

## **BILL ANALYSIS**

C.S.H.B. 1804  
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Pensions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation has granted state agencies the authority to establish deferred compensation plans using both traditional contributions and Roth contributions. However, as interested parties note, political subdivisions are allowed to establish only traditional deferred compensation plans and not qualified Roth contribution plans. There are concerns that some political subdivisions, without realizing they did not have the authority to do so, have implemented Roth contribution programs in their deferred compensation plan offerings in accordance with federal law. There are additional concerns that the plan administrator of a 457 plan does not have the authority to allow a qualified vendor to lend money to an employee participating in such a plan. C.S.H.B. 1804 seeks to give political subdivisions more freedom in the administration of their deferred compensation plans.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1804 amends the Government Code to authorize a political subdivision to establish a qualified Roth contribution program in accordance with the federal Internal Revenue Code of 1986, under which an employee may designate all or a portion of the employee's contribution under a 401(k) plan as a Roth contribution at the time the contribution is made or convert all or a portion of the employee's previous contribution under the plan to a Roth contribution. The bill authorizes a political subdivision, if authorized by federal law, to establish a program in accordance with the applicable federal law under which an employee may designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made or convert all or a portion of the employee's previous contribution under the plan to a Roth contribution.

C.S.H.B. 1804 authorizes the plan administrator of a 457 plan to develop and implement procedures to efficiently administer a program under the plan that allows a qualified vendor to lend money to a participating employee.

C.S.H.B. 1804 specifies that the legislature validates an act taken before the bill's effective date by a political subdivision to establish and administer a qualified Roth contribution program in accordance with the federal Internal Revenue Code of 1986, a program in accordance with federal law under which an employee may designate or convert all or a portion of the employee's contribution under a 457 plan as or to a Roth contribution at the time the contribution is made, or a loan program under a 457 plan. The bill specifies the legislature's validation of such an act does not apply to a matter that on the bill's effective date is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final court judgment, or has been held invalid by a final court judgment.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1804 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 609.006(a), Government Code, is amended to read as follows:

(a) A deferred compensation plan must conform to federal law to provide that deferred amounts and investment income are not includable, for federal income tax purposes, in the gross income of a participating employee until distributed to the employee, subject to the employee's option to designate or convert all or a portion of deferred amounts as or to Roth contributions under Section 609.1025 or 609.5021, as applicable, the federal income tax treatment of which is governed by Section 402A, Internal Revenue Code of 1986.

SECTION 1. Subchapter B, Chapter 609, Government Code, is amended by adding Section 609.1025 to read as follows:

Sec. 609.1025. ROTH CONTRIBUTION PROGRAMS. A political subdivision may:  
(1) establish a qualified Roth contribution program in accordance with Section 402A, Internal Revenue Code of 1986, under which an employee may designate all or a portion of the employee's contribution under a 401(k) plan as a Roth contribution at the time the contribution is made; and

(2) if authorized by federal law, establish a program in accordance with the applicable federal law under which an employee may designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made.

SECTION 2. Subchapter B, Chapter 609, Government Code, is amended by adding Section 609.1025 to read as follows:

Sec. 609.1025. ROTH CONTRIBUTION PROGRAMS. A political subdivision may:  
(1) establish a qualified Roth contribution program in accordance with Section 402A, Internal Revenue Code of 1986, under which an employee may:

(A) designate all or a portion of the employee's contribution under a 401(k) plan as a Roth contribution at the time the contribution is made; or

(B) convert all or a portion of the employee's previous contribution under the plan to a Roth contribution; and

(2) if authorized by federal law, establish a program in accordance with the applicable federal law under which an employee may:

(A) designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made; or

(B) convert all or a portion of the

employee's previous contribution under the plan to a Roth contribution.

SECTION 2. Subchapter B, Chapter 609, Government Code, is amended.

SECTION 3. (a) The legislature validates an act taken before the effective date of this Act by a political subdivision to establish and administer:

(1) a qualified Roth contribution program in accordance with Section 402A, Internal Revenue Code of 1986;

(2) a program in accordance with federal law under which an employee may designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made; or

(3) a loan program under a 457 plan.

(b) Subsection (a) of this section does not apply to a matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(2) has been held invalid by a final court judgment.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.

SECTION 4. (a) The legislature validates an act taken before the effective date of this Act by a political subdivision to establish and administer:

(1) a qualified Roth contribution program in accordance with Section 402A, Internal Revenue Code of 1986;

(2) a program in accordance with federal law under which an employee may designate or convert all or a portion of the employee's contribution under a 457 plan as or to a Roth contribution at the time the contribution is made; or

(3) a loan program under a 457 plan.

(b) Subsection (a) of this section does not apply to a matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(2) has been held invalid by a final court judgment.

SECTION 5. Same as introduced version.