



Senate

General Assembly

File No. 309

January Session, 2013

Substitute Senate Bill No. 54

Senate, April 3, 2013

The Committee on Labor and Public Employees reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A RETIREMENT SAVINGS PLAN FOR LOW-INCOME PRIVATE SECTOR WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2013*) As used in this section and
2 sections 2 to 14, inclusive, of this act:

3 (1) "Connecticut Retirement Security Trust Fund" or "trust" means
4 the trust fund established pursuant to section 2 of this act, in
5 accordance with section 3-13c of general statutes, as amended by this
6 act;

7 (2) "Connecticut Retirement Security Trust Fund Board" or "board"
8 means the governing body of the Connecticut Retirement Security
9 Trust Fund, established pursuant to section 2 of this act;

10 (3) "Eligible employee" means any individual who is employed by a
11 qualified employer and who is not eligible to participate in a
12 qualifying plan or arrangement described in Section 219(g)(5) of

13 Internal Revenue Code, except (A) any individual who is seventeen
14 years of age or younger on January first of each year, and (B) any
15 individual who is included in a unit of employees covered by a
16 collective bargaining agreement between employee representatives
17 and one or more employers, if there is evidence that retirement
18 benefits were the subject of good faith bargaining between such
19 employee representatives and such employer or employers;

20 (4) "Individual retirement account" means an individual retirement
21 account or individual retirement annuity within the trust established
22 in accordance with Section 408(a) or (b) of the Internal Revenue Code;

23 (5) "Individual retirement savings balance" means the sum of all
24 assets deposited into a plan participant's individual retirement
25 account, plus accumulated interest and minus any fees;

26 (6) "Internal Revenue Code" means the Internal Revenue Code of
27 1986, or any subsequent corresponding internal revenue code of the
28 United States, as amended from time to time;

29 (7) "Plan participant" means any eligible employee who maintains
30 an individual retirement account within the trust;

31 (8) "Public retirement plan" or "plan" means a retirement plan
32 designed by the Connecticut Retirement Security Trust Fund Board
33 and offered through the Connecticut Retirement Security Trust Fund
34 to eligible employees and qualified employers in the state; and

35 (9) "Qualified employer" means any person, corporation, limited
36 liability company, firm, partnership, voluntary association, joint stock
37 association or other entity that employs five or more persons in the
38 state. "Qualified employer" does not include: (A) The federal
39 government, (B) the state or any political subdivision thereof, or (C)
40 any municipality, unit of a municipality or municipal housing
41 authority.

42 Sec. 2. (NEW) (*Effective July 1, 2013*) (a) There is established a fund to
43 be known as the "Connecticut Retirement Security Trust Fund" the

44 purpose of which shall be to promote and enhance retirement savings
45 for private sector employees in the state. The Connecticut Retirement
46 Security Trust Fund shall be a nonlapsing fund held by the Treasurer
47 separate and apart from all other moneys, funds and accounts.
48 Investment earnings credited to the fund shall become part of the trust.

49 (b) The trust shall constitute an instrumentality of the state and shall
50 perform essential governmental functions, in accordance with the
51 provisions of this section. The trust shall receive and hold all payments
52 and deposits or contributions intended for the trust, as well as gifts,
53 bequests, endowments or federal, state or local grants and any other
54 funds from any public or private source and all earnings until
55 disbursed in accordance with the provisions of this section.

56 (c) The amounts on deposit in the trust shall not constitute property
57 of the state and the trust shall not be construed to be a department,
58 institution or agency of the state. Amounts on deposit in the trust shall
59 not be commingled with state funds and the state shall have no claim
60 to or against, or interest in, such funds. Any contract entered into by or
61 any obligation of the trust shall not constitute a debt or obligation of
62 the state and the state shall have no obligation to any designated
63 beneficiary or any other person on account of the trust and all amounts
64 obligated to be paid from the trust shall be limited to amounts
65 available for such obligation on deposit in the trust. The amounts on
66 deposit in the trust may only be disbursed in accordance with the
67 provisions of this section. The trust shall continue in existence as long
68 as it holds any deposits or has any obligations and until its existence is
69 terminated by law and upon termination any unclaimed assets shall
70 return to the state. Property of the trust shall be governed by section 3-
71 61a of the general statutes.

72 (d) The State Treasurer shall be responsible for the receipt and
73 investment of moneys held by the trust. The trust shall not receive
74 deposits in any form other than cash, except in the case of a rollover
75 contribution described in Section 402(c), 403(a)(4), 403(b)(8) or 457
76 (e)(16) of the Internal Revenue Code. No depositor or designated

77 beneficiary may direct the investment of any contributions or amounts
78 held in the trust other than the specific fund options provided for by
79 the trust.

80 (e) The assets of the trust shall be used for the purpose of
81 distributing individual retirement savings balances to the plan
82 participants and paying the operational, administrative and
83 investment costs of the trust.

84 Sec. 3. (NEW) (*Effective July 1, 2013*) (a) There is established the
85 Connecticut Retirement Security Trust Fund Board which shall serve
86 as the trustee of the Connecticut Retirement Security Trust Fund. The
87 board is charged with the implementation and administration of the
88 trust, including the design of the public retirement plan.

89 (b) Notwithstanding the provisions of section 4-9a of the general
90 statutes, the board shall consist of the following trustees:

91 (1) One appointed by the speaker of the House of Representatives,
92 who shall represent an organization whose principle purpose is
93 advocacy for seniors and who shall serve an initial term of four years;

94 (2) One appointed by the president pro tempore of the Senate, who
95 shall be an academic expert on retirement plan designs and who shall
96 serve an initial term of four years;

97 (3) One appointed by the majority leader of the House of
98 Representatives, who shall be a representative of the business
99 community who manages employee retirement plan options and who
100 shall serve an initial term of four years;

101 (4) One appointed by the majority leader of the Senate, who shall be
102 an organized labor representative and who shall serve an initial term
103 of four years;

104 (5) One appointed by the minority leader of the House of
105 Representatives, who shall be a representative of the business
106 community with expertise in consumer retirement planning and who

107 shall serve an initial term of three years;

108 (6) One appointed by the minority leader of the Senate, who shall be
109 an expert in designing retirement plan options for businesses and who
110 shall serve an initial term of three years;

111 (7) One appointed by the Governor, who shall be an academic
112 expert in the needs of an aging population and who shall serve an
113 initial term of three years;

114 (8) The State Comptroller, or the State Comptroller's designee;

115 (9) The State Treasurer, or the State Treasurer's designee;

116 (10) The Labor Commissioner, or the commissioner's designee; and

117 (11) The Secretary of the Office of Policy and Management, or the
118 secretary's designee.

