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**Written Comments Submitted to the
Joint Committee on Financial Services
Commonwealth of Massachusetts**

**By
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On behalf of the
American Society of Pension Professionals and Actuaries**

**Hearing on H.1194: An Act Relative to Universal Voluntary
Retirement Accounts**

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Mr. Chairmen and members of the Committee, thank you for this opportunity to testify on H.1194. I am Judy Miller, Director of Retirement Policy for the American Society of Pension Professionals and Actuaries (ASPPA). ASPPA is a national organization of more than 8,000 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 and attorneys, united by a common dedication to the employer-based retirement system. ASPPA has over 300 members who live and work in the Commonwealth of Massachusetts for more than 80 companies that provide services to employer-based retirement plans. ASPPA is particularly focused on the issues faced by small- to medium-sized employers, and so is well-qualified to comment on small employer retirement plan legislation such as H.1194.

ASPPA has consistently and actively supported other proposals to expand small business retirement plan coverage. This has included a federal tax credit which provides small businesses with up to a \$500 annual tax credit for the start-up costs of a new small business retirement plan. However, we oppose H.1194, because the bill is not likely to expand coverage, and may in fact do more harm than good.

The reason given for the proposal (as stated in the first sentence of Section 1 of H.1194) is that “The legislature finds that small and medium sized businesses find it difficult to offer retirement plans because of the complexity and costs.” This assertion simply is not true, and the proposed “solution” of Commonwealth-run employer-based retirement

savings arrangements would not only fail to address a real problem, but would do so at a substantial cost and potential liability to the Commonwealth.

Low-cost, easy to operate, retirement plans for small employers exist in the market place right now. Congress created SIMPLE IRA plans with no significant administrative costs and minimal responsibility specifically for small employers that do not want the cost or responsibility of a full blown 401(k) plan. Not only SIMPLE IRAs, but 401(k) plans, are already available through the private sector at very low cost. Furthermore, the same federal laws and regulations would apply to a Commonwealth-run plan as to plans available through private providers, so plans run by the Commonwealth would be as simple or as complex as the same type of plan (SIMPLE IRA or 401(k) plan) already available in the very competitive Massachusetts marketplace.

There would be little, if any, cost savings under a state-sponsored plan. A state-sponsored plan for small business – whether SIMPLE IRAs, IRAs accepting only payroll-deduction contributions, or a 401(k) plan - would be much more expensive to administer than the Commonwealth’s 403(b) or 457 plans. There are practical reasons any business person should understand – like the additional cost of collecting payroll information and contributions from hundreds of small employers instead of from established governmental payroll systems.

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. The ERISA rules, and Internal Revenue Code non-discrimination requirements, are designed to protect rank and file workers. These rules are important -- they are also complicated and time consuming.

It is critical to understand that each and every private business is required to adopt a plan, and perform required testing, as a single employer. This requirement creates a long list of responsibilities for the service provider for each plan. One of the first steps can be among the most complicated – determining if the employer is a stand-alone business, or part of a controlled group or affiliated service group. This means the state would have to request ownership information from the employer - not just ownership in the small business, but what other businesses the owners own in case the small business needs to be combined with other businesses for testing under controlled group or affiliated service rules. Once the administrator has determined what constitutes the employer for purposes of retirement plan coverage and discrimination testing purposes, the administrative tasks can begin. These tasks include (1) gathering payroll data from multiple sources; (2) determining if the data is complete, and if the right elements of pay have been included or excluded; (3) reviewing reported hours worked for reasonableness, and using the information to adjust vesting and determine which employees must be included in testing and contribution allocations; (4) determining key employees and HCE’s; (5) completing discrimination and top heavy testing and retesting; (6) determining and processing refunds to correct any failed testing; (7) allocating employer contributions according to the plan’s formula and (8) completing required federal filings

and notices. Other services that must be provided on an ongoing basis include administering loans and defaults on loans; distribution processing; document processing and amendments; and compliance with federally mandated ERISA requirements such as providing communication, website, and educational materials necessary to fulfill its fiduciary duties to small business and the workers.

H.1194 doesn't limit the Commonwealth's options to IRAs. The bill would allow the Commonwealth to operate any "internal revenue service approved employer plan". If the proposal limited employer-based plans to SIMPLE IRAs, some of the tasks described above would be reduced or eliminated, but the need to determine what businesses are part of the same employer, to gather payroll information, collect contributions, and verify that the contributions made by small business owners and highly paid employees have been properly limited, will remain.

There is no easy way around the rules and there should not be – the rules are designed to protect rank and file employees. There also is no reason to expect the Commonwealth of Massachusetts to administer hundreds of plans more efficiently than businesses that have been doing the work for years.

There would be substantial cost to the state. In addition to start up and maintenance costs, which other states have found would be substantial¹, the Commonwealth of Massachusetts would become a fiduciary for employer-sponsored plans covered by their program because the state would be selecting the investments and record keeper. This is liability the state can ill afford, and the state would need to obtain fiduciary insurance covering its exposure.

In the private pension system today, plan advisors – actuaries, administrators, accountants and attorneys -- help employers choose the plan that is best for that small business and its workers, and operate the plan in accordance with federal law and regulations. Is the state ready to bear this burden for each and every plan and worker? Who will represent the small business if the IRS or DOL audits their plan? And will the state recover these expenses from program assets, *i.e.* workers, as well? These are just a few real downsides faced by private service providers every day – and the state would bear the same burden. The state will not be able to eliminate its responsibility for the risk of non-compliance by contracting with a third party.

Massachusetts should not compete with its own small, private businesses unless there is a market failure. State governments should only step in private markets if there is an inherent unfairness which disadvantages its citizens. In Massachusetts, the marketplace for 401(k) plans, SIMPLE IRAs and other retirement savings vehicles, is robust and highly competitive. Massachusetts's private service providers compete in this market and create jobs and pay taxes. H.1194 would allow the state to compete directly with private

¹ A report by the state of Washington in 2009 estimated that the cost to the state would be an initial start-up cost of \$3.4 million over two years – and then on-going costs of \$2 million per year. The State of Maryland examined the viability of a state administered 401(k) plan and concluded that such a program would require significant long-term state expense.

service providers even though small businesses already have many options to provide pension plans, along with multiple opportunities to avoid or limit costs.

The availability of workplace retirement savings opportunities should be expanded, but the voluntary state-run retirement accounts proposed in this bill are not the solution.

If an employer doesn't want to set up a retirement plan, it is generally either because the employer is not educated about available options or the employer does not want to commit to making contributions for employees each year. H.1194 doesn't address either problem. Massachusetts workers and business owners would be better served by the Commonwealth providing education on just how simple and low cost plans can be, and educating employers about the federal tax credit available to small businesses to help pay for any start-up costs that are incurred. In addition, surveys show small business owners that do not provide a retirement plan to employees often think their employees do not value having a retirement plan at work. A Commonwealth education campaign encouraging workers with no workplace plan to ask their employer to make a retirement savings plan available could help overcome this perception, and lead to more small businesses providing a workplace retirement savings plan.

H.1194 is a well-intentioned, but very bad idea. The Commonwealth's creation of retirement plans for small businesses will not solve a real problem, but it could hurt Massachusetts businesses that provide retirement plan services, and would result in substantial cost and ERISA fiduciary liability for the Commonwealth. The effort would be better spent on educating employers about existing options, educating workers about the importance of retirement savings, or giving employers a tax credit to help make the contributions that are the real roadblock to establishing a plan.

The Committee should oppose H.1194.