

RETIREMENT SAVINGS PROGRAM ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5461 (H-1) as reported from committee

Sponsor: Rep. Mike McFall

Committee: Labor

Complete to 9-25-24

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5461 would create the Retirement Savings Program Act, which would establish a state-run, automatic enrollment individual retirement account (commonly known as an auto-IRA) program for Michigan employees.

FISCAL IMPACT: The bill would increase costs for the Department of Treasury and would have an indeterminate fiscal impact on local units of government (see *Fiscal Information*, below).

THE APPARENT PROBLEM:

Many Americans are not saving enough for their retirement. The American Association of Retired Persons (AARP) estimates that about 42% of Michigan's private-sector employees do not have access to a retirement plan through their employer and fewer than 10% of Michigan residents contribute to a retirement plan outside of their jobs.¹ Women and people of color are also disproportionately likely to lack sufficient retirement savings. Reportedly, a significant barrier to access is some small employers' concern that setting up a retirement plan would be too costly, complicated, and time-consuming to operate.

THE CONTENT OF THE BILL:

House Bill 5461 would create a new act, the Retirement Savings Program Act, which would establish a retirement savings program for private-sector employees in the form of an individual retirement account (IRA) to be administered by a seven-member Secure Retirement Savings Board.² The Michigan Secure Retirement Savings Program (MSRSP) would be funded through automatic payroll deductions and open to any private-sector *employee* in Michigan, although an *employer* would retain the right to set up an employer-sponsored retirement plan or use a similar plan offered by a trade association or chamber of commerce instead of participating in the program.

Employee would mean an individual who is at least 18 years of age, is employed by an employer, and has wages allocable to Michigan during the calendar year for purposes of the Income Tax Act. As applicable, it would also include a self-employed individual who is enrolled in the Michigan Secure Retirement Savings Program or an enrollee who is an employee of an employer not covered by the program.

Employer would mean a person or entity engaged in a for-profit or nonprofit business, industry, profession, trade, or other enterprise in Michigan that has continuously employed at least one employee in Michigan during the previous calendar year, has

¹ <https://www.aarp.org/content/dam/aarp/ppi/2022/state-fact-sheets/michigan.doi.10.26419-2Fppi.00164.024.pdf>.

² An employee's retirement account under the program could be either a traditional IRA or a Roth IRA.

been in business at least 730 days after its first payroll, and has not offered a qualified retirement plan³ in the preceding 730 days. Employer would *not* include the federal government, the state government, or any political subdivision of the state government.

Secure Retirement Savings Board

The act would create the Secure Retirement Savings Board (SRSB), which would be housed in the Department of Treasury and would consist of the following seven members:

- The state treasurer, or a designee, who would be the chair.
- A designee of the state treasurer.
- The director of the Department of Technology, Management, and Budget or a designee.
- Two public representatives with expertise in retirement savings plan administration or investment, who would be appointed by the governor.
- A representative of participating employers, who would be appointed by the governor.
- A representative of enrollees, who would be appointed by the governor.

Each of the governor's appointments would be subject to the advice and consent of the Senate. (Any appointment not acted on by the Senate within 60 session days would be considered to have fulfilled this requirement.)

For the initial appointments, one of the public representatives would serve a term of four years while the other would serve a term of two years. The representative of participating employers would serve a term of three years, and the representative of enrollees would serve a term of two years. Subsequent appointees would serve on the board for terms of four years.

Vacancies would be filled for the balance of an unexpired term in the same manner as the original appointment. If a vacancy occurs while the Senate is in recess, the governor would make a temporary appointment to serve until their next meeting.

Board members would not be compensated for their service but could be reimbursed for any necessary travel expenses.

Board objectives

The Secure Retirement Savings Board would be responsible for administering the MSRSP with the goal of promoting greater retirement savings for private sector employees in a convenient, low-cost, and portable manner.

The board, its members, an appointed trustee and any other agents appointed or engaged by the board, and all program staff would be required to discharge their duties (including the selection of investment options available to enrollees) solely in the interest of the program's enrollees and beneficiaries as follows:

- For the exclusive purposes of providing benefits to enrollees and defraying reasonable expenses of administering the program.
- By investing with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a similar capacity and familiar with those matters would use in conducting a similar enterprise.

³ ***Qualified retirement plan*** would include a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code.

- By using any contributions paid by enrollees and employers into the trust exclusively for the purpose of paying benefits to program enrollees, for the cost of administration of the program, and for investments made for the benefit of the program.