119 (c) All appointments to the board shall be made not later than thirty
120 calendar days after the effective date of this section. Following the
121 expiration of their initial terms, subsequent trustees appointed by
122 members of the General Assembly shall serve three-year terms. Any
123 vacancy shall be filled by the appointing authority not later than thirty
124 calendar days after the office becomes vacant. Any trustee previously
125 appointed to the board may be reappointed.

126 (d) The Comptroller and the Treasurer shall serve as chairpersons of
127 the board. Said chairpersons shall schedule the first meeting of the
128 board, which shall be held not later than forty calendar days after the
129 effective date of this section. The board shall meet at least monthly.

130 (e) The trustees shall serve without compensation but shall, within
131 available appropriations, be reimbursed in accordance with the
132 standard travel regulations for all necessary expenses that they may
133 incur through service on the board.

134 (f) Each trustee shall, not later than ten calendar days after
135 appointment, take an oath of office that so far as it devolves upon the

136 trustee, the trustee will diligently and honestly administer the affairs of
137 the board, and will not knowingly violate or willingly permit to be
138 violated any of the provisions of law applicable to the trust. Each
139 trustee's term shall begin from the date the trustee takes such an oath.

140 (g) Each trustee shall be entitled to one vote on the board. A
141 majority of the board shall constitute a quorum for the transaction of
142 any business, the exercise of any power or the performance of any
143 duty authorized or imposed by law.

144 (h) The board shall be within the Retirement Division of the office of
145 the Comptroller for administrative purposes only.

146 (i) The board, on behalf of the trust and for purposes of
147 implementing the plan, shall:

148 (1) Establish consistent terms for each individual retirement
149 account, including, but not limited to, (A) the method of payment into
150 the trust by payroll deduction, or rollover contribution described in
151 Section 402(c), 403(a)(4), 403(b)(8) or 457(e)(16) of the Internal Revenue
152 Code, transfer from bank accounts or otherwise, (B) the termination,
153 withdrawal or transfer of payments under the trust, including the
154 purchase of an annuity product upon retirement, (C) changing of the
155 identity of the designated beneficiary, (D) any charges or fees in
156 connection with the administration of the plan, and (E) interest
157 allocated to individual retirement accounts for a given calendar year
158 based upon the performance of the trust;

159 (2) Enter into one or more contractual agreements, including
160 contracts for legal, actuarial, accounting, custodial, advisory,
161 management, administrative, advertising, marketing and consulting
162 services for the plan and pay for such services from the trust;

163 (3) Adopt such regulations in accordance with the provisions of
164 chapter 54 of the general statutes as are necessary to carry out the
165 provisions of this section and may establish rules and regulations
166 which it deems necessary or desirable to facilitate the proper

167 administration of the trust. Rules and regulations established by the
168 board shall be binding upon all parties dealing with the board and all
169 persons claiming any benefits from the trust;

170 (4) Hire staff, including a program administrator;

171 (5) Form working groups as necessary to solicit feedback from key
172 stakeholders on the design of the plan, advocate for changes in federal
173 retirement law to improve retirement security, assess the impact of the
174 plan on reducing public assistance costs for the elderly in the state and
175 determine if changes in federal or state tax law could help employees
176 in the state save for retirement; and

177 (6) Develop alternative plan designs, if necessary, to help eligible
178 employees in the state save for retirement.

179 (j) In conducting the business of the trust, including its oversight
180 functions, the board shall act: (1) With the care, skill, prudence and
181 diligence under the circumstances then prevailing that a prudent
182 person acting in a like capacity and familiar with such matters would
183 use in the conduct of an enterprise of a like character and with like
184 aims; (2) in accordance with strict fiduciary standards and
185 responsibilities; and (3) in accordance with the provisions of the
186 general statutes.

187 (k) The board shall ensure that the trust complies with all applicable
188 requirements of federal and state laws, rules and regulations to the
189 extent necessary for the trust to meet all criteria for federal tax-deferral
190 or tax-exempt benefits under the Internal Revenue Code.

191 (l) (1) All plans, descriptions and reports and all legal, financial and
192 actuarial documents dealing with the general operations of the plan
193 shall be available for inspection and copying by members and their
194 representatives. The cost of any copying shall be borne by the member
195 or representative, but shall not exceed twenty-five cents per page.

196 (2) Each year the Treasurer shall publish and forward to the board a
197 consolidated report showing the fiscal transactions of the trust for the

198 preceding fiscal year, including gain or loss by category of security, a
199 reconciliation of assets showing the progression of the trust from one
200 year to the next, the amount of the accumulated cash and securities of
201 the system and the last balance sheet showing the financial condition
202 of the system by means of an actuarial valuation of its assets and
203 liabilities. Assets shall be shown at book and market value and by type
204 or term of investment. Gain or loss shall be reported by category of
205 security type.

206 Sec. 4. (NEW) (*Effective July 1, 2013*) Each individual retirement
207 account shall include design features prescribed by the Connecticut
208 Retirement Security Trust Fund Board. The board may amend such
209 features from time to time to serve the interests of eligible employees,
210 plan participants, qualified employers and other stakeholders. Each
211 individual retirement account shall:

212 (1) Provide automatic roll-over of a plan participant's individual
213 retirement savings balance upon any change of employment.
214 Participants shall not liquidate their individual retirement accounts
215 upon changes in employer;

216 (2) Transition to an inflation-indexed annuity with options for
217 spousal benefits and lump-sum distribution upon the plan
218 participant's retirement;

219 (3) Assure plan portability through maintenance of separate
220 accounts for each plan participant. Each qualified employer shall allow
221 eligible employees to contribute to the plan through payroll deduction
222 and through any other means prescribed by the board;

223 (4) Offer a guaranteed interest rate to plan participants upon the
224 board analyzing expected rates of return on trust assets;

225 (5) Include a written quarterly report detailing: (A) The individual
226 retirement savings balance of such plan participant's individual
227 retirement account, (B) the estimated value of assets available upon
228 such plan participant's retirement, (C) an estimate of such plan

229 participant's expected monthly retirement income, and (D) the total
230 assets in the trust including an accounting of contributions by plan
231 participants and qualified employers and investment returns. This
232 information shall be made available through a secure Internet web site.
233 The report shall comply with all federal regulations regarding
234 reporting;

235 (6) Require that all assets in the individual retirement account,
236 whether contributed by a plan participant or a qualified employer or
237 accrued through investments, shall vest immediately upon a plan
238 participant's enrollment in the plan;

239 (7) Provide preretirement death benefits to enable a plan participant
240 to bequeath assets to designated beneficiaries; and

241 (8) Ensure that all contributions to individual retirement accounts
242 are tax qualified under the Internal Revenue Code and the state tax
243 code.

