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 ERISIA;

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)