The SRSB would have to cause the program to be designed, established, and operated in a manner that does all of the following:

- Aligns with best practices for retirement savings vehicles.
- Maximizes participation, simplicity, ease of administration for enrollees and participating employers, savings, and sound investment practices.
- Provides an efficient product to enrollees by pooling investment funds.
- Ensures the portability of benefits, including the ability for funds to be rolled over from or into other retirement accounts.

The SRSB would have to provide for the payment of administrative costs and expenses for the creation, management, and operation of the program in a manner that keeps annual administrative expenses as low as possible. (Subject to appropriation, the state could pay for administrative costs associated with creating and managing the program until sufficient funds are available in the Secure Retirement Savings Program Fund, described below.) Administrative fees would be proportionally allocated to enrollees' IRAs.

Secure Retirement Savings Program Fund

The act would establish the Secure Retirement Savings Program Fund (SRSPF) as a trust outside of Treasury, with the Secure Retirement Savings Board as its trustee.⁴ The fund would consist of money received from enrollees and participating employers through automatic payroll deductions, in addition to contributions from other entities. Enrollees' IRAs would be maintained in the fund as individual accounts, but the SRSB would have to ensure that money in the fund is held and invested as pooled investments with the goal of achieving cost savings through efficiencies and economies of scale. (The fund would have to be operated in a manner, as determined by the SRSB, that ensures that enrollees' accounts meet federal requirements for IRAs under the Internal Revenue Code.)

Money in the SRSPF could be invested or reinvested by the state treasurer or partially or wholly invested under contract with one or more private investment managers. If the SRSB selects an investment manager, the board would have to conduct an open bid process and would have to consider the manager's fees and charges in order to reduce administrative expenses. Investment managers would have to provide any reports that the SRSB considers to be necessary to oversee each manager's performance and the performance of the SRSPF.

Secure Retirement Administrative Fund

The act would also establish the Secure Retirement Administrative Fund as a separate trust fund in the Department of Treasury, from which the Secure Retirement Savings Board would pay for any start-up administrative expenses and board expenses. The SRSB would deposit all grants, gifts, donations, fees, and investment earnings used to recover administrative costs into the Secure Retirement Administrative Fund, which could also receive grants or other money designated for administrative purposes from any entity, in addition to interest and earnings

⁴ The board would have to appoint a trustee to administer the fund in compliance with section 408 of the Internal Revenue Code.

from the fund's investments. Money in the Secure Retirement Administrative Fund at the close of a fiscal year would remain in the fund and would not lapse to the general fund.

Subject to appropriation, the SRSB could use money in the Secure Retirement and Administrative Fund to cover expenses incurred in performing its duties under the act.

Statement of investment policy

The SRSB would have to prepare and adopt a written statement of investment policy that includes a risk management and oversight program and that prohibits the SRSB, MSRSP, and SRSPF from borrowing for investment purposes. The risk management and oversight program would have to do the following:

- Ensure that an effective risk management system is in place to monitor the risk levels of the MSRSP and the SRSPF portfolio.
- Ensure that the risks taken are prudent and properly managed.
- Provide an integrated process for overall risk management.
- Assess investment returns and risk to determine if the risks are adequately compensated when compared to applicable performance benchmarks and standards.

The policy and any subsequent changes would have to be posted on the SRSB's or Treasury's website at least 30 days before implementation and considered at a public hearing.

Michigan Secure Retirement Savings Program

The SRSB would have to perform the duties and obligations of the Michigan Secure Retirement Savings Program in an effective, efficient, and low-cost manner and could exercise any powers reasonably necessary to effectuate the program's purposes and objectives. In administering the program, the SRSB would be responsible for the following:

- Assembling the staff necessary to administer the Michigan Secure Retirement Savings Program and determining their duties.⁵
- Contracting as necessary to administer the program and the SRSPF.
- Facilitating program education, outreach, and compliance with all applicable requirements under the Internal Revenue Code.
- Evaluating and, if necessary, procuring insurance against any loss in connection with the property, assets, or activities of the Michigan Secure Retirement Savings Program.⁶ (Any financial liability for the payment of benefits in excess of money available under the MSRSP would be borne solely by these entities.)

The SRSB would also have to determine and establish processes for the following:

- Setting up an automatic payroll deduction for an enrollee and the participating employers' forwarding of the contributions and related information to the MSRSP.
- Enrolling in, opting out of, and terminating participation in the program.

⁵ As necessary, this could include employing staff, appointing a program administrator, and contracting with the State Treasurer to make Department of Treasury employees available to administer the program.