244 Sec. 5. (NEW) (*Effective July 1, 2013*) The Treasurer, on behalf of the
245 Connecticut Retirement Security Trust Fund and for purposes of the
246 trust, shall:

247 (1) Receive and invest moneys in the trust in any instruments,
248 obligations, securities or property in accordance with section 6 of this
249 act;

250 (2) Procure insurance in connection with the trust's property, assets,
251 activities or deposits or contributions to the trust;

252 (3) Apply for, accept and expend gifts, grants or donations from
253 public or private sources to enable the trust to carry out its objectives;
254 and

255 (4) Establish one or more funds within the trust and maintain
256 separate accounts for each individual retirement account.

257 Sec. 6. (NEW) (*Effective July 1, 2013*) Notwithstanding sections 3-13

258 to 3-13h, inclusive, of the general statutes, the Treasurer shall invest
259 the amounts on deposit in the trust in a manner reasonable and
260 appropriate to achieve the objectives of the trust, exercising the
261 discretion and care of a prudent person in similar circumstances with
262 similar objectives. The Treasurer shall give due consideration to rate of
263 return, risk, term or maturity, diversification of the total portfolio
264 within the trust, liquidity, the projected disbursements and
265 expenditures and the expected payments, deposits, contributions and
266 gifts to be received. The Treasurer shall not require the trust to invest
267 directly in obligations of the state or any political subdivision of the
268 state or in any investment or other fund administered by the Treasurer.
269 The assets of the trust shall be continuously invested and reinvested in
270 a manner consistent with the objectives of the trust until disbursed
271 upon order of the board or expended on expenses incurred by the
272 operations of the trust.

273 Sec. 7. (NEW) (*Effective July 1, 2013*) The Connecticut Retirement
274 Security Trust Fund Board, shall establish and evaluate procedures
275 necessary to implement the public retirement plan. The board shall:

276 (1) Design, establish and operate the plan to: (A) Increase access and
277 enrollment in quality retirement plans that provide an annuitized
278 benefit; (B) provide a guaranteed rate of return; (C) reduce the need for
279 public assistance through a system of prefunded retirement-income;
280 (D) offer low administrative costs and streamlined enrollment; (E)
281 minimize the need for financial sophistication for plan participants;
282 and (F) ensure trust and transparency in the management of retirement
283 funds through oversight and ethics review of plan fiduciaries;

284 (2) Explore and establish investment options that offer plan
285 participants the conversion of individual retirement account balances
286 to secure retirement income without incurring debt or liabilities to the
287 state;

288 (3) Establish the process for plan enrollees to switch from the default
289 of lifetime annuity to lump-sum payout upon retirement;

290 (4) Disseminate educational information concerning saving and
291 planning for retirement;

292 (5) Disseminate information concerning the tax credits available to
293 small business owners for establishing new retirement plans and the
294 federal retirement savings contribution credit available to lower and
295 moderate-income households for qualified savings contributions;

296 (6) Determine the eligibility of an employer, employee or any other
297 individual to participate in the program;

298 (7) Evaluate and establish the process by which a plan participant
299 shall contribute a portion of his or her salary or wages to his or her
300 individual retirement account;

301 (8) Evaluate and establish the process by which a qualified
302 employer shall credit the plan participant's contributions to his or her
303 individual retirement account through payroll deposit;

304 (9) Evaluate and establish the process by which a qualified
305 employer shall contribute to a plan participant's individual retirement
306 account, provided: (A) The contribution shall be allowed under the
307 Internal Revenue Code, and (B) the contribution shall not cause the
308 plan to be treated as an employee benefit plan under the federal
309 Employee Retirement Income Security Act of 1974;

310 (10) Design and establish the process for the enrollment of eligible
311 employees in the plan and design and establish the process by which
312 an individual or employee of a nonparticipating employer may enroll
313 in or make contributions to the program. This process shall include,
314 but not be limited to, the creation of an information packet including
315 the necessary paperwork for an eligible employee to enroll in or opt-
316 out of the plan;

317 (11) Develop one or more payroll deposit savings arrangements
318 through which qualified employers may make deposits into the trust;

319 (12) Establish and maintain a secure Internet web site that displays

320 all public notices issued by the board and such other information as
321 the board deems relevant pursuant to the education of the public
322 regarding the plan;

323 (13) Submit, in accordance with the provisions of section 11-4a of
324 the general statutes, a report to the General Assembly regarding any
325 changes that are necessary for the implementation of the plan; and

326 (14) Set maximum investment levels in accordance with
327 contribution limits set for individual retirement accounts by the
328 Internal Revenue Code.

329 Sec. 8. (NEW) (*Effective July 1, 2013*) (a) Not later than August 1,
330 2014, or ninety days following the date on which the conditions
331 required by section 17 of this act have been met, whichever is later, the
332 Connecticut Retirement Security Trust Fund Board shall open the
333 public retirement plan to enrollment.

334 (b) On or before December 1, 2014, and annually thereafter, the
335 board shall declare the rate at which interest shall be allocated to
336 individual retirement accounts for the following calendar year
337 commencing January first. Any interest accrued on moneys held in the
338 plan from the plan's opening until January 1, 2015, shall be used to
339 establish a reserve fund held by the Treasurer.

340 (c) Interest shall be allocated to individual retirement accounts and
341 shall be computed at the stated interest rate on the balance of an
342 eligible employee's account and shall be compounded daily.

343 (d) On or before December 1, 2014, and annually thereafter, the
344 board shall notify all plan participants of any changes to the default
345 contribution rate for the following calendar year.

346 (e) (1) Administrative fees shall be allocated to each individual
347 retirement account on a pro rata basis.

348 (2) Annual administrative expenses shall not exceed one per cent of
349 the total trust balance.

350 (f) All expenses, including employee costs, incurred to implement,
351 maintain, advertise and administer the plan shall be paid from money
352 collected by or for the trust.

353 Sec. 9. (NEW) (*Effective July 1, 2013*) (a) Not later than ninety
354 calendar days after the Connecticut Retirement Security Trust Fund
355 Board opens the plan for enrollment, qualified employers shall offer
356 eligible employees a payroll deposit option to facilitate participation in
357 the plan.

358 (b) (1) Each eligible employee shall be enrolled in the plan unless
359 such employee elects not to participate in the plan.

360 (2) An eligible employee may elect to opt out of the plan by
361 providing written notice, on such form and in such manner as the
362 board may prescribe, to the board and such eligible employee's
363 employer.

