

## **BILL ANALYSIS**

C.S.H.B. 3480

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Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, the Teacher Retirement System of Texas (TRS) certifies only individual mutual fund families as non-annuity qualified investment products. Other non-annuity investment programs, known as mutual fund platforms, are not authorized to certify with TRS. Section 403(b)(7) of the Internal Revenue Code specifically allows mutual funds and non-annuity platforms that offer multiple mutual fund families. The 403(b) Final Regulations, issued by the Internal Revenue Service in July 2007, now require coordination among all approved product providers so that the restrictions on loans, hardship withdrawals, and other distributions are enforced.

Additionally, TRS lacks sufficient statutory authority to ensure that third party administrators are not creating unfair competitive advantages for their affiliated 403(b) vendors. The bill enables TRS to ensure third party administrators do not curtail the availability of 403(b) products among teachers.

C.S.H.B. 3480 allows a company that offers a custodial account under the federal Internal Revenue Code of 1986 to certify with TRS and places these companies under the regulation of Vernon's Texas Civil Statutes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Teacher Retirement System of Texas in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 3480 amends Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962, relating to annuities and investments for certain public employees, by specifying that the Teacher Retirement System of Texas (TRS) is authorized to adopt rules only to administer such laws and the bill's provisions after consultation with the Texas Department of Banking, as well as consultations with the Texas Department of Insurance (TDI) and the State Securities Board. The bill requires TRS to refer to the appropriate division of the TDI, the Texas Department of Banking, or State Securities Board all complaints about a qualified investment product, including complaints that allege violations of state law relating to annuities or investments for certain public employees by companies that certify to TRS that the companies offer qualified investment products. The bill requires TDI, the Texas Department of Banking, or the State Securities Board to investigate a complaint received from TRS. The bill requires the investigating agency, if as a result of the investigation the agency determines that a violation may have occurred, to forward the results of the investigation to the attorney general. The bill requires the agencies to submit a report to TRS at the beginning of each quarter of the fiscal year that provides the status of any enforcement action taken or investigation made regarding a product or a company that is the subject of a complaint described above and to promptly notify TRS of any final enforcement issued regarding the product or company. The bill authorizes TRS to deny, suspend, or revoke the certification of a company if TRS receives notice that the company or the company's product was determined to be in violation of established law in any judicial or administrative proceeding. The bill authorizes a company whose certification is denied, suspended, or revoked to recertify

to the board of trustees of TRS after an applicable period of suspension or revocation.

C.S.H.B. 3480 clarifies that a company offering qualified investment products other than annuity contracts that is authorized to certify to TRS based on rules adopted by the board of trustees includes a company that offers a custodial account under Section 403(b)(7), Internal Revenue Code of 1986, that hold only investment products registered with TRS.

C.S.H.B. 3480 extends the prohibition against an educational institution's granting of exclusive access to information about an employee's financial information including information about an employee's qualified investment products to a company or agent offering qualified investment products without the employee's written consent to include prohibiting such access to an affiliate of such company; the bill extends the prohibition against such institution's use of public funds to recommend a qualified investment product offered by a company or an agent of a company to include qualified investment products offered by an affiliate as well. The bill prohibits an educational institution from entering into or continuing a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked.

C.S.H.B. 3480 prohibits a person from entering into or renewing a contract with an educational institution to provide services for or administer a plan offered by the institution under Section 403(b), Internal Revenue Code, if the person is a company that certifies to TRS, a company owned by or otherwise affiliated by common ownership or control with a company that certifies to TRS, or an agent of such a company.

C.S.H.B. 3480 prohibits a person, other than an employee of an educational institution, or an affiliate of the person from entering into or renewing a contract under which the person is to provide services for or administer a plan offered by the institution under Section 403(b), Internal Revenue Code of 1986, unless the person holds a license or certificate of authority issued by TDI, is registered as a securities dealer or agent or investment advisor with the State Securities Board, or is a financial institution that is authorized by state or federal law to exercise fiduciary powers and has its main office, a branch office, or a trust office in Texas.

C.S.H.B. 3480 specifies that a person commits an offense if the person sells or offers for sale an investment product that is not an eligible qualified investment or that is not registered and that the person knows will be the subject of a salary reduction agreement and removes the sale or offer for sale of a qualified investment product under the same conditions from the terms of the offense.

