

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 23, 2017**

**TO:** Honorable Dan Flynn, Chair, House Committee on Pensions

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3601** by Alonzo (Relating to the creation of a state-administered retirement plan.), As Introduced

**The fiscal implications of the bill are indeterminate and would depend on the number of participants in the Secure Retirement Plan, the contributions of participants and employers to the plan, the investment activity of the plan, and any potential fees charged to participants to administer the plan.**

The bill would add Chapter 83 to the Labor Code to establish the Secure Retirement Plan for Texans (plan). The plan would operate as a self-sustaining trust. The plan would consist of a state-administered automatic individual retirement account savings program and a state-sponsored open multiple employer plan as permitted by Sections 401(k) and 413(c) of Internal Revenue Code of 1986. An individual retirement account (IRA) would mean an IRA or individual retirement annuity within the meaning of Section 408 or Roth IRA described by Section 408A of the Internal Revenue Code of 1986.

The plan would be an agency of state governed by a five-member board with the Comptroller of Public Accounts (Comptroller) as chair of the board. The Comptroller would, with the consent of the board, hire an executive director (E.D.) and would determine the duties and set the compensation of the E.D. and other employees as appropriate.

With certain exceptions, participation in the plan would be open to residents that are self-employed or whose employer reports to the Texas Workforce Commission for the purpose of paying unemployment taxes. Employers eligible to participate in the plan would include a person engaged in a business, industry, profession, trade or other enterprise in this state, whether for profit or non-profit, and also includes state agencies and political subdivisions whose employees are not participating in a public retirement system. Each eligible employee would be enrolled in the plan unless the employee elects not to participate.

Plan contribution mechanisms would include a payroll deduction IRA arrangement for employees of eligible employers, a multiple employer plan to permit employer contributions, and direct contributions for self-employed persons. The participants of the plan would contribute at least two percent of their wages and not more than the annual limit established by Section 401(k) of the Internal Revenue Code of 1986. The governing board would be authorized to implement an annual automatic escalation of employee contributions in a manner prescribed by the bill. Contributions to the plan would be deposited into a pooled or common fund, managed under the direction of the governing board. The participants' rate of return would be set annually by the board to provide maximum benefits to the participants while maintaining an appropriate reserve.

The board would be required to approve one or more investment management entities, the costs of which would be paid out of funds held in the plan and may not be attributed to the administrative costs of the board in operating the plan. The board would hold contributions in trust and segregate money received by the plan as the plan fund and the administrative fund. Money in the plan fund may be invested or reinvested by the Comptroller or may be invested in whole or in part under contract with the governing body of a statewide public retirement system, private money managers or a combination of these entities. Transfers may be made from the plan fund to the administrative fund to pay costs associated with administering the plan, including board operations, plan administrator and investment expenses, and enforcement and compliance costs. Administration costs would only be paid from the administrative fund and expenditures from the administrative fund may not exceed 0.5 percent of the total plan fund.

The bill would specify that that the plan does not create a financial liability for the state or employer of record; that the employer is not a fiduciary in relation to the plan; that the state is prohibited from incurring liabilities associated with administering the plan; and that the plan fund is not guaranteed by the state.

The board may request that the Attorney General bring an enforcement action against an eligible employer in violation Chapter 83, as added by the bill.

The plan would be open for enrollment not later than September 1, 2018.

The bill would authorize the Legislature to appropriate money from the General Revenue Fund to the board for initial expenses of the plan and first-year administrative costs. The board would be required to repay the amount of the appropriations plus interest calculated at the rate earned by the Economic Stabilization Fund by September 1, 2019.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The fiscal impact of the bill is indeterminate. The number of employees which would enroll in the Secure Retirement Plan is unknown. In recent years, the state legislatures of California and Illinois have enacted legislation authorizing similar plans. According to the Comptroller, California estimates a 70 percent enrollment of eligible participants or 4.7 million participants; Illinois has an estimated enrollment of 4.2 million. Texas has more than 10 million non-government employees. Assuming a 70 percent participation rate, an estimated 7 million participants would enroll in the plan. The potential contributions of the participants and their employers are unknown, as are the investment activities of the board.

The bill authorizes the Legislature to appropriate General Revenue funding for initial start up costs of the new agency and plan. The Comptroller estimates an appropriation of \$3,000,000 in fiscal year 2018 would be required to hire an executive director and an indeterminate number of staff to manage the program and to pay for board expenses, consultant and legal expenses, and fiduciary liability insurance premiums. The Comptroller's estimate is based on appropriations of \$2,000,000 loans provided to California and Illinois to support initial administrative costs of those states' plans. To provide additional context, the annual administrative costs of certain Texas state employee retirement plans include \$1,004,121 for the TexaSaver 457 and 401(k) deferred compensation plans (212,764 participants) and \$50,087,440 for the Employees Retirement Fund (364,626 active contributing, non-contributing, and retired members).

The bill would require that the initial appropriation would be paid back to the General Revenue Fund not later than September 1, 2019. As the level of participation, contributions, and investments are indeterminate for the first year of enrollment (i.e. fiscal year 2019), it is also unknown whether the plan would generate enough earnings and fees to repay the initial appropriation by the required date.

The Office of the Attorney General indicates there would be a cost to bring an enforcement action against an eligible employer in violation of the plan requirements. However, as an estimate is unknown regarding the frequency with which the Attorney General may be asked to enforce violations or the number of litigation that would require representation, an estimate of the enforcement costs are likewise unknown.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, AG, WP, LCO