364 (3) Following initial implementation of the plan in accordance with
365 this section, and at least biennially thereafter, qualified employers shall
366 designate an open enrollment period during which each eligible
367 employee who previously opted out of the plan shall be enrolled in the
368 plan unless the employee again elects to opt out.

369 (4) Any eligible employee not participating in the plan may enroll at
370 any time by submitting written notice, on such form and in such
371 manner as the board may prescribe, to the board and such eligible
372 employee's employer.

373 (c) (1) A qualified employer shall retain the option at all times to set
374 up any type of employer-sponsored retirement plan.

375 (2) A qualified employer may establish an employer-sponsored
376 retirement plan provided such qualified employer notifies each eligible
377 employee and plan participant, within a reasonable amount of time
378 and in a manner prescribed by the board.

379 (d) (1) In accordance with the provisions of chapter 54 of the general

380 statutes, the board may set a default contribution amount as a
381 percentage of salary at not less than three per cent and may vary such
382 amount according to the length of time that an eligible employee has
383 contributed to the plan.

384 (2) Plan participants may, at any time, on a form and in a manner
385 prescribed by the board, elect to change their level of contribution.

386 Sec. 10. (NEW) (*Effective July 1, 2013*) From time to time, the
387 Connecticut Retirement Security Trust Fund Board shall consider the
388 opinions of eligible employees, plan participants, qualified employers
389 and other stakeholders in making modifications to the public
390 retirement plan by: (1) Holding public hearings to allow eligible
391 employees, plan participants, qualified employers and other
392 stakeholders to comment on the plan, including the default
393 contribution amounts, guaranteed interest rates and fees charged; (2)
394 surveying plan participants and qualified employers to assess their
395 experience with the plan; and (3) assessing the marketplace of
396 employer-sponsored retirement plan offerings to determine what is
397 otherwise available to employees and residents in the state.

398 Sec. 11. (NEW) (*Effective July 1, 2013*) (a) Qualified employers shall
399 not be liable for an eligible employee's decision to participate in or opt-
400 out of the public retirement plan, or for the investment performance of
401 assets deposited in the trust.

402 (b) (1) A qualified employer shall not be a fiduciary or considered to
403 be a fiduciary of the plan.

404 (2) A qualified employer shall not be responsible for the
405 administration, investment or investment performance of the plan.

406 (3) A qualified employer shall not be liable with regard to
407 investment returns, plan design or retirement income paid to plan
408 participants.

409 (c) A qualified employer's voluntary contribution made in
410 accordance with the process established under section 7 of this act may

411 not contradict the provisions of this section or change the qualified
412 employer's relationship to the plan or such qualified employer's
413 obligations to eligible employees.

414 Sec. 12. (NEW) (*Effective July 1, 2013*) (a) The state shall not be liable
415 for the payment of the individual retirement account balance earned
416 by plan participants.

417 (b) Any financial liability for the payment of retirement account
418 balances in excess of funds available in the trust shall be borne by the
419 entities with whom the Treasurer contracts to provide insurance to
420 protect the value of the trust.

421 (c) The state, and any of the funds of the state, shall not have any
422 obligation for the payment of the benefits arising from this section.

423 Sec. 13. (NEW) (*Effective July 1, 2013*) (a) No qualified employer
424 shall, without good cause, fail to allow an eligible employee to
425 participate in the plan. The Labor Commissioner shall administer this
426 section.

427 (b) Qualified employers shall remit all moneys intended for the trust
428 not later than fourteen calendar days after the date such moneys were
429 deducted from each plan participant's wages.

430 (c) Any eligible employee or plan participant aggrieved by a
431 violation of the provisions of sections 2 to 14, inclusive, of this act and
432 section 3-13c of the general statutes, as amended by this act, may file a
433 complaint with the Labor Commissioner. Upon receipt of any such
434 complaint, the commissioner may hold a hearing. After the hearing,
435 any qualified employer who is found by the Labor Commissioner, by a
436 preponderance of the evidence, to have violated the provisions of this
437 section shall be liable to the Labor Department for a civil penalty of six
438 hundred dollars for each eligible employee employed by the qualified
439 employer. Any party aggrieved by the decision of the commissioner
440 may appeal the decision to the Superior Court in accordance with the
441 provisions of chapter 54 of the general statutes.

442 (d) Penalties collected in accordance with this section shall be
443 deposited in the trust.

444 Sec. 14. (NEW) (*Effective July 1, 2013*) (a) Each trustee of the
445 Connecticut Retirement Security Trust Fund Board shall file, with the
446 board and with the Office of State Ethics, a statement of financial
447 interests, as described in section 1-83 of the general statutes. Such
448 statement shall be a public record.

449 (b) The board shall submit, in accordance with the provisions of
450 section 11-4a of the general statutes: (1) An annual audit, prepared in
451 accordance with generally-accepted accounting principles by an
452 independent certified accountant, on the operations of the trust and
453 plan not later than January first of each year, following its first full year
454 of implementation, to the Governor, president pro tempore of the
455 Senate and the speaker of the House of Representatives, and (2) a
456 report prepared by the board, which shall include, but not be limited
457 to, a summary of the plan design and operation, the number of plan
458 participants and the average contribution of said plan participants, and
459 the rates of return and administrative costs as a percentage of total
460 assets of the plan.

461 Sec. 15. Section 3-13c of the general statutes is repealed and the
462 following is substituted in lieu thereof (*Effective from passage*):

463 Trust funds as used in sections 3-13 to 3-13e, inclusive, and 3-31b
464 shall be construed to include Connecticut Municipal Employees'
465 Retirement Fund A, Connecticut Municipal Employees' Retirement
466 Fund B, Soldiers, the Connecticut Retirement Security Trust Fund,
467 Sailors and Marines Fund, State's Attorneys' Retirement Fund,
468 Teachers' Annuity Fund, Teachers' Pension Fund, Teachers'
469 Survivorship and Dependency Fund, School Fund, State Employees
470 Retirement Fund, the Hospital Insurance Fund, Policemen and
471 Firemen Survivor's Benefit Fund and all other trust funds
472 administered, held or invested by the Treasurer.

473 Sec. 16. (*Effective July 1, 2013*) (a) The Connecticut Retirement

474 Security Trust Fund Board shall conduct a market feasibility study to
475 determine whether the necessary conditions for implementation of this
476 act can be met, including: (1) Likely participation rates; (2) contribution
477 levels; (3) rate of account closures and rollovers; and (4) ability to
478 provide employers with a payroll deposit system for remitting
479 contributions from employees.

480 (b) Not later than December 15, 2013, the board shall submit, in
481 accordance with the provisions of section 11-4a of the general statutes,
482 a report on the findings of such study and any recommendations
483 therefrom to the Governor and to the joint standing committee of the
484 General Assembly having cognizance of matters relating to labor and
485 public employees.