⁶ As needed, each member of the board would be indemnified from personal loss or liability resulting from action or inaction as a board member.

- Setting a contribution level and investment option. (Minimum and maximum contribution levels for enrollees would be set in accordance with limits established for IRAs in the Internal Revenue Code.⁷)
- Defining default, minimum, and maximum (up to 15% of an enrollee's wages) contribution rates with an automatic escalation scale that increases an enrollee's contribution rate until it reaches the maximum rate.
- Computing investment earnings, losses, and interest at the interest rate on the balance of an individual's account and proportionally allocating the earnings, losses, or interest to individual accounts.
- If feasible, allowing an individual who is not an employee (such as a self-employed individual) or who is an employee of an employer not covered by the program to opt in to and contribute to the program.

The board could enter into intergovernmental agreements with departments of the state government to further successful implementation and operation of the MSRSP, and, unless otherwise prohibited, these departments would have to cooperate and share relevant data with the SRSB as requested.

Private provider marketplace

The SRSB would have to establish and maintain a website to assist employers in identifying private sector providers of retirement arrangements that would serve as an alternative to the MSRSP.

Before the website becomes publicly accessible, the SRSB would have to publish notice of its availability and of the process for a private sector provider to be included on the website. The board would also have to make the website available to the public before opening the MSRSP for enrollment, and the website address would have to be included on any website posting or other MSRSP materials offered to the public.

The SRSB would have to review the performance of any listed investment vendor at least once every four years.

Information packets

Before opening the MSRSP for enrollment, the SRSB would have to design information packets for both employers and employees that include background information on the program, appropriate disclosures, and website information for any established vendors.⁸

The employee information packet would have to include a form that is available electronically and allows an employee to note their decision to opt out of the program or to participate in a contribution level other than an automatic escalation. It would also have to include a disclosure form that informs employees of the following:

- The benefits and risks associated with making contributions to the MSRSP.
- How to make contributions to the program.
- How to opt out of the program.

⁷ The IRA contribution limit for 2024 is generally \$7,000: <https://www.irs.gov/newsroom/401k-limit-increases-to-23000-for-2024-ira-limit-rises-to-7000>.

⁸ The SRSB would determine the entity responsible for providing an employee information packet to employees once an employer registers for the program.

- How to participate with a level of employee contributions other than an automatic increase up to the SRSB-established maximum.
- The process for withdrawing retirement savings.
- How to obtain additional information about the programs.
- That employees seeking financial advice should contact financial advisors.
- That participating employers are not in a position to provide financial advice and are not liable for decisions made by employees.
- That the MSRSP is not an employer-sponsored retirement program and is not guaranteed by the state.

Implementation and enrollment

The program would generally have to be implemented within 24 months after the bill takes effect. However, if the SRSB does not obtain adequate funding to implement the MSRSP in a timely manner, it could delay implementation and extend any corresponding deadlines.

The SRSB would have to establish an implementation timeline, to be adopted at a public meeting, under which employers will enroll employees in the program that includes the date by which an employer must begin enrollment and the date by which enrollment must be complete. The SRSB would have to publicize the timeline and provide advance notice to employers of their enrollment date and the amount of time to complete enrollment.

Once the program is open for enrollment, employees who have not opted out of participation would be automatically enrolled in the MSRSP (or, as applicable, a similar program sponsored by an employer or offered by a trade association or chamber of commerce). Enrollees would be able to select their contribution level, at either a percentage of their wages or a dollar amount, up to the deductible amount established by the Internal Revenue Code⁹ and could change their contribution amount or terminate their enrollment at any time (subject to SRSB rules). Enrollees would also be able to change their investment selection to another available option at any time, subject to rules promulgated by the SRSB.

Employee contributions made through automatic payroll deductions would have to be paid to the SRSPF using one or more payroll deposit retirement savings arrangements by the end of the following month, unless the SRSB prescribes a later deadline.¹⁰ If a participating employer or its agent willfully fails to remit a portion of an employee's contribution by these deadlines, they would be guilty of a misdemeanor punishable by a fine of up to \$5,000.

Investment earnings, losses, and interest would be allocated to individual MSRSP accounts, and an enrollee's retirement savings benefit would have to be an amount equal to the balance in their account.

