

# HOUSE BILL ANALYSIS

## HB 2922

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**Brief Description:** Administering the deferred compensation plan.

### **Background:**

Deferred Compensation Plan. The Washington State Deferred Compensation Plan (DCP) is a voluntary income deferral plan for state employees and employees of 276 participating political subdivisions. The DCP was established in 1981 and was administered by the Committee for Deferred Compensation (CDC) from that time until June 30, 1996. Effective July 1, 1996, the duties and responsibilities of the CDC were given to the Department of Retirement Systems (DRS) and to the Employee Retirement Benefits Board (ERBB). The ERBB was created within DRS in 1995 with the enactment of the Teachers' Retirement System Plan III, and was made responsible for selecting investment options for both members of TRS Plan III and participants in the DCP.

Changes in United States Internal Revenue Code. Current state law requires that all monies in the deferred compensation account remain solely the property of the state (until made available to the participating employee or beneficiary) subject to the claims of the state's general creditors. This language exists because of requirements contained in the United States Internal Revenue Code prior to 1996.

In 1996, Congress amended the Internal Revenue Code to require that the assets of government deferred compensation plans be held for the exclusive benefit of employees in a trust, custodial accounts, or qualifying insurance contract. Existing plans have until January 1, 1999, to place their plan assets into the trust, account or insurance contract. If this change is not made, employee contributions under the Deferred Compensation Plan could become subject to federal income taxes beginning in 1999.

Fiduciary Responsibilities. Current state law provides that the ERBB select the investment options for the DCP. Fiduciary counsel for the SIB has advised that the SIB and the ERBB would have unclear and overlapping fiduciary duties with regard to