486 Sec. 17. (NEW) (*Effective July 1, 2013*) (a) Prior to the implementation
487 of any plan, trust, administrative arrangement or investment offering
488 under the provisions of sections 2 to 14, inclusive, of this act and
489 section 3-13c of the general statutes, as amended by this act, the
490 Connecticut Retirement Security Trust Fund Board shall determine
491 that, based on the market analysis, the provisions of sections 2 to 14,
492 inclusive, of this act and section 3-13c of the general statutes, as
493 amended by this act, will be self-sustaining, and funds are made
494 available through a nonprofit or other private entity, federal funding,
495 or appropriations by the General Assembly in amounts sufficient to
496 allow the board to implement this act until the board has sufficient
497 funds to be self-sustaining.

498 (b) Prior to the implementation of any plan, trust, administrative
499 arrangement or investment offering under the provisions of sections 2
500 to 14, inclusive, of this act and section 3-13c of the general statutes, as
501 amended by this act, the arrangements for individual retirement
502 accounts shall qualify for the favorable federal income tax treatment
503 ordinarily accorded to individual retirement accounts under the
504 Internal Revenue Code, and the public retirement plan shall be
505 determined not to be an employee benefit plan under the federal
506 Employee Retirement Income Security Act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2013</i>	New section
Sec. 2	<i>July 1, 2013</i>	New section
Sec. 3	<i>July 1, 2013</i>	New section
Sec. 4	<i>July 1, 2013</i>	New section
Sec. 5	<i>July 1, 2013</i>	New section
Sec. 6	<i>July 1, 2013</i>	New section
Sec. 7	<i>July 1, 2013</i>	New section
Sec. 8	<i>July 1, 2013</i>	New section
Sec. 9	<i>July 1, 2013</i>	New section
Sec. 10	<i>July 1, 2013</i>	New section
Sec. 11	<i>July 1, 2013</i>	New section
Sec. 12	<i>July 1, 2013</i>	New section
Sec. 13	<i>July 1, 2013</i>	New section
Sec. 14	<i>July 1, 2013</i>	New section
Sec. 15	<i>from passage</i>	3-13c
Sec. 16	<i>July 1, 2013</i>	New section
Sec. 17	<i>July 1, 2013</i>	New section

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Comptroller; Treasurer	GF - Potential Cost	100,000	None
Treasurer; Comptroller	Connecticut Retirement Security Trust Fund - Cost	None	See Below
Treasurer	Connecticut Retirement Security Trust Fund - Revenue Gain	None	See Below

Municipal Impact: None

Explanation

The bill establishes and requires the Connecticut Retirement Security Trust Fund Board to conduct a market feasibility study, which is expected to be contracted with an expert and to cost approximately \$100,000. The source of funding for the study is not specified. There will be a cost of \$100,000 to the General Fund if the Office of the State Comptroller or the Office of the State Treasurer, who are co-chairs of the Board, provide funding for the study. In addition, it is unclear whether members of the Board would be reimbursed for travel expenses for meetings that occur prior to the establishment of the Connecticut Retirement Security Trust Fund. The source of funding for potential board expenses is also unspecified.

If the market feasibility study indicates that the plan will be self-sustaining, the bill requires the Board to set-up the Trust Fund. The resources of the Fund will be held in a separate account that is invested by the Office of the Treasurer. The plan is administered by the Office of the State Comptroller and overseen by the Board. This is not expected to have a state fiscal impact because it is anticipated that all

costs associated with the Fund and the plan will be paid by contributions made by participants and investment income on those contributions.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 54*****AN ACT ESTABLISHING A RETIREMENT SAVINGS PLAN FOR LOW-INCOME PRIVATE SECTOR WORKERS.*****SUMMARY:**

This bill creates the Connecticut Retirement Security Trust Fund (the “trust”) to provide a public retirement plan for certain private sector employees, who are automatically enrolled in the plan unless they opt out. The trust is administered by an 11-member Connecticut Retirement Security Trust Fund Board chaired by the state treasurer and comptroller.

The bill requires the trust’s plan to offer individual retirement accounts (IRAs) with a number of specified features, including automatic rollover if the employee changes employers and options for spousal benefits and lump sum payments when the employee retires.

The plan cannot be open for enrollment until the (1) board determines that the plan will be self-sustaining and (2) retirement plan is determined not to be an employee benefit plan under the federal Employee Retirement Income Security Act (ERISA). The plan must open to enrollment no later than August 1, 2014 or 90 days after those conditions are satisfied, whichever is later.

Additional plan requirements under the bill include:

1. annual declarations of the interest rate for IRAs for each upcoming year;
2. annual administrative fees cannot exceed 1% of the total trust balance;
3. all expenses, including trust employee costs, must be paid from money collected by the trust;
4. qualified employers (those with at least five employees) must

- offer employees a payroll deduction option to join the trust program;
5. the default employee contribution cannot be less than 3% of salary;
 6. employers are not responsible for the administration or investment of the fund;
 7. employers must not be liable for the investment return; and
 8. financial liabilities in excess of trust assets must be borne by the treasurer-selected fund insurers.

Under the bill, the trust will be a nonlapsing fund held by the treasurer separate and apart from all other state funds and accounts. The treasurer is responsible for the receipt and investment of money held in the trust which must receive and hold all payments, deposits, contributions, and gifts intended for it. Funds are held until disbursed in accordance with the bill's provisions.

EFFECTIVE DATE: July 1, 2013 except the section adding the name of the new trust to the list of existing trusts administered by the treasurer is upon passage.

§1—DEFINITIONS

The bill includes the following definitions:

1. "eligible employee" means any individual employed by a qualified employer and who is not eligible to participate in a qualifying defined benefit plan or arrangement as recognized in the federal Internal Revenue Code (IRC), but not (a) anyone age 17 or younger on January first of each year, and (b) anyone included in a union agreement, if there is evidence that retirement benefits were the subject of good faith bargaining between the union and such employer or employers.
2. "Public retirement plan" or "plan" means a retirement plan designed by the trust board and offered through the trust to eligible employees and qualified employers in the state.
3. "Qualified employer" means any person, corporation, limited

liability company, firm, partnership, voluntary association, joint stock association, or other entity that employs five or more people in Connecticut. Qualified employer does not include the federal government, state, any political subdivision of the state, or any municipality, unit of a municipality or municipal housing authority.

§2—TRUST

The trust must receive and hold all payments, deposits, contributions, gifts, bequests, endowments, or government grants and any other public or private funds intended for it. Investment earnings credited become part of the trust. Funds are held until disbursed in accordance with the bill's provisions.

