



FLOOR ALERT

May 29, 2012

To: Members of the California State Senate

From: American Council of Life Insurers
 Association of California Life and Health Insurance Companies
 California Association of Health Underwriters
 California Chamber of Commerce
 California Farm Bureau Federation
 California Grocers Association
 California Independent Grocers Association
 California Manufacturers and Technology Association
 California Retailers Association
 Financial Planning Association
 Financial Services Institute
 Insurance Brokers and Agents of the West
 Investment Company Institute
 National Association of Insurance and Financial Advisors of California
 National Federation of Independent Business
 Pacific Life Insurance Company
 Plumbing-Heating-Cooling Contractors Association of California
 Securities Industry and Financial Markets Association
 Small Business California
 Western Electrical Contractors Association

RE: OPPOSE SB 1234, AS AMENDED May 29, 2012

- The twenty organizations listed above strongly oppose SB 1234, legislation that creates a state-run retirement savings plan for private sector workers.
- California already faces hundreds of billions of dollars in unfunded pension liability for its public sector workers. Now is not the time for the state to create and assume liability for any new plan for private sector employees.

- We agree with the Department of Finance’s detailed opposition to SB 1234. In its May 2 analysis, DOF argues, among other things, that the bill:
 - could create undue pressure on the General Fund;
 - could create a multi-billion dollar liability for the state;
 - unnecessarily enters the federal government’s domain; and
 - is inconsistent with the Administration’s efforts to reduce government.
- SB 1234 continues to raise problems for the small employer.
 - SB 1234 imposes a mandated benefit rather than giving employers the flexibility to offer the mix of compensation and benefits that best meets the needs of their employees.
 - SB 1234 seeks to eliminate an employer’s potential federal liability and responsibility. We do not believe that a state bill has that authority under ERISA or the Internal Revenue Code.
 - The May 24th amendments reduce but do not eliminate the employers’ operational responsibilities and compliance costs. Employers will still have to distribute information, answer questions, collect opt-out forms, and transfer contributions to the program.
- SB 1234 ’s retirement savings program would be subject to ERISA and Internal Revenue Code requirements and to Department of Labor and IRS regulators that do not normally apply to public pension systems. Some of these requirements include:
 - The state would have a fiduciary duty under ERISA to the plan participants. It would need to ensure that the plan is properly managed, that plan options are appropriate and adjusted as necessary, and that expenses are reasonable. Plan participants and the DOL could sue the state for not meeting these obligations; sovereign immunity would not apply. The state cannot statutorily or contractually eliminate this liability or direct regulation by the DOL.
 - ERISA plans must pay an annual premium to the Pension Benefit Guarantee Corporation (PBGC) for insurance in the event the plan terminates with insufficient assets. PBGC premiums for multiple employer (private employer, not multiemployer union) plans are \$35 per participant. With a projected 7 million participants, PBGC premiums alone could total \$245 million annually.
- SB 1234 raises serious cost issues.
 - Initial costs to study and develop the program and to obtain the necessary federal approvals will likely be significant. Such costs will increase dramatically if the program faces a legal challenge. Interestingly, SB 1234 initially limited start up funding to federal, non-profit or private sources. The recently amended bill now permits an annual Budget Act appropriation.
 - While SB 1234 sets aside one percent (1%) of the total program fund to administer the program trust on an ongoing basis, it is highly likely that administrative, compliance, insurance, PBGC premiums (as above) and other costs will exceed that amount.
 - The guaranteed rate of return on investment creates the very real possibility that the state will have to fill the gap between the promised and the realized rates of return. Insurance - which, of course, comes at a cost - may assist in this process, but the ultimate responsibility rests with the state, either as an explicit or “implied” guarantee.
- The legislation remains unnecessary as California already has a robust and highly competitive retirement savings market.

WE URGE YOU TO VOTE NO ON SB 1234