

SENATE AMENDMENTS

2nd Printing

By: Truitt, Menendez

H.B. No. 3480

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain investment products made available to certain
3 public school employees and the companies authorized to provide
4 those products; providing civil penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 4, Chapter 22 (S.B. 17), Acts of the 57th
7 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
8 Texas Civil Statutes), is amended to read as follows:

9 Sec. 4. In this section and in Sections 5, 6, 7, 8, 8A, 9,
10 9A, 9B, 10, 11, 12, and 13 of this Act:

11 (1) "Board of trustees" means the board of trustees of
12 the Teacher Retirement System of Texas.

13 (2) "Educational institution" means a school district
14 or an open-enrollment charter school.

15 (3) "Eligible qualified investment" means a qualified
16 investment product offered by a company that:

17 (A) is certified to the board of trustees under
18 Section 5 of this Act; or

19 (B) is eligible to certify to the board of
20 trustees under Section 8 of this Act.

21 (4) "Employee" means an employee of an educational
22 institution.

23 (5) "Qualified investment product" means an annuity or
24 investment that:

1 (A) meets the requirements of Section 403(b),
2 Internal Revenue Code of 1986, and its subsequent amendments;

3 (B) complies with applicable federal insurance
4 and securities laws and regulations; and

5 (C) complies with applicable state insurance and
6 securities laws and rules.

7 (6) "Retirement system" means the Teacher Retirement
8 System of Texas.

9 (7) "Salary reduction agreement" means an agreement
10 between an educational institution and an employee to reduce the
11 employee's salary for the purpose of making direct contributions to
12 or purchases of a qualified investment product.

13 SECTION 2. Section 6, Chapter 22 (S.B. 17), Acts of the 57th
14 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
15 Texas Civil Statutes), is amended by amending Subsections (c), (d),
16 (e), and (f) and adding Subsections (d-1), (d-2), and (f-1) to read
17 as follows:

18 (c) After consultation with the Texas Department of
19 Insurance, the Texas Department of Banking, and the State
20 Securities Board, the retirement system may adopt rules only to
21 administer this section and Sections 5, 7, 8, 8A, 9A, 9B, 11, 12,
22 and 13 of this Act.

23 (d) The retirement system shall refer all complaints about
24 qualified investment products, including complaints that allege
25 violations of this Act by companies that certify to the retirement
26 system under Section 5 or 8 of this Act that the companies offer
27 qualified investment products, to the appropriate division of the

1 Texas Department of Insurance, the Texas Department of Banking, or
2 the State Securities Board.

3 (d-1) Except as provided by Subsection (d-2) of this
4 section, the Texas Department of Insurance, the Texas Department of
5 Banking, or the State Securities Board shall investigate a
6 complaint received from the retirement system under Subsection (d)
7 of this section. If as a result of the investigation the Texas
8 Department of Insurance, the Texas Department of Banking, or the
9 State Securities Board, as applicable, determines that a violation
10 of this Act may have occurred, the Texas Department of Insurance,
11 the Texas Department of Banking, or the State Securities Board, as
12 applicable, shall forward the results of the investigation relating
13 to an alleged violation of this Act to the attorney general.

14 (d-2) If the Texas Department of Banking receives a
15 complaint from the retirement system under Subsection (d) of this
16 section that relates to a federally chartered financial
17 institution, the Texas Department of Banking shall:

18 (1) refer the complaint to the appropriate federal
19 regulatory agency; and

20 (2) notify the attorney general of the department's
21 referral.

22 (e) The Texas Department of Insurance, the Texas Department
23 of Banking, and the State Securities Board shall cooperate with the
24 retirement system in the administration of this Act and shall:

25 (1) submit a report to [notify] the retirement system
26 at the beginning of each quarter of the fiscal year that provides
27 the status of any enforcement action taken or investigation or

1 referral made [~~determination~~] regarding a product or a company that
2 is the subject of a complaint under Subsection (d) of this section;
3 and

4 (2) promptly notify the retirement system of any final
5 enforcement order issued regarding the product or company [~~violates~~
6 ~~Section 5 or 8A of this Act~~].

7 (f) The retirement system may deny, suspend, [~~shall reject~~]
8 or revoke the certification of a company if the retirement system
9 receives notice that [~~under Subsection (e) of this section or~~
10 ~~Section 5(c) of this Act of a violation regarding~~] the company or
11 the company's product was determined to be in violation of this Act
12 or another law in any judicial or administrative proceeding.

13 (f-1) A [~~The~~] company whose certification is denied,
14 suspended, or revoked under this section may recertify to the board
15 of trustees after any applicable period of suspension or
16 revocation.

