State cost per employee account would be $20 a year in addition to standard service provider fees of between .07% and 1% ($10-$25). The study noted that it is difficult to achieve economies of scale in the small employer market because the provider must deal with multiple employers with separate payroll systems, record keeping, and plan termination requirements. This situation is quite different than the economies of scale a state can achieve with its own retirement plan or a large private sector employer.

Complete studies are available upon request.

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