

BILL ANALYSIS

Senate Research Center
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S.B. 366
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State Affairs
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature has authorized state agencies to establish deferred compensation plans utilizing both traditional (pre-tax) contributions and Roth (after-tax) contributions. Similarly, Chapter 609 (Deferred Compensation Plans), Government Code, authorizes political subdivisions to establish deferred compensation plans, but only traditional plans, not qualified Roth contribution plans—an apparent oversight. Without realizing their lack of authority, some political subdivisions have already implemented Roth contribution programs in their deferred compensation plan offerings in accordance with Section 402A of the Internal Revenue Code.

Under Chapter 609, Government Code, a political subdivision may create and administer plans under Sections 457 and 401(k) of the Internal Revenue Code of 1986, as amended. Employee loans against 401(k) plans are specifically allowed by Section 609.117 (Loans Under 401(k) Plan), Government Code, but loans against the 457 plans are not —also an apparent oversight.

The Texas Supreme Court uses a three-prong test to determine whether retroactive application of a statute violates Section 16 (Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts), Article I, Texas Constitution: (1) the nature and strength of the public interest served by the statute as evidenced by the legislature's factual findings, (2) the nature of the prior right impaired by the statute, and (3) the extent of the impairment.

There are no prior rights impaired by retroactive implementation of this proposal. The only element remaining is the nature and strength of the public interest served by the statute as evidenced by the legislature's factual findings. This prong requires the legislature to make factual findings. However, given that certain governmental employees in the State of Texas have been afforded this ability while others were not and the fact that it has been customarily utilized throughout the State of Texas since the late 1990s, it should not be difficult for the legislature to find that the nature and strength of the public interest served is very strong. As a result, retroactive application of this proposal would not violate the Texas Constitution.

The proposed legislation authorizes a political subdivision to establish qualified Roth contribution programs and validates an already established Roth contribution program. In addition it allows a political subdivision to authorize its plan administrator to implement procedures to allow a qualified vendor to lend money to an employee participating in a 457 deferred compensation plan.

As proposed, S.B. 366 amends current law relating to the authority of political subdivisions to offer certain deferred compensation plans to employees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 609, Government Code, by adding Section 609.1025, as follows:

Sec. 609.1025. ROTH CONTRIBUTION PROGRAMS. Authorizes a political subdivision to:

(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. Amends Subchapter B, Chapter 609, Government Code, by adding Section 609.1175, as follows:

Sec. 609.1175. LOANS UNDER 457 PLAN. 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.

SECTION 3. (a) Provides that 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) Provides that Subsection (a) of this section does not apply to a matter that on the effective date of this Act 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.

SECTION 4. Effective date: upon passage or September 1, 2013.