C.S.H.B. 3480 makes a person who violates the law relating to annuities and investments for certain public employees subject to a civil penalty in an amount that does not exceed \$10,000 for a single violation or \$1,00,000 for multiple violations. The bill requires the court, for purposes of determining the amount of such a civil penalty, to consider the following factors: the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation; the harm to other persons resulting directly or indirectly from the violation; cooperation by the person in any inquiry conducted by the state concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation; the history of previous violations by the person; the need to deter the person or others from committing such violations in the future; and other matters as justice may require. The bill authorizes the attorney general to institute an action for injunctive relief to restrain a violation by a person who is or who appears to be in violation of or threatening to violate such provisions or to collect a civil penalty described above. The bill requires an action by the attorney general to be filed in a district court in Travis County. The bill authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

## **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3480 differs from the original by making the rulemaking authority granted to the Teacher Retirement System of Texas (TRS) with respect to administration of certain provisions of the law relating to annuities and investments for certain public employees contingent on TRS's consultation with the Texas Department of Banking, in addition to consultation with the Texas Department of Insurance (TDI), and the State Securities Board, whereas the original does not include the Texas Department of Banking in this provision.

C.S.H.B. 3480 differs from the original by applying the definitions of several terms used in laws relating to annuities and investments for certain public employees to provisions added to those laws by the bill and removing a provision in the original subjecting violations of these laws to enforcement under Insurance Code provisions relating to discipline and enforcement under The Securities Act.

C.S.H.B. 3480 differs from the original by requiring TRS to refer complaints that allege violations of law by companies that certify to TRS as well as complaints about qualified investment products, whereas the original requires TRS to refer only complaints about qualified investment products or certified companies. The substitute differs from the original by adding the Texas Department of Banking to the entities to which TRS must refer such complaints, whereas the original requires TRS to refer such complaints only to TDI and the State Securities Board. The substitute adds a provision not in the original requiring TDI, the Texas Department of Banking, and the State Securities Board to investigate such complaints and, on a determination that a violation may have occurred, to forward the investigation's results to the attorney general.

C.S.H.B. 3480 adds a provision not in the original requiring the Texas Department of Banking to cooperate with TRS in the administration of laws relating to annuities and investments for certain public employees.

C.S.H.B. 3480 differs from the original by requiring the quarterly reports to TRS required of TDI, the Texas Department of Banking, and the State Securities Board to provide the status of any enforcement action taken or investigation made regarding a product or company that is the subject of a complaint and requiring those agencies to promptly notify TRS of any final enforcement order issued, whereas the original requires the quarterly reports to TRS required of TDI and the State Securities Board to set forth the status of any action or determination regarding either such a product or a company alleged to have violated certain provisions of the law and to promptly notify TRS of any final order finding a violation of law.

C.S.H.B. 3480 authorizes TRS to deny, suspend, or revoke the certification of a company if the retirement system receives notice that the company was determined to be in violation of law in any judicial or administrative proceeding, rather than requiring TRS to revoke the certification of a company if TRS receives notice of a final order finding a violation of the law, as in the original. The substitute removes provisions in the original requiring TRS to revoke the certification for a company for a period of one year, if TRS receives notice that the company has violated certain prohibitions against that company's entering into or renewing a contract with an educational institution for administration of that institution's 403(b) retirement plan.

C.S.H.B. 3480 differs from the original, in a provision authorizing certain companies that offer qualified investment products other than annuity contracts to certify to TRS, by making the provision applicable also to a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, that hold only investment products registered with TRS,

whereas the original specifies custodial accounts under that provision, as amended, with only registered products of other certified companies.

C.S.H.B. 3480 differs from the original by prohibiting an educational institution from granting exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to an affiliate of a company offering such products without the employee's written consent and from using public funds to recommend a qualified investment product offered by an affiliate of a company that offers that product, whereas the original does not include such affiliate in those prohibitions, which are applicable under existing law to a company or an agent offering such products.

C.S.H.B. 3480 differs from the original by prohibiting an educational institution from entering into or continuing a salary reduction agreement with an employee if the qualified investment product in the agreement is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked, whereas the original prohibits a salary reduction agreement for a product that is offered by a company that has not certified to TRS, including a company whose certification has been suspended or revoked.

C.S.H.B. 3480 adds a provision not in the original prohibiting certain persons, other than an employee of an educational institution, from entering into or renewing a contract under which the person is to provide services for or administer a plan offered by an educational institution unless the person meets certain licensing and registration requirements or is an authorized financial institution with an office in Texas.

C.S.H.B. 3480 adds a provision not in the original specifying that a person commits an offense if the person sells or offers for sale an investment product that is not an eligible qualified investment or that is not registered and that the person knows will be the subject of a salary reduction agreement, removing the sale or offer for sale of a qualified investment product under the same circumstances from the terms of the offense.

C.S.H.B. 3480 adds provisions not in the original making a person subject to a civil penalty for violating the law relating to annuities and investments for certain public employees; specifying factors a court is required to consider when hearing a trial for such a violation; authorizing of the attorney general to institute an action for injunctive relief or to collect a civil penalty; establishing venue for such an action in a Travis County district court; and authorizing the attorney general to recover reasonable expenses involving a violation described above.

C.S.H.B. 3480 adds saving provisions not in the original.