17 SECTION 3. Section 8(a), Chapter 22 (S.B. 17), Acts of the
18 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
19 Vernon's Texas Civil Statutes), is amended to read as follows:

20 (a) A company that offers qualified investment products
21 other than annuity contracts, including a company that offers
22 custodial accounts under Section 403(b)(7), Internal Revenue Code
23 of 1986, that hold only investment products registered with the
24 system under Section 8A of this Act, may certify to the retirement
25 system based on rules adopted by the board of trustees. The rules
26 shall be based on reasonable factors, including:

27 (1) the financial strength of the companies offering

1 products; and

2 (2) the administrative cost to employees.

3 SECTION 4. Section 9(a), Chapter 22 (S.B. 17), Acts of the
4 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 (a) An educational institution may not:

7 (1) except as provided by Subdivision (8) of this
8 subsection and Subsection (b) of this section, refuse to enter into
9 a salary reduction agreement with an employee if the qualified
10 investment product that is the subject of the salary reduction is an
11 eligible qualified investment and is registered with the system
12 under Section 8A;

13 (2) require or coerce an employee's attendance at any
14 meeting at which qualified investment products are marketed;

15 (3) limit the ability of an employee to initiate,
16 change, or terminate a qualified investment product at any time the
17 employee chooses;

18 (4) grant exclusive access to an employee by
19 discriminating against or imposing barriers to any agent, broker,
20 or company that provides qualified investment products under this
21 Act;

22 (5) grant exclusive access to information about an
23 employee's financial information, including information about an
24 employee's qualified investment products, to a company or agent or
25 affiliate of a company offering qualified investment products
26 unless the employee consents in writing to the access;

27 (6) accept any benefit from a company or from an agent

1 or affiliate of a company that offers qualified investment
2 products; ~~or~~

3 (7) use public funds to recommend a qualified
4 investment product offered by a company or an agent or affiliate of
5 a company that offers a qualified investment product; or

6 (8) enter into or continue a salary reduction
7 agreement with an employee if the qualified investment product that
8 is the subject of the salary reduction agreement is not an eligible
9 qualified investment, including the investment product of a company
10 whose certification has been denied, suspended, or revoked.

11 SECTION 5. Section 10(a), Chapter 22 (S.B. 17), Acts of the
12 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
13 Vernon's Texas Civil Statutes), is amended to read as follows:

14 (a) A person commits an offense if the person:

15 (1) sells or offers for sale an ~~a qualified~~
16 investment product that is not an eligible qualified investment or
17 that is not registered under Section 8A of this Act and that the
18 person knows will be the subject of a salary reduction agreement;

19 (2) violates the licensing requirements of Title 13,
20 Insurance Code, with regard to a qualified investment product that
21 the person knows will be the subject of a salary reduction
22 agreement; or

23 (3) engages in activity described by Subchapter B,
24 Chapter 541, Insurance Code, with regard to a qualified investment
25 product that the person knows will be the subject of a salary
26 reduction agreement.

27 SECTION 6. Chapter 22 (S.B. 17), Acts of the 57th

1 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
2 Texas Civil Statutes), is amended by adding Section 10A to read as
3 follows:

4 Sec. 10A. (a) A person who violates this Act is subject to a
5 civil penalty in an amount that does not exceed:

6 (1) \$10,000 for a single violation; or

7 (2) \$1,000,000 for multiple violations.

8 (b) For purposes of determining the amount of a civil
9 penalty under this section, the court shall consider the following
10 factors:

11 (1) the seriousness, nature, circumstances, extent,
12 and persistence of the conduct constituting the violation;

13 (2) the harm to other persons resulting directly or
14 indirectly from the violation;

15 (3) cooperation by the person in any inquiry conducted
16 by the state concerning the violation, efforts to prevent future
17 occurrences of the violation, and efforts to mitigate the harm
18 caused by the violation;

19 (4) the history of previous violations by the person;

20 (5) the need to deter the person or others from
21 committing such violations in the future; and

22 (6) other matters as justice may require.

23 (c) The attorney general may institute an action:

24 (1) for injunctive relief to restrain a violation by a
25 person who is or who appears to be in violation of or threatening to
26 violate this Act; or

27 (2) to collect a civil penalty under this section.

1 (d) An action under this section must be filed in a district
2 court in Travis County.

3 (e) The attorney general may recover reasonable expenses
4 incurred in obtaining injunctive relief under this section,
5 including court costs, reasonable attorney's fees, investigative
6 costs, witness fees, and deposition expenses.

