

## **BILL ANALYSIS**

Senate Research Center  
84R3215 KFF-F

S.B. 640  
By: Garcia  
State Affairs  
3/6/2015  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Defined contribution plans require employees to make an active selection to join the plan. Therefore, employees who do not make an active selection to enroll in the plans are not taking advantage of the tax-deferred savings afforded by the plans, nor the employer-sponsored matching contributions.

Surveys have indicated that there is a much higher level of savings when an automatic enrollment with an "opt out" provision feature is offered. This in turn assures that employees will be better financially situated in retirement.

Many private employers modify their plans to automatically enroll their employees in the defined contribution plans at a certain percentage, unless the employee actively "opts out" of this enrollment. The State of Texas allows state employers to have automatic enrollment of the various 457 plans that different institutions have in place, but does not apply to local governments in the State of Texas.

S.B. 640 seeks to apply the automatic enrollment provision to all hospital districts, so that the hospital district may encourage its employees to plan for their retirement.

As proposed, S.B. 640 amends current law relating to automatic employee participation in and administration of a deferred compensation plan provided by hospital districts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of a hospital district in SECTION 2 (Section 609.202, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 609.007(c), Government Code, to require an employee, except as provided by Section 609.202 or 609.5025 (Automatic Participation; Default Investment Product), to participate in a deferred compensation plan, to consent in the contract to automatic payroll deductions in an amount equal to the deferred amount.

SECTION 2. Amends Chapter 609, Government Code, by adding Subchapter B-1, as follows:

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

Sec. 609.201. **APPLICABILITY OF SUBCHAPTER.** Provides that 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 (Deferred Compensation Plans for Employees of Political Subdivisions).

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

(b) Provides that 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. Provides that, notwithstanding Sections 609.007(a) (relating to authorizing a political subdivision to contract with an employee of that subdivision) and (c), an employee is not required to affirmatively contract for and consent to participation in a plan under this section.

(c) Provides that 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 (Evaluation and Approval of Qualified Vendor) and the rules adopted under Subsection (f). Provides that the contribution is made by automatic payroll deduction.

(d) Authorizes an employee participating in a deferred compensation plan under this section to, at any time, 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) Requires a hospital district to which this subchapter applies to ensure that, at the time of employment, each employee is informed of the elections the employee is authorized to make under this section and the responsibilities of the employee under Section 609.010 (Liability; Responsibility for Monitoring).

(f) Requires the board of the hospital district to adopt rules to implement the requirements of this section. Requires that the rules 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) Provides that 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) 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. Requires that this information, using existing resources, be included as part of the new employee orientation process. 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.

Sec. 609.203. DISCRETIONARY TRANSFER. (a) 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.

(b) Provides that the hospital district is not required to give notice of a transfer under Subsection (a) to the employee before the transfer occurs.

(c) Requires the hospital district, promptly after a transfer under Subsection (a) 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.

Sec. 609.204. ALTERNATIVE TO FUND DEPOSIT. Authorizes a hospital district, instead of depositing deferred amounts and investment income in the trust fund of the deferred compensation plan, to invest deferred amounts and investment income in a qualified investment product specifically designated by the district for that purpose.

Sec. 609.205. CONTRACTS FOR GOODS AND SERVICES. (a) 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.

(b) Authorizes a hospital district, in a contract under Subsection (a), to provide for periodic audits of the person with whom the contract is made. Authorizes an audit to cover the proper handling and accounting of public or trust funds and other matters related to the proper performance of the contract.

(c) Authorizes the hospital district to contract with a private entity to conduct an audit under Subsection (b).

SECTION 3. Makes application of Section 609.202, Government Code, as added by this Act, prospective to January 1, 2016.

SECTION 4. (a) Provides that, 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) Provides that this section does not validate an act that was a misdemeanor or felony under the law of this state at the time the act occurred.

SECTION 5. Effective date: upon passage or September 1, 2015.