

## **BILL ANALYSIS**

C.S.H.B. 2068  
By: Coleman  
County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that a number of hospital districts currently have deferred compensation plans that are offered to district employees under which the employee must elect to opt in. Requiring an employee to opt in has led to less than optimal participation rates, and the parties note that the greater the participation, the greater the potential returns. The parties assert that providing an opt-out deferred compensation plan, whereby an employee would automatically participate in the plan with the option to opt out, would be beneficial to the districts and district employees. C.S.H.B. 2068 seeks to address this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 2068 amends the Government Code to authorize a hospital district created under general or special law that offers a deferred compensation plan to the district's employees, at the district's option, to elect to require automatic employee participation in the plan. The bill establishes that an employee of such a hospital district, if the hospital district elects to require automatic participation in a deferred compensation plan, automatically participates in the plan unless the employee affirmatively elects not to participate and that an employee is not required to affirmatively contract for and consent to participation in such a plan.

C.S.H.B. 2068 establishes that an employee automatically participating in a deferred compensation plan makes a contribution by automatic payroll deduction of one percent of the compensation earned by the employee to a default investment product selected by the plan administrator based on certain criteria and the rules adopted by the hospital district's board. The bill authorizes an employee automatically participating in a deferred compensation plan, at any time and in accordance with rules adopted by the board, to elect to end participation in the plan, to contribute to a different investment product, to contribute a different amount to the plan, or to designate all or a portion of the employee's contribution as a Roth contribution subject to the availability of a Roth contribution program.

C.S.H.B. 2068 requires a hospital district to which the bill's provisions apply to ensure that, at the time of employment, each employee is informed of the elections the employee may make and the employee's responsibilities for monitoring certain elements of the plan. The bill requires the board to adopt rules to implement the bill's requirements relating to automatic participation in the

deferred compensation plan and the default investment product and requires the rules to ensure that the operation of a deferred compensation plan conforms to the applicable requirements of any federal rule that provides fiduciary relief for investments in qualified default investment alternatives or otherwise governs default investment alternatives under participant-directed individual account plans. The bill establishes that the amount deducted as part of the plan from an employee's compensation is not deducted for payment of a debt and the automatic payroll deduction is not garnishment or assignment of wages.

C.S.H.B. 2068 requires the hospital district, using existing resources, to inform new employees of their automatic enrollment in a deferred compensation plan and their right to opt out of enrollment and requires this information, using existing resources, to be included as part of the new employee orientation process. The bill requires the district to maintain a record of a new employee's acknowledgement of receipt of information regarding the ability to opt out of enrollment in a deferred compensation plan.

C.S.H.B. 2068 authorizes a hospital district to transfer an employee's deferred amounts and investment income from a qualified investment product to the trust fund of the deferred compensation plan in which the employee participates if the district determines that the transfer is in the best interest of the plan and the employee. The bill specifies that the hospital district is not required to give notice of such transfer to the employee before the transfer occurs but requires the hospital district, promptly after such a transfer occurs, to give to the employee a notice that states the reason for the transfer and requests that the employee promptly designate another qualified investment product to receive the transferred amount.

C.S.H.B. 2068 authorizes a hospital district to invest deferred amounts and investment income in a qualified investment product specifically designated by the district for that purpose instead of depositing deferred amounts and investment income in the trust fund of the deferred compensation plan.

C.S.H.B. 2068 authorizes a hospital district to contract for necessary goods and consolidated billing, accounting, and other services to be provided in connection with a deferred compensation plan. The bill authorizes the hospital district to provide for periodic audits of the person with whom such a contract is made, authorizes the audit to cover the proper handling and accounting of public or trust funds and other matters related to the proper performance of the contract, and authorizes the hospital district to contract with a private entity to conduct such an audit.

C.S.H.B. 2068 limits the applicability of its provisions relating to automatic participation in a deferred compensation plan to an employee of a hospital district subject to those provisions who initially begins employment on or after January 1, 2016. The bill establishes that the acts of a hospital district created under general or special law that relate to discretionary transfers of funds and consolidation of billing and accounting for deferred compensation plans provided by the district to the district's employees and that occurred before the bill's effective date are validated as if the acts had occurred as authorized by law except for an act that, under state law at the time the act occurred, was a misdemeanor or felony.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2068 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 609.007(c), Government Code, is amended.

SECTION 2. Chapter 609, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PARTICIPATION IN DEFERRED COMPENSATION PLAN BY CERTAIN HOSPITAL DISTRICT EMPLOYEES

Sec. 609.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital district created under general or special law if the district offers a deferred compensation plan to the district's employees under Subchapter B.

Sec. 609.202. AUTOMATIC PARTICIPATION; DEFAULT INVESTMENT PRODUCT. (a) This section applies only to an employee of a hospital district to which this subchapter applies.

(b) An employee automatically participates in a deferred compensation plan provided by the hospital district unless the employee affirmatively elects not to participate in the plan. Notwithstanding Sections 609.007(a) and (c), an employee is not required to affirmatively contract for and consent to participation in a plan under this section.