The funds in the trust are not property of the state, and the trust must not be construed to be a department, institution, or agency of the state. Money in the trust cannot be commingled with state funds, and the state has no claim to or against, or interest in, the funds.

Any contract entered into by, or any obligation of, the trust does not constitute a debt or obligation of the state. The state has no obligation to any designated beneficiary or any other person because of the trust, and all amounts obligated to be paid from the trust must be limited to amounts available for such obligation on deposit in the trust.

The amounts on deposit in the trust may only be disbursed in accordance with the bill's provisions. The trust must continue in existence as long as it holds any deposits or has any obligations and until its existence is terminated by law. Upon termination, any unclaimed assets must return to the state. Property of the trust is governed by the state law that addresses abandoned property held by a fiduciary.

The trust constitutes an instrumentality of the state and must perform essential governmental functions, as provided in the bill.

Deposits, Rollover Contributions, and Use of Assets

The state treasurer is responsible for the receipt and investment of moneys held in the trust. The trust can only receive cash deposits or rollover contributions from certain tax deferred retirement accounts or annuity plans under the IRC (specifically 402(c), 403(a)(4), 403(b)(8), and 457(e)(16) plans). No depositor or designated beneficiary may direct the investment of any contributions or amounts held in the trust other than the specific fund options the trust provides.

The assets of the trust must be used for distributing individual retirement savings balances to the participants and paying the trust's operational, administrative, and investment costs.

§§ 3 & 14 —TRUST FUND BOARD

The bill establishes the Connecticut Retirement Security Trust Fund Board (the "board"). The board is the trustee and is charged with implementing and administering the trust, including the design of the public retirement plan.

The board consists of the following 11 trustees:

1. one appointed by the House speaker, representing a senior citizen advocacy organization, serving an initial term of four years;
2. one appointed by the Senate president, who must be an academic expert on retirement plan designs, serving an initial term of four years;
3. one appointed by the House majority leader, who must be an employee retirement plan manager representing the business community, serving an initial term of four years;
4. one appointed by the Senate majority leader, representing organized labor, serving an initial term of four years;
5. one appointed by the House minority leader who must have expertise in consumer retirement planning representing the

- business community, serving an initial term of three years;
6. one appointed by the Senate minority leader who must have expertise in designing retirement plan options for businesses, serving an initial term of three years;
 7. one appointed by the governor who must be an academic expert in the needs of the aging, serving an initial term of three years;
 8. the state comptroller, or his designee;
 9. the state treasurer, or her designee;
 10. the labor commissioner, or her designee; and
 11. the Office of Policy and Management secretary, or his designee.

All appointments to the board must be made by July 31, 2013. Following the expiration of their initial terms, subsequent legislative leader appointees will serve three-year terms. Any vacancy must be filled by the appointing authority not later than 30 calendar days after the vacancy. Any trustee previously appointed to the board may be reappointed.

The comptroller and the treasurer must serve as board chairpersons (apparently they will be co-chairs). The chairpersons must hold the board's first meeting by August 10, 2013. It must meet at least monthly.

The trustees serve without pay but will receive, within available appropriations, reimbursements for standard travel and other necessary expenses.

Each trustee must, no later than 10 calendar days after appointment, take an oath of office that he or she will diligently and honestly administer the affairs of the board, and will not knowingly violate or willingly permit violations of the applicable trust law. Each trustee's term will begin from the date the trustee takes such an oath. The bill does not say who will administer the oath.

Each trustee has one vote on the board. A majority of the trustees constitutes a quorum. The board is within the retirement division of the comptroller's office for administrative purposes only.

§14 —Board Ethics

The bill requires each trustee of the board to file, with the board and the Office of State Ethics, a statement of financial interests, as described by law. The statement is a public record.

§3 —BOARD DUTIES

The board, on behalf of the trust and to implement the plan, must carry out a number of duties specified in the bill.

It must establish consistent terms for each IRA offered through the trust's plan. The terms must include, but not be limited to:

1. the payment method into the trust by payroll deduction or rollover contributions for certain tax deferred retirement accounts or annuity plans under the IRC (specifically 402(c), 403(a)(4), 403(b)(8), and 457(e)(16) plans);
2. the termination, withdrawal, or transfer of payments under the trust, including the purchase of an annuity product upon retirement;
3. changing the identity of the designated beneficiary;
4. any administrative charges or fees; and
5. interest allocated to IRAs based upon the trust performance.

The board must also:

1. enter into contracts for legal, actuarial, accounting, custodial, advisory, management, administrative, advertising, marketing, and consulting services for the plan and pay for these services from the trust;
2. adopt regulations necessary to carry out the board's duties and

may establish rules and regulations that it deems necessary or desirable to facilitate the proper administration of the trust (rules and regulations the board establishes are binding on all parties dealing with the board and all people claiming trust benefits);

3. hire staff, including a program administrator;
4. form working groups as necessary to (a) solicit feedback from key stakeholders on the plan's design, (b) advocate for changes in federal retirement law to improve retirement security, (c) assess the plan's impact on reducing public assistance costs for the elderly in the state, and (d) determine if changes in federal or state tax law could help employees in the state save for retirement;
5. develop alternative plan designs, if necessary, to help eligible employees in the state save for retirement; and
6. ensure that the trust complies with all applicable federal and state laws, rules, and regulations to the extent necessary to meet federal tax-deferral or tax-exempt benefit criteria under the IRC.

In conducting the trust's business, the board must act:

1. with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
2. in accordance with state statutes and strict fiduciary standards and responsibilities.

All plans, descriptions, and reports and all legal, financial and actuarial documents dealing with the general operations of the plan must be available for inspection and copying by members and their representatives. The cost of any copying must be borne by the member or representative, but cannot exceed 25 cents per page.

§7—BOARD POLICIES AND PROCEDURES

The board, must establish and evaluate policies and procedures necessary to implement the public retirement plan.

