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Statement by Michael Callahan

On behalf of the American Society of Pension Professionals and Actuaries

Comments Presented to the Labor and Public Employees Committee

Hearing on SB 54: An Act Establishing a Retirement Savings Plan for Low-Income Private Sector Workers

February 26, 2013

Mr. Chairman and members of the Committee, thank you for this opportunity to testify on SB 54. I am Michael Callahan. I am an Enrolled Actuary and for many years I ran a third party administration firm here in Connecticut that helped thousands of employers provide retirement plans to their employees. I have worked with retirement plans of all types – defined benefit and defined contribution, hundreds of which are sponsored by small businesses here in Connecticut.

I am here speaking on behalf of the American Society of Pension Professionals and Actuaries (ASPPA), which is a national organization of more than 11,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, attorneys and investment professionals, united by a common dedication to the employer-based retirement system.

ASPPA has consistently and actively supported proposals to expand retirement plan coverage. This has included auto-IRA proposals supported by the Obama Administration that would require employers to offer payroll reduction savings at work through private sector providers while encouraging employers to set up private sector qualified retirement plans. However, we oppose SB 54 because it would not be permitted under Federal law, and, even it was, it would impose substantial liability on the State of Connecticut and its employers. In other words, it just won't work.

SB 54 would "create a defined benefit plan for low-income private sector workers who do not currently have access to an employer-sponsored retirement plan allowing such workers to contribute a certain percentage of their annual salary to a state-administered retirement savings trust." The intention is good, but in practice it would be a nightmare.

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First, although a state employee can contribute to the State's defined benefit plan with before-tax dollars through salary reduction, federal law does *not* permit salary reduction contributions to a defined benefit plan for non-governmental employees. So employees' contributions to the SB 54 plan would be subject to income tax That means private-sector employees would receive better tax treatment for contributions to an IRA than they would for their contributions to the proposed defined benefit plan.

Second, the federal Employee Retirement Income Security Act (ERISA), the labor law that protects employees' rights to benefits, does not apply to plans for state and local government employees – but it does apply to all private employers' retirement plans. *Every employer that has an employee covered by the SB 54 defined benefit plan would have to adopt the plan as a single employer, and would be subject to the responsibilities and liabilities for private employers under ERISA.* In addition to disclosure and reporting requirements, each employer would be subject to ERISA's minimum contribution requirements. In other words, although SB 54 does not mention an employer contribution requirement, federal law requires contributions from an employer in years in which a defined benefit plan's investment return, or other experience, is not as favorable as expected. An enrolled actuary would have to be engaged by each Connecticut employer participating in the SB 54 plan to determine their minimum required contributions for each and every year. Pursuant to Federal law, the actuary would need to complete and file a form certifying whether or not a contribution is required and if one is required, that at least the required amount was made. Penalties apply when an employer fails to make a required contribution. (Of course, there is another form to file to report and pay the penalty.)

Finally, a State-run defined benefit plan would also bring ERISA fiduciary liability to the State. Connecticut would become an ERISA fiduciary for the SB 54 plan because the State would be selecting the investments and serve as plan administrator. There are also other risks associated with non-compliance with federal rules such as penalties if required disclosures are not completed on a timely basis. This is liability the state can ill afford.

In summary, SB 54 is a well-intentioned, but very bad idea. It would not provide employees with favorable tax treatment, but it would result in substantial cost and ERISA fiduciary liability for both the State and the employers of the workers. Nobody wins under this proposal.

The Committee should oppose SB 54.