

Testimony of John W. Mangan on HB 2960-A
General Government Subcommittee
Joint Ways and Means Committee
May 7, 2015

Thank you, Co-Chairs and members of the committee. For the record, my name is John Mangan and I am regional Vice President for the American Council of Life Insurers. Our member companies include Standard of Oregon, State Farm, Farmers, Liberty Life and about 300 other providers of retirement plans. I am the ACLI's national issue person for state sponsored retirement plans so am aware of other state actions. I appreciate your willingness to hear from me.

I would like to focus on correcting some of the statements that were made yesterday. This proposal represents an enormous and so far unprecedented undertaking affecting 10s of thousand of employers and perhaps half a million Oregonians. The committee is right to review it carefully and get all the facts.

In answer to a question from Sen. Johnson, it was stated that California and Illinois have implemented a state sponsored plan for private workers. This is incorrect. More than 30 states have reviewed proposals over the past few years but NO state has implemented such a plan or enrolled a single person. The fact is states are deeply concerned about the significant legal, administrative, cost and liability issues in these proposals.

California, Connecticut and Illinois have adopted proposed plans but each are undergoing a significant due-diligence process before allowing implementation. That due diligence includes requiring that a DOL opinion be obtained confirming that the plan would NOT be subject to ERISA. California and Connecticut are also required to show that the proposed plan will be fiscally self-sustaining and will not require General Fund subsidies. And the Legislature gets to review the plan and its costs and vote on it before it is implemented.

None of these due diligence steps are required in HB 2960, which is our primary concern with the bill. Our proposed -3 amendments, which simply mirror the California and Connecticut requirements for oversight and accountability, would cure these concerns and we urge you to reconsider them.

The fact is no other state has proposed to have the Legislature delegate to a state board the power to design, create and **implement** a mandatory retirement plan without performing this critical due diligence, and without further fiscal or legislative oversight. The Board can cause the automatic enrollment of up to 650,000 Oregonians. If the board puts that money in a typical pre-tax IRA fund, the General Fund will lose that tax revenue. (Connecticut estimated its two year loss at \$160 million.) The Board can even make rules disqualifying current plans and extending the employer mandate, again without oversight. We think this delegation of power creates a serious lack of transparency and accountability, and is imprudent.

ERISA is the key issue and you should not proceed without confirming the proponents' claim that ERISA will not apply. If it does apply, all their cost and liability assumptions are wrong.

It was stated yesterday that "K&L Gates has produced a Legal Memo that concludes a plan like Oregon's is exempt." We have separate legal memos from Davis & Harman in Washington, DC, that conclude the opposite. These legal memos have been presented to the task force and to each of the policy committees. They address the Oregon plan proposed in 2013, the plan described in the Task Force report and the "Safe Harbor" issues raised by

the Treasurer's office yesterday. These credible legal opinions conclude that a mandatory employer based auto-enrollment IRA will most likely be subject to ERISA. At the very least, the DOL should be consulted.

It was stated yesterday that the DOL is afraid or unwilling to opine on whether a state sponsored employer benefit plan for private workers is subject to ERISA. The DOL is not afraid to opine and has recently done so. We have submitted for the record a 2012 opinion requested and received by the state of Connecticut. It concludes a state sponsored benefit plan for private workers would be subject to ERISA.

Also, we know the DOL is not afraid to opine because they said so to Oregon's Task Force on June 10, 2014. The head of the DOL's regulatory opinions division made clear that Oregon **should seek a DOL opinion** before concluding its proposed plan would meet the *ERISA safe harbor*. This commentary, so important to the core premise of HB 2960, was suppressed from the Task Force Report even though we called attention to its absence. We recommend you review the DOL transcript.

Rather than relying on dueling legal opinions, the -3 amendment just says, "ask the question of DOL." Both California and Illinois are taking this step. They understand the issue is too important to ignore. Implementing a plan before knowing the answer could risk huge negative financial consequences for the state. It could mean a series of broken promises:

- The promise to employers that there is no liability or cost to them of their mandatory participation.
- The promise to the legislature and taxpayers that there is no federal regulation, no liability and no responsibility for investment results or plan errors.
- The promise to this fiscal committee that the plan is fiscally self-sustaining and will not require General Fund subsidies.
- The promise to workers that the plan will be sustainable and their pre-tax contributions won't suddenly be refunded with taxes owing.

We should be all too aware of the pain to Oregonians of broken promises. The retirement promises we as plan sponsors, employers and providers make to workers are sacrosanct. Our promises have to be valid and endure throughout a participant's working life and retirement... 30, 40 or 50 years. In our business, we have to do our homework first to ensure the sponsor knows what the rules and responsibilities are. And we need to know the plan is financially sustainable. You should have these assurances as well.

We urge you to adopt the -3 amendments to ensure you know in advance that the promises you are making are valid and that the state can fulfill them.

Thank you.