Dear Chairman Holvey,

Thank you for giving me the chance to testify at your March 6 hearing on HB 2960. I apologize for not following up sooner on a key issue that was raised regarding ERISA.

I mentioned that we have reviewed two legal opinions that go to the heart of this issue. They call into question assertions that were made by proponents that a mandatory auto-enrollment IRA arrangement such as the one in HB 2960 would not (1) be pre-empted by and (2) trigger coverage under ERISA, the federal law that governs all employer sponsored retirement plans for private workers. I have attached the two opinions and hope they can be added to the record.

The first opinion was commissioned by AARP and the National Conference on Public Employee Retirement Systems (NCPERS), two of the sponsors of the bill. It was prepared by the Segal Consulting Firm and was circulated in Maryland and other states by the proponents.

The second opinion is from the Washington DC law firm Davis & Harman, a specialist in U.S. Department of Labor issues. We commissioned that opinion.

Reading the two opinions together could be helpful to your review of the bill. The Segal memo seems to contradict some of the proponents' own testimony. The Davis & Harman memo reviews and critiques the Segal memo and reaches completely different conclusions. For instance, here are two excerpts:

"The Segal Memorandum appears to conclude that a Mandatory Automatic IRA Arrangement would not be subject to ERISA because it would fall under an exception in Department of Labor ("DOL") regulations for voluntary IRA payroll arrangements. The Segal Memorandum also suggests that a state mandate that an employer offer a Mandatory Automatic IRA Arrangement if the employer does not offer another retirement plan might not be subject to ERISA's broad preemption provision based the argument that a Mandatory Automatic IRA Arrangement does not mandate the creation of an *ERISA plan*. The Segal Memorandum ***cites no authority*** for this proposition. As explained below, ***there are strong reasons to doubt both of these conclusions***."

And later:

"In short, although DOL has not addressed the issue directly and there is no direct precedent on this issue, it is generally thought that the inclusion of an ***automatic enrollment feature results in employer involvement that exceeds that allowed under the safe harbor***. The Segal Memorandum does not provide any analysis to allow one to conclude otherwise. In fact, Congressional proposals for a federally-mandated automatic payroll deduction IRA have included a specific exception from ERISA because, otherwise, an automatic enrollment payroll deduction IRA, even one required by law, ***would be treated as an ERISA plan.*** Congress can provide an exemption from ERISA coverage; a state cannot."

It is based on analysis like this that we support **the -3 amendment**. We believe it would be prudent to ask for DOL confirmation that the plan will not impose liabilities before implementing it and auto-enrolling hundreds of thousands of Oregonians.

Thank you again for your courtesy.

John Mangan