(c) An employee participating in a deferred compensation plan under this section makes a contribution of one percent of the compensation earned by the employee to a default investment product selected by the plan administrator based on the criteria established under Section 609.113 and the rules adopted under Subsection (f). The contribution is made by automatic payroll deduction.

(d) At any time, an employee participating in a deferred compensation plan under this section may, in accordance with rules adopted by the board of the hospital district, elect to end participation in the plan, to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Chapter 609, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PARTICIPATION IN DEFERRED COMPENSATION PLAN BY CERTAIN HOSPITAL DISTRICT EMPLOYEES

Sec. 609.201. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a hospital district created under general or special law if the district offers a deferred compensation plan to the district's employees under Subchapter B.

(b) A hospital district subject to this subchapter may, at the district's option, elect to require automatic employee participation in a deferred compensation plan under Section 609.202.

Sec. 609.202. AUTOMATIC PARTICIPATION; DEFAULT INVESTMENT PRODUCT. (a) This section applies only to an employee of a hospital district that elects under Section 609.201(b) to require automatic employee participation in a deferred compensation plan under this section.

(b) An employee automatically participates in a deferred compensation plan provided by the hospital district unless the employee affirmatively elects not to participate in the plan. Notwithstanding Sections 609.007(a) and (c), an employee is not required to affirmatively contract for and consent to participation in a plan under this section.

(c) An employee participating in a deferred compensation plan under this section makes a contribution of one percent of the compensation earned by the employee to a default investment product selected by the plan administrator based on the criteria established under Section 609.113 and the rules adopted under Subsection (f). The contribution is made by automatic payroll deduction.

(d) At any time, an employee participating in a deferred compensation plan under this section may, in accordance with rules adopted by the board of the hospital district, elect to end participation in the plan, to

contribute to a different investment product, to contribute a different amount to the plan, or to designate all or a portion of the employee's contribution as a Roth contribution subject to the availability of a Roth contribution program.

(e) A hospital district to which this subchapter applies shall ensure that, at the time of employment, each employee is informed of:

(1) the elections the employee may make under this section; and

(2) the responsibilities of the employee under Section 609.010.

(f) The board of the hospital district shall adopt rules to implement the requirements of this section. The rules must ensure that the operation of a deferred compensation plan under this section conforms to the applicable requirements of any federal rule that provides fiduciary relief for investments in qualified default investment alternatives or otherwise governs default investment alternatives under participant-directed individual account plans.

(g) The amount deducted under this section from an employee's compensation is not deducted for payment of a debt and the automatic payroll deduction is not garnishment or assignment of wages.

(h) Using existing resources, the hospital district shall inform new employees of their automatic enrollment in a deferred compensation plan and their right to opt out of enrollment. Using existing resources, this information must be included as part of the new employee orientation process. The district shall maintain a record of a new employee's acknowledgement of receipt of information regarding the ability to opt out of enrollment in a deferred compensation plan.

Sec. 609.203. DISCRETIONARY TRANSFER.

Sec. 609.204. ALTERNATIVE TO FUND DEPOSIT.

Sec. 609.205. CONTRACTS FOR GOODS AND SERVICES.

SECTION 3. Section 609.202, Government Code, as added by this Act, applies only to

contribute to a different investment product, to contribute a different amount to the plan, or to designate all or a portion of the employee's contribution as a Roth contribution subject to the availability of a Roth contribution program.

(e) A hospital district to which this subchapter applies shall ensure that, at the time of employment, each employee is informed of:

(1) the elections the employee may make under this section; and

(2) the responsibilities of the employee under Section 609.010.

(f) The board of the hospital district shall adopt rules to implement the requirements of this section. The rules must ensure that the operation of a deferred compensation plan under this section conforms to the applicable requirements of any federal rule that provides fiduciary relief for investments in qualified default investment alternatives or otherwise governs default investment alternatives under participant-directed individual account plans.

(g) The amount deducted under this section from an employee's compensation is not deducted for payment of a debt and the automatic payroll deduction is not garnishment or assignment of wages.

(h) Using existing resources, the hospital district shall inform new employees of their automatic enrollment in a deferred compensation plan and their right to opt out of enrollment. Using existing resources, this information must be included as part of the new employee orientation process. The district shall maintain a record of a new employee's acknowledgment of receipt of information regarding the ability to opt out of enrollment in a deferred compensation plan.

Sec. 609.203. DISCRETIONARY TRANSFER.

Sec. 609.204. ALTERNATIVE TO FUND DEPOSIT.

Sec. 609.205. CONTRACTS FOR GOODS AND SERVICES.

SECTION 3. Same as introduced version.

an employee of a hospital district subject to that section who initially begins employment on or after January 1, 2016.

SECTION 4. (a) Except as provided by Subsection (b) of this section, the acts of a hospital district created under general or special law that relate to discretionary transfers of funds and consolidation of billing and accounting for deferred compensation plans provided by the district to the district's employees and that occurred before the effective date of this Act are validated as if the acts had occurred as authorized by law.

(b) This section does not validate an act that, under the law of this state at the time the act occurred, was a misdemeanor or felony.

SECTION 5. 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, 2015.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.