7 SECTION 7. (a) Section 9(a), Chapter 22 (S.B. 17), Acts of
8 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
9 Vernon's Texas Civil Statutes), as amended by this Act, applies to a
10 salary reduction agreement that is entered into or renewed on or
11 after the effective date of this Act. A salary reduction agreement
12 that is entered into or renewed before the effective date of this
13 Act is governed by the law in effect on the date the agreement was
14 entered into or renewed, and the former law remains in effect for
15 that purpose.

16 (b) Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the
17 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
18 Vernon's Texas Civil Statutes), as added by this Act, apply to a
19 contract to administer a plan under Section 403(b), Internal
20 Revenue Code of 1986, offered by a school district or
21 open-enrollment charter school that is entered into or renewed on
22 or after the effective date of this Act. A contract entered into or
23 renewed before the effective date of this Act is governed by the law
24 in effect on the date the contract was entered into or renewed, and
25 the former law remains in effect for that purpose.

26 (c) Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th
27 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's

1 Texas Civil Statutes), as amended by this Act, and Section 10A,
2 Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called
3 Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as
4 added by this Act, apply only to a violation that occurs on or after
5 the effective date of this Act. A violation that occurred before
6 the effective date of this Act is covered by the law in effect at the
7 time the violation occurred, and the former law is continued in
8 effect for that purpose.

9 SECTION 8. This Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Atty Gen
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: VanderPelt

1 Amend H.B. No. 3480 (committee printing) as follows and
2 adjust accordingly:

3 1) Page 3, line 16 after "revoked", insert the following:
4 without first providing the employee with notice in writing
5 that:

6 (A) indicates the reason the subject of the salary
7 reduction agreement is no longer an eligible qualified
8 investment or why certification has been denied, suspended, or
9 revoked; and

10 (B) clearly states that by signing the notice the
11 employee is agreeing to enter into or continue the salary
12 reduction agreement

13
14 2) Add the following appropriately numbered SECTION to the
15 bill and renumbering subsequent SECTIONS accordingly:

16 SECTION _____. Chapter 22 (S.B. 17), Acts of the 57th
17 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
18 Texas Civil Statutes), is amended by adding Sections 9A and 9B
19 to read as follows:

20 Sec. 9A. A person, other than an employee of an
21 educational institution, or an affiliate of the person may not
22 enter into or renew a contract under which the person is to

1 provide services for or administer a plan offered by the
2 institution under Section 403(b), Internal Revenue Code of 1986,
3 unless the person:

4 (1) holds a license or certificate of authority
5 issued by the Texas Department of Insurance;

6 (2) is registered as a securities dealer or agent or
7 investment advisor with the State Securities Board; or

8 (3) is a financial institution that:

9 (A) is authorized by state or federal law to
10 exercise fiduciary powers; and

11 (B) has its main office, a branch office, or a
12 trust office in this state.

13 Sec. 9B. (a) This section applies to an entity under this
14 Act that enters into a contract with an educational institution
15 to administer a plan offered by the institution under Section
16 403(b), Internal Revenue Code of 1986.

17 (b) If a person described by Subsection (a) holds a
18 meeting at which qualified investment products will be marketed
19 to employees of the educational institution, the person must
20 provide representatives of other companies certified to the
21 retirement system under Section 5 or 8 of this Act an
22 opportunity to attend and market their qualified investment
23 products at the meeting.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3480 by Truitt (Relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Statutes to expand the types of companies offering 403(b) retirement plans eligible to certify with the Teacher Retirement System (TRS). The Texas Department of Insurance (TDI), Department of Banking (DOB), and the Securities Board (SB) would investigate complaints received by TRS, and the bill would require TDI, DOB, and SB to cooperate and provide a quarterly report to TRS of any company that violates certification requirements. Additionally, the DOB would be responsible for referring a complaint from the retirement system that relates to a federally chartered financial institution to the appropriate federal regulatory agency. The Office of Attorney General (OAG) would be notified of the referral.

The OAG would enforce civil penalties established in the bill ranging from \$10,000 to \$1 million for single or multiple violations.

The bill would not allow a person, other than an employee of an educational institution, or an affiliate to enter into or renew a contract for the administration of an educational institution's Section 403(b) retirement plan unless the person holds a license from TDI, is registered with SB, or is a financial institution that is authorized by state or federal law to exercise fiduciary powers and has a main office in the State of Texas.

Based on information provided by the OAG, TRS, DOB, TDI, and SB, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 312 Securities Board, 323 Teacher Retirement System, 451 Department of Banking, 454 Department of Insurance

LBB Staff: JOB, KJG, MW, ACa, JRO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3480** by Truitt (Relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Statutes to expand the types of companies offering 403(b) retirement plans eligible to certify with the Teacher Retirement System (TRS) and would require a company contracting with a public school to administer its 403(b) plan be certified by the Texas Department of Insurance (TDI), registered with the State Securities Board (SB), or authorized to exercise fiduciary powers by the Department of Banking (DoB).

