

SUBJECT: Revising provisions related to 403(b) retirement plans in public schools

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 8 ayes — Truitt, Anchia, Anderson, Flynn, Hernandez, Hopson, Parker, Veasey

0 nays

1 absent — Woolley

WITNESSES: For — Mike Cochran, TCG Consulting; Phil Lynch, 1st American Pension Services, Inc.; (*Registered, but did not testify*: Portia Bosse, Texas State Teachers Association; Ann Fickel, Texas Classroom Teachers Association; Tony Goolsby, 1st American Pension; Dean McWilliams, TCG Consulting; Josh Sanderson, Association of Texas Professional Educators)

Against — None

On — Miles Mathews, ING Americas Insurance Holdings; Brenda Nation, American Council of Life Insurers; (*Registered, but did not testify*: Jennifer Ahrens, Texas Association of Life and Health Insurers; Denny Crawford, State Securities Board; Brian Guthrie, Teacher Retirement System; Martin McCaulay, Texas Pension Review Board)

BACKGROUND: VTCS, art. 6228a-5 allows school districts, higher education institutions, and certain state agencies to offer 403(b) retirement investment products to their employees as a vehicle for voluntary, tax-deferred payroll savings.

The 77th Legislature in 2001 enacted SB 273 by Armbrister, which authorized the Teacher Retirement System (TRS) to review and certify financial companies offering investment products through a 403(b) program. The 80th Legislature in 2007 enacted HB 2341 by Truitt, which enabled school districts to comply with federal regulations requiring greater oversight of 403(b) plans.

DIGEST:

CSHB 3480 would amend VTCS, art. 6228a-5 to expand the types of companies eligible to offer 403(b) retirement accounts to certify with the Teacher Retirement System of Texas (TRS). The bill would also require a company contracting with a public school to administer its 403(b) plan to be certified with the Texas Department of Insurance (TDI), registered with the State Securities Board (SSB), or authorized to exercise fiduciary duties by the Department of Banking (DoB).

403(b) plan requirements. A school district or open-enrollment charter school could not enter into or continue a salary reduction agreement with an employee if the qualified investment product subject to the salary reduction agreement was not an eligible qualified investment, including the investment product of a company whose certification had been denied, suspended, or revoked.

A company or its agent could not enter into a new or renewal contract with a school district to provide services for or administer a 403(b) plan offered by the education institution if the company was properly certified by TRS and offers an eligible qualified investment. Other than an employee of a school district, a person or their affiliate could not enter into a new or renewal contract to provide a 403(b) plan, unless the person:

- held a license or certification of authority issued by TDI;
- was registered as a securities dealer, agency, or investment advisor with the SSB; or
- was a financial institution that was authorized by state or federal law to exercise fiduciary power and had its main office, a branch office, or a trust office within the state.

Expansion of investment options. A company offering qualified investment products other than annuity contracts, including a company offering custodial accounts under Internal Revenue Code of 1986, sec. 403(b)(7), could certify with TRS under established rules.

Investigations and violations. TDI, DoB, or SSB would investigate a complaint received from TRS. If the investigation determined that a violation may have occurred, the applicable state agency would forward its results to the attorney general. TDI, DoB, and the SSB would have to submit an annual report that provided the status of any enforcement action taken or investigation made as a result of a complaint.

TRS could deny, suspend, or revoke the certification of a company if it received notice that the company or the company's product was determined to violate the law in any judicial or administrative proceeding. A company could recertify to TRS after an applicable period of suspension or revocation of their certification.

A violation would be subject to a civil penalty in an amount not exceeding \$10,000 for a single violation or \$1,000,000 for multiple violations. The court would consider a number of factors in determining a civil penalty, including:

- the seriousness of the violation;
- the history of previous violations by the person; and
- other matters required to determine justice.

The attorney general could institute an action for injunctive relief or to collect a civil penalty, and that action would have to be filed in a district court in Travis County. In obtaining injunctive relief, the attorney general could recover reasonable court costs.

The bill would take effect September 1, 2009. The bill's provisions regarding a salary reduction agreement, contract to administer a 403(b), or related violations would only apply after the effective date.

**SUPPORTERS
SAY:**

CSHB 3480 would help stop the emerging practice of using free or reduced-priced third party administration services (TPAs) as a vehicle to limit competition for 403(b) products for public school teachers. This harmful practice is a result of some TPAs taking advantage of confusion on the part of school districts regarding recent changes in Internal Revenue Service (IRS) regulations regarding 403(b) plans.

In addition to offering to help school districts with IRS compliance issues, some TPAs also are being authorized to be the sole provider for 457(b) products. Through this relationship, some TPAs are attempting to push their own 403(b) product, at the expense of existing ones, despite clear prohibition in the law that a school may not accept any benefit from a company offering a qualified investment product, such as a 403(b) plan. This deceptive practice hurts teachers who may buy retirement plans unnecessarily, as well as other third-party agents who cannot compete with large agencies offering their services as "loss-leaders."

By separating a business selling 403(b) products from those that administer the plans, CSHB 3480 effectively would end the opportunity for vendors to enter into agreements that would entail a conflict of interest in combining those services.

The bill also would provide additional safeguards to protect teacher's investments by requiring firms to register, be licensed, or be regulated by the Texas Department of Insurance (TDI), the State Securities Board (SSB), and the Department of Banking (DoB), respectively, and to require that their products are approved by TRS. This would ensure that all service providers and their products were appropriately vetted before a company could enter into a contract with a school district.

The bill would also allow TDI, SSB, and the DoB to investigate any complaint received from TRS regarding this issue. This, in addition to fines ranging up to \$1 million, would be an effective deterrent to fraudulent activity.

The bill also would increase teacher 403(b) investment options by allowing TRS to certify other non-annuity investment programs, known as mutual fund platforms. This would provide teachers access to multiple mutual fund families at potentially lower costs than current offerings.

**OPPONENTS
SAY:**

This bill would cause the state to intervene unnecessarily to fix a perceived parity issue in teachers' retirement plans. In doing so, the state inadvertently could reduce the plan options available to teachers.