It must:

1. design, establish, and operate the plan to (a) increase access and enrollment in quality retirement plans that provide an annuitized benefit, (b) provide a guaranteed rate of return, (c) reduce the need for public assistance through a system of prefunded retirement-income, (d) offer low administrative costs and streamlined enrollment, (e) minimize the need for financial sophistication for plan participants, and (f) ensure trust and transparency in the management of retirement funds through oversight and ethics review of plan fiduciaries;
2. explore and establish investment options that offer plan participants the conversion of IRA balances to secure retirement income without incurring debt or liabilities to the state;
3. establish a process for plan enrollees to switch from the default of lifetime annuity to lump-sum payout upon retirement;
4. disseminate educational information concerning saving and planning for retirement;
5. disseminate information concerning the tax credits available to small business owners for establishing new retirement plans and the federal retirement savings contribution credit available to lower and moderate-income households for qualified savings contributions;
6. determine the eligibility of an employer, employee, or any other individual to participate in the program;
7. evaluate and establish the process by which a plan participant must contribute a portion of his or her salary or wages to his or her IRA;

8. evaluate and establish the process by which a qualified employer must credit the plan participant's contributions to his or her IRA through payroll deposit;
9. evaluate and establish the process by which a qualified employer must contribute to a plan participant's IRA, provided that the contribution must (a) be allowed under the IRC and (b) not cause the plan to be treated as an employee benefit plan under ERISA;
10. design and establish the process (a) for the enrollment of eligible employees in the plan and (b) by which an individual or employee of a nonparticipating employer may enroll in or make contributions to the program. This process must include the creation of an information packet with the necessary paperwork for an eligible employee to enroll in or opt-out of the plan;
11. develop one or more payroll deposit savings arrangements through which qualified employers may make deposits into the trust;
12. establish and maintain a secure Internet web site that displays all public notices issued by the board and such other information as the board deems relevant for educating the public regarding the plan;
13. submit a report to the General Assembly regarding any changes necessary for the plan's implementation; and
14. set maximum investment levels in accordance with contribution limits set for IRAs by the IRS.

§ 14—BOARD ANNUAL AUDIT REPORT

The board must submit, in accordance with state law: (1) an annual audit, prepared in accordance with generally-accepted accounting principles by an independent certified accountant, on the operations of the trust and plan by January 1 of each year, following its first full year

of implementation, to the governor, Senate president, and the House speaker, and (2) a report prepared by the board, including at a minimum, a summary of the plan design and operation, the number of participants, the average participant contribution, and the rates of return and administrative costs as a percent of total plan assets. The bill does not indicate who receives the report with the plan summary and number of participants and does not indicate when it is due.

§4 —IRA FEATURES

The board must prescribe the design features for each IRA offered under the plan. The board may amend the features from time to time to serve the interests of eligible employees, plan participants, qualified employers, and other stakeholders. Each IRA must:

1. provide automatic roll-over of a plan participant's individual retirement savings balance upon any change of employment;
2. forbid participants from liquidating their IRAs when they change employers;
3. transition to an inflation-indexed annuity with options for spousal benefits and lump-sum distribution when the participant retires;
4. assure plan portability by keeping separate accounts for each plan participant;
5. offer a guaranteed interest rate to plan participants upon the board analyzing expected rates of return on trust assets;
6. include a written quarterly report detailing (a) the individual retirement savings balance of a plan participant's IRA, (b) the estimated value of assets available upon the participant's retirement, (c) an estimate of the participant's expected monthly retirement income, and (d) other specifics;
7. require that all IRA assets, whether contributed by an employee or an employer or accrued through investments, must vest

immediately upon an employee's enrollment;

8. provide preretirement death benefits to enable a plan participant to bequeath assets to designated beneficiaries; and
9. ensure that all contributions to IRAs are tax qualified under the IRC and the state tax code.

Each qualified employer must allow eligible employees to contribute to the plan through payroll deduction and through any other means prescribed by the board.

The quarterly report must be made available through a secure Internet web site and must comply with all federal regulations regarding reporting.

§5 —TREASURER'S DUTIES

The treasurer, on behalf of, and for purposes of, the trust, must:

1. receive and invest moneys in the trust in any instruments, obligations, securities, or property in accordance with the bill's investment guidelines;
2. procure insurance in connection with the trust's property, assets, activities, or deposits or contributions to the trust;
3. apply for, accept, and expend gifts, grants, or donations from public or private sources to enable the trust to carry out its objectives; and
4. establish one or more funds within the trust and maintain separate accounts for each IRA.

§3—TREASURER'S ANNUAL REPORT

Each year the treasurer must publish and forward to the board a consolidated report showing the fiscal transactions of the trust for the preceding fiscal year, including:

1. gain or loss by category of security,

2. a reconciliation of assets showing the trust's progression from one year to the next,
3. the amount of the accumulated cash and securities in the trust, and
4. the last balance sheet showing the trust's financial condition by means of an actuarial valuation of its assets and liabilities.

Assets must be shown at book and market value and by type or term of investment, and gain or loss must be reported by category of security type.

§§ 6 & 15—INVESTMENT GUIDELINES

The bill includes conflicting provisions on whether the treasurer's trust investments for the new trust are regulated under the existing requirements established for state trusts with investments overseen by the treasurer (see COMMENT).

Under the bill, the treasurer must invest the amounts on deposit in the trust in a manner reasonable and appropriate to achieve the objectives of the trust, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. She must give due consideration to rate of return, risk, term or maturity, diversification of the total portfolio within the trust, liquidity, projected disbursements and expenditures, and the expected payments, deposits, contributions, and gifts to be received.

The treasurer must not require the trust to invest directly in obligations of the state, its towns, or any of its political subdivisions or in any investment or other fund she administers. The trust assets must be continuously invested and reinvested in a manner consistent with the trust objective until disbursed upon order of the board or expended on expenses incurred due to trust operations.

§§ 8 & 9—PLAN ENROLLMENT, INTEREST RATES, EMPLOYEE CONTRIBUTIONS & FEES

The board must open the public retirement plan to enrollment by

August 1, 2014, or 90 days after the conditions required by the bill are met (see § 17), whichever is later. The bill does not provide any steps or course of action to be taken if the conditions required under the bill are not met.

Interest

On or before December 1, 2014, and annually thereafter, the board must declare the rate at which interest must be allocated to IRAs for the following calendar year. Any interest accrued on moneys held in the plan from its opening until January 1, 2015, must be used to establish a reserve fund held by the treasurer. Interest must be (1) allocated to IRAs, (2) computed at the stated interest rate on the balance of an eligible employee's account, and (3) compounded daily.

Contribution Rates

The board may set a default contribution amount, under the provisions of the Uniform Administrative Procedures Act (UAPA), of at least 3% of the participant's salary and may vary such amount according to the length of time that an eligible employee has contributed to the plan. It is not clear why such an activity as setting an employee contribution rate should be done under the UAPA (see BACKGROUND).

The board must, annually by December 1, notify all plan participants of any changes to the default contribution rate for the following calendar year. The first such notification must be by December 1, 2014.

Plan participants may, at any time and on a form and in a manner prescribed by the board, elect to change their contribution level (apparently this means a participant may increase his or her contribution).

Administrative Fees and Expenses

Administrative fees must be allocated to each IRA on a pro rata basis. Annual administrative expenses must not exceed 1% of the total trust balance.

All expenses, including employee costs, incurred to implement, maintain, advertise, and administer the plan must be paid from money collected by or for the trust.

