



Memorandum re HB 3436 (Bailey)

Business & Labor Committee

March 15, 2013

Thank you very much for the opportunity to submit this statement regarding House Bill 3436 on behalf of the Securities Industry and Financial Markets Association (SIFMA)¹. 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.

We appreciate the Committee's interest in reviewing the utility of creating a public retirement plan for private sector workers, as proposed in HB 3436. 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 burdens of additional costs and liability that would be shouldered by the State in establishing such a retirement plan for non-public workers, and the competition the State would enter into with the private market which today provides a wide variety of individual retirement account options for employees who are ready to contribute a percentage of their annual compensation towards retirement.

Current Provider Market in Oregon

As you may know, there is already a robust and highly competitive market for retirement savings alternatives in Oregon. 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, with SIMPLE and SEP-IRAs being particularly good low cost options for small employers. Moreover, in instances where an employer does not provide a plan, IRAs are readily available at most financial institutions in Oregon – whether urban, suburban or rural - and around the country, in various formats, including online do-it-yourself, with limited financial advisor support from a call center, or with a one on one financial advisor relationship. There is no reason for the State to enter into competition with Oregon financial services companies who are employing thousands of workers in the State

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA has offices in New York and Washington, D.C. For more information, visit <http://www.sifma.org>.

and that are already providing these services, and doing so at no direct cost to the State. Accordingly, it may be helpful for the Committee to review the existing product offerings to determine if there is a gap in availability, and what the costs would be to the states trying to enter the market on their own. We would encourage you to explore how to enhance the existing market rather than create a program which competes against it or replaces it.

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.

ERISA

Part of the costs relate, in our view, to the federal regulations that vendors already face in the retirement space, which we believe the state will also become subject to. We believe the Employee Retirement Income Security Act (ERISA) would appropriately apply in the case of a state plan for private sector workers and would create substantial ERISA compliance costs and financial liability for Oregon. The Department of Labor issued an Advisory Opinion last year to Connecticut Governor Malloy which addressed this issue as well. Advisory Opinion 2012-01A was issued in response to the Connecticut General Assembly's attempt to provide health insurance coverage for private sector workers. In it the DOL advised that private sector employers could not be considered governmental agencies or instrumentalities within the meaning of ERISA. Section 4 of ERISA, discussing applicability of ERISA Title I, does not differentiate between welfare benefit plans and pension benefit plans and the analysis is identical for coverage of private sector workers in a pension benefit plan.

These liability concerns include liability for a breach of fiduciary duty under ERISA, which entails:

- 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.

No Other State Runs A Plan for Non-Public Workers

We have heard that some supporters of a state-run retirement savings plan for non-public employees believe that these programs exist in other states: they do not. 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.

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. Thank you for your consideration. For further information, please contact Marin Gibson of SIFMA at (212) 313-1317 or mgibson@sifma.org.