TDI, DoB, and SB would investigate complaints received by TRS, and the bill would require TDI, DoB, and SB to cooperate and provide a quarterly report to TRS of any company that violates certification requirements. A company found in violation will have their certification revoked for one year. Additionally, the DoB would be responsible for referring a complaint from the retirement system that relates to a federally chartered financial institution to the appropriate federal regulatory agency. The Office of Attorney General (OAG) would be notified of the referral.

The OAG would enforce civil penalties established in the bill ranging from \$10,000 to \$1 million for single or multiple violations.

Based on information provided by the OAG, TRS, DoB, TDI, and SB, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 312 Securities Board, 323 Teacher Retirement System, 451 Department of Banking, 454 Department of Insurance

LBB Staff: JOB, KJG, MW, ACa, JRO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3480** by Truitt (relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Statutes to expand the types of companies offering 403(b) retirement plans eligible to certify with the Teacher Retirement System (TRS) and would require a company contracting with a public school to administer its 403(b) plan be certified by the Texas Department of Insurance (TDI), registered with the State Securities Board (SB), or authorized to exercise fiduciary powers by the Department of Banking (DoB).

TDI, DoB, and SB would investigate complaints received by TRS, and the bill would require TDI, DoB, and SB to cooperate and provide a quarterly report to TRS of any company that violates certification requirements. A company found in violation will have their certification revoked for one year. Additionally, a certified company, an affiliate, or an agent may not enter into or renew a contract for the administration of an educational institution's Section 403(b) retirement plan.

The Office of Attorney General (OAG) would enforce civil penalties established in the bill ranging from \$10,000 to \$1 million for single or multiple violations.

Based on information provided by the OAG, TRS, DoB, TDI, and SB, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 312 Securities Board, 323 Teacher Retirement System, 451 Department of Banking, 454 Department of Insurance

LBB Staff: JOB, ACa, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 31, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3480 by Truitt (Relating to annuities and investments for certain public employees.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Statutes requiring the Texas Department of Insurance (TDI) and the State Securities Board to cooperate and provide a quarterly report to the retirement system of any company that violates certification requirements. A company found in violation will have their certification revoked for one year. Additionally, a certified company, an affiliate, or an agent may not enter into or renew a contract for the administration of an educational institution's Section 403(b) retirement plan.

Based on information provided by TDI and the Securities Board, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 312 Securities Board, 454 Department of Insurance

LBB Staff: JOB, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD
Austin, Texas

ACTUARIAL IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 17, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3480** by Truitt (relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties.), **Committee Report 1st House, Substituted**

The following new information was supplied by agency 338 PENSION REVIEW BOARD:

In response to your request for an Actuarial Impact Statement on CSHB 3480 (relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties) the Pension Review Board has determined the following:

CSHB 3480 would add provisions to the requirements for companies offering contracts under the 403(b) tax sheltered annuity program overseen by TRS. The provisions of the bill would take effect September 1, 2009.

The bill, if enacted, will not have a significant actuarial effect because it does not propose to change the funding or obligations of any public retirement system.

Source Agencies: 338 Pension Review Board

LBB Staff: JOB, JRO

LEGISLATIVE BUDGET BOARD
Austin, Texas

ACTUARIAL IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 31, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3480 by Truitt (Relating to annuities and investments for certain public employees.), **As Introduced**

HB 3480 would add provisions to the requirements for companies offering contracts under the 403(b) tax sheltered annuity program overseen by TRS.

According to the analysis provided by TRS, the provisions of the bill would not affect the timing or payment of benefits for annuitants but only the administration of the System's voluntary 403(b) annuity program, so the changes in the bill would have no material impact to the actuarial liabilities of TRS. However, there could be additional administrative and technology expenses associated with implementing the proposed changes.

The bill, if enacted, will not have a significant actuarial effect because it does not propose to change the funding or obligations of any public retirement system.

The analysis and calculations are based on the member data of TRS as of August 31, 2008, the actuarial value of assets updated as of February 28, 2009, and the actuarial assumptions and methods in use as of August 31, 2008 for valuing the actuarial condition of TRS. Finally, this analysis is based on all other provisions of TRS in effect as of August 31, 2008.

SOURCES:

Actuarial Analysis by W. Michael Carter, FSA, Lewis Ward, Joseph P. Newton, FSA, Gabriel Roeder Smith & Company, Consultants and Actuaries, March 31, 2009.

Actuarial Review by Martin McCaulay, Deputy Executive Director/Actuary, Pension Review Board, March 31, 2009

Source Agencies: 338 Pension Review Board

LBB Staff: JOB, WM