Enrollment

Not later than 90 calendar days after board opens the plan for enrollment, qualified employers must offer eligible employees a payroll deposit option to facilitate participation in the plan. Each eligible employee must be enrolled in the plan unless such employee elects not to participate in the plan. The bill is not clear about (1) who must enroll the employee if he or she does not choose to enroll and (2) who determines if an employee is an eligible employee under the bill (see COMMENT).

An eligible employee may elect to opt out of the plan by providing written notice, on a form and in a manner as the board may prescribe, to the board and his or her employer.

Following initial implementation of the plan and at least biennially thereafter, qualified employers must designate an open enrollment period during which each eligible employee who previously opted out of the plan must be enrolled in the plan unless the employee again elects to opt out (see COMMENT).

Any eligible employee not participating in the plan may enroll at any time by submitting written notice, on a form and in a manner as the board may prescribe, to the board and his or her employer.

A qualified employer must retain the option at all times to set up any type of employer-sponsored retirement plan. The employer may establish an employer-sponsored retirement plan as long as it notifies each eligible employee and plan participant within a reasonable amount of time and in a manner prescribed by the board.

§ 10—STAKEHOLDER INPUT

From time to time, the board must consider the opinions of eligible employees, plan participants, qualified employers, and other

stakeholders in modifying the retirement plan by:

1. holding public hearings to allow eligible employees, plan participants, qualified employers, and other stakeholders to comment on the plan, including the default contribution amounts, guaranteed interest rates, and fees charged;
2. surveying plan participants and qualified employers to assess their experience with the plan; and
3. assessing the marketplace of employer-sponsored retirement plan offerings to determine what is otherwise available to employees and residents in the state.

§ 11—PROTECTIONS FOR EMPLOYERS

Under the bill, qualified employers are not be liable for an eligible employee's decision to participate in or opt out of the plan or for the investment performance of assets deposited in the trust.

Also, employers are not:

1. a fiduciary or considered to be a fiduciary of the plan,
2. responsible for the administration, investment, or investment performance of the plan, or
3. liable with regard to investment returns, plan design or retirement income paid to plan participants.

Further, a qualified employer's voluntary contribution made under the bill may not (1) create any of these liabilities or responsibilities or (2) change the employer's relationship to the plan or the employer's obligations to eligible employees.

§ 12—PROTECTIONS FOR THE STATE

The bill specifies that the state is not liable for the payment of the IRA balance earned by plan participants.

Any financial liability for the payment of retirement account balances in excess of funds available in the trust must be borne by the entities with whom the treasurer contracts to provide insurance to protect the value of the trust.

The state, and any of the funds of the state, must not have any obligation for paying benefits under the bill.

§ 13—COMPLAINT PROCESS

The bill prohibits qualified employers from, without good cause, failing to allow an eligible employee to participate in the plan. The employers must remit all moneys intended for the trust not later than 14 calendar days after the date they were deducted from plan participants' wages.

Any eligible employee or plan participant aggrieved by a violation of the bill's provisions may file a complaint with the labor commissioner, but the bill only provides penalties for failing to allow employees to participate and failing to remit funds on time that are intended for the trust.

Upon receipt of any such complaint, the commissioner may hold a hearing. After the hearing, any qualified employer who the commissioner finds, by a preponderance of the evidence, to have violated the participation or timely fund remittance must be liable to the labor department for a civil penalty of \$600 for each eligible employee employed by the employer. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with state law.

Any penalties collected under the bill must be deposited in the trust.

§ 16—MARKET FEASIBILITY STUDY

The board must conduct a market feasibility study to determine whether the necessary conditions for implementing the bill can be met, including:

1. likely participation rates,
2. contribution levels,
3. rate of account closures and rollovers, and
4. ability to provide employers with a payroll deposit system for remitting contributions from employees.

The board must submit a report on the findings of such study and any recommendations therefrom to the governor and the Labor Committee by December 15, 2013.

§ 17—DETERMINATION OF TRUST AS FINANCIALLY SELF SUSTAINING AND EXEMPT FROM ERISA

Under the bill, the trust's retirement plan must clear two tests before it can be implemented.

First, the board must determine that, based on the bill's provisions and the market analysis required in the bill, (1) the trust will be self-sustaining, and (2) startup funds are made available through a nonprofit or other private entity, federal funding, or state appropriation in amounts sufficient to allow the board to implement this trust's plan.

Second, the board must determine (1) the arrangements for IRAs must qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the IRC, and (2) the trust's plan must be determined not to be an employee benefit plan under the ERISA. If the plan were to be determined to be under ERISA regulatory control, then it could jeopardize all the other retirement trust funds the state administers, which currently are not under ERISA. ERISA has fiduciary and other requirements that the various state funds currently do not have to meet.

BACKGROUND

UAPA

Under the UAPA, only an agency's final decision can be appealed to

Superior Court. Final decisions are those resulting from a contested case where the affected party is given a right to a hearing. A “contested case” is an agency proceeding where a person’s legal rights, duties, or privileges are determined by statute. UAPA regulates how agencies conduct contested cases, including (1) determining the parties, (2) setting notice requirements, (3) guiding the conduct and record of the hearing, and (4) setting rules for appeals.

COMMENT

Conflicting Provisions

The bill includes conflicting provisions on whether the treasurer’s trust investments for the new trust are under the oversight and requirements established for existing state trusts for which the treasurer oversees investments. Section 6 of the bill exempts the treasurer’s trust investments from the oversight and requirements established in the trust statutes that apply to funds such as the Teacher’s Pension Fund, the State Employee Retirement Fund, and the Connecticut Municipal Employees’ Retirement Fund. Section 15 of the bill places the new trust in these same statutes that would put it under the same oversight as the other funds.

Unclear Who Must Enroll Employees

The bill requires that eligible employees be automatically enrolled in the trust plan unless they opt out. The bill does not explain who automatically enrolls the employee if he or she does not opt out. Under the bill, the employer must give the employee an enrollment form. But it is unclear of the mechanics of what happens next if the employee does not enroll. Since the bill is not explicitly authorizing the employer to enroll the employee, this provision may violate the state law that prohibits such action by the employer unless it is authorized by law or the employee gives permission (CGS § 31-71e).

Furthermore, the bill does not state who determines if an employee is an eligible employee. This would have to be done before an employee is enrolled.

Automatic Enrollment of Employees Who Previously Opted Out

The bill specifies that an employee will automatically be enrolled during open enrollment if the person does not opt out, even if the person has opted out in previous years. It is not clear whether it is legal to automatically enroll a person in a program that he or she has chosen previously to opt out of.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 3 (03/19/2013)