⁹ See 26 USC 408a(c): <https://www.govinfo.gov/content/pkg/USCODE-2022-title26/pdf/USCODE-2022-title26-subtitleA-chap1-subchapD-partI-subpartA-sec408A.pdf>. For 2024, the contribution limit is generally \$7,000, although the amount that is deductible can be reduced depending on income, filing status, and whether the taxpayer or their spouse is covered by a retirement plan through their work.

¹⁰ This deadline could not be later than the due date for required income tax and unemployment tax deposits for the payroll period to which the payments relate.

State and employer liability

A participating employer would not be liable for an employee's decision to participate in or opt out of the program, or for the investment decisions of the SRSB or any program enrollee. Participating employers also would not be liable for investment returns, program design, or benefits paid to enrollees.

The state would not be liable for payment of retirement savings benefits accrued by a MSRSP enrollee. A state board, commission, or agency (or an officer, employee, or member of those entities) would not be liable for a loss or deficiency resulting from particular investments selected under the act, except for a liability that arises out of a breach of fiduciary duty.

Reports

Once the program becomes operational, the SRSB would have to submit an annual report to the governor and the standing House and Senate committees concerned with retirement issues by July 1 that includes a summary of the benefits provided by the program, the number of enrollees in the program, and the percentage and amounts of investment options and rates of return, in addition to any other information relevant to make a full, fair, and effective disclosure of the operations of the MSRSP and the SRSPF.

The board would also have to provide a report to each enrollee at least once a year that states the contributions and investment income allocated to, withdrawals from, and balances in the enrollee's program account for that reporting period.

Penalties

An employer that fails to remit an employee's contributions into their MSRSP account would have to pay the amount of the unremitted contribution plus interest (as provided for deficiencies in tax payments in 1941 PA 122, known as the revenue act),¹¹ from the time the unremitted contribution was due until paid, into the employee's account. If the individual no longer has an account through the employer, the employer would have to directly pay them the amount and interest due.

Beginning nine months after the SRSB notifies the state treasurer that the MSRSP has been implemented, an employer that fails to timely enroll an employee without reasonable cause would be subject to a \$250 penalty for each employee for each whole or partial calendar year during which the employee had not opted out of the program but was not enrolled. The penalty would increase to \$500 for each following calendar year or portion thereof that the employee remains unenrolled.

Upon receiving notice from the SRSB, Treasury would have to immediately post a notice on its website that states the date that the penalties become effective and states that employers may sponsor an alternative arrangement instead of enrolling employees in the program. If applicable, the notice would also have to include a link to the private provider marketplace.

If an employer is subject to a penalty for not enrolling an employee, the SRSB would have to issue a notice of the proposed fine that states the number of employees for which the penalty applies for both a first and subsequent violation, and the total amount of the fine. The employer

¹¹ See: <https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-5>.

would have 30 days to request a hearing to review the order, and, upon such a request, the SRSB would have to conduct the review as a contested case under the Administrative Procedures Act.

If no further action for review is taken by the date the appeal period has expired, or if timely action for review has been taken by the date that all court proceedings have concluded or the time for further appeal has expired, the SRSB's decision would become final.

As soon as practicable after the penalties are no longer subject to review, the SRSB would have to notify the employer of the amount due. Any amount unpaid within 10 days would be a lien in favor of the state on all property and rights to property belonging to the employer, and the Income Tax Act provisions pertaining to actions taken for unpaid tax liabilities would apply.

Fines would be deposited into the Secure Retirement Administrative Fund.

(For the purposes of any state law allowing the Department of Treasury of another state agency to offset an amount owed to a taxpayer against a tax liability or allowing the Department of Treasury to offset an overpayment of tax against any liability owed to the state, a fine under the act would be considered a tax liability of the employer, and any refund due to an employer would be considered to be an overpayment of taxes.)

Confidentiality

Generally speaking, all information received by the SRSB or Treasury from tax returns filed by an employer or from any investigation conducted under the act could be used for official purposes within the SRSB or Treasury in accordance with the official procedures for collecting penalties and would be granted the same confidentiality as information obtained in connection with the administration of a tax. The information would be exempt from disclosure under the Freedom of Information Act (FOIA) and a provision of the revenue act governing the disclosure of certain tax information.

However, the SRSB, state treasurer, or an authorized delegate could publish or otherwise make available reasonable statistics concerning the operation of the act, if the contents of returns are grouped into a way that any employer-specific information is not disclosed. Additionally, the SRSB, State Treasurer, or an authorized delegate could provide information to an employer's authorized representative in accordance with a request or authorization made by the employer or the authorized representative.

Intergovernmental agreements

The SRSB could enter into an agreement with the Department of Treasury or another state agency to fulfill its enforcement duties, and Treasury could charge the SRSB a reasonable fee for its costs in performing under such an agreement to be paid out of the Secure Retirement and Administrative Fund.

At the request of the SRSB, Treasury could enter into agreements with other states that offer auto-IRA programs to achieve greater mutual bargaining power and reduce the costs of plan administration and operation or for any other purpose consistent with the board's fiduciary duty to program participants.

BACKGROUND INFORMATION:

According to the Pew Charitable Trusts, 17 states currently offer automatic IRAs to employees, with Rhode Island being the most recent state to establish such a program in June 2024.¹² Four of those states (Colorado, Delaware, Maine, and Vermont) participate in the Partnership for a Dignified Retirement, a consortium of auto-IRA programs with a singular administrator for employers and employees in member states.¹³

FISCAL INFORMATION:

House Bill 5461 would increase short-term administrative and oversight costs for the Department of Treasury and the Secure Retirement Savings Board created under the provisions of the bill.

According to estimates developed by the Department of Treasury, initial costs under the bill are estimated to be about \$5.0 million over the initial five-year period and would require 2.0 FTE positions to assist with administration and oversight. After the up-front cost for the state, the department anticipates that the program would be financially self-sustaining three to five years following implementation based on the experiences of other states with an auto-IRA program. Ultimately, the structure of the program, enrollment, and the fees charged would dictate the time frame for self-sustainability because contributions and investment returns from which financing will ultimately come would take time to accumulate.

The bill also would have an indeterminate fiscal impact on local units of government, as the number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Supporters of the bill point to research suggesting that people are 15 times more likely to save for retirement when they can do so through a payroll deduction plan and argue that promoting retirement savings would reduce state and federal costs for social assistance programs in the

¹² <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2024/09/arizona-workplace-savings-program-would-help-workers-save-for-a-more-secure-financial-future>. California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Oregon, Vermont, Virginia, and Washington also offer auto-IRA programs. State-specific information on programs implemented before June 2023 can be found here: <https://cri.georgetown.edu/wp-content/uploads/2023/03/cri-state-brief-snapshot.pdf#page=5>.

¹³ <https://treasury.colorado.gov/press-release/june-26-2024-colorado-and-vermont-enter-partnership-for-automatic-retirement-savings>.

long run. Reportedly, many small businesses want to offer a retirement plan for their employees but cite time and cost requirements as reasons why they cannot offer their own plan. Supporters of House Bill 5461 argue that creating a state-run retirement benefit system would address these concerns by prompting businesses to either use the state's plan or set up a plan of their own, which also could help smaller businesses better compete with larger employers to attract and retain employees. Additionally, they note that automatic enrollment systems have been reported to foster high levels of retirement savings participation among all demographics and are key in addressing racial inequities and other barriers to access.

Against:

Opponents of the bill raise concerns about adding a mandate on small business owners. They argue that the time and costs necessary to comply with these requirements would eliminate flexibility and limit what an employer can do to help their employees. Some entities noted their preference for a system that allows employers to opt in, rather than a mandatory state-run program, while others believe that a voluntary program would still impose burdens on businesses and would be too confusing for both employees and employers.

Response:

Proponents of the legislation responded that auto-IRA programs are more effective when they are mandatory rather than voluntary and that there would be little required of an employer beyond setting up the payroll deduction.

Against:

Opponents also question the effectiveness and necessity of the program, as private retirement savings options already exist and are open to all employees. Some propose that a better way to promote the goal of increased retirement savings would be to focus on educating employees about these options and improve access instead of creating a new government program.

POSITIONS:

Representatives of the following entities testified in support of the bill (4-18-24):

- AARP
- American Retirement Association
- Aura Company
- Michigan's Children
- Pew Charitable Trusts
- TIAA Financial Services

The following entities indicated support for the bill (4-18-24):

- Community Economic Development Association of Michigan
- Detroit Regional LGBT Chamber of Commerce
- Hot Diggity Dog Walking & Pet Sitting

The American Council of Life Insurers indicated a neutral position on the bill. (4-18-24)

A representative of the National Federation of Independent Business testified in opposition to the bill. (4-18-24)

The following entities indicated opposition to the bill:

- Michigan Retailers Association (4-18-24)
- National Association of Insurance and Financial Advisors Michigan (4-18-24)
- Small Business Association of Michigan (9-25-24)

Legislative Analyst: Holly Kuhn
Fiscal Analysts: Ben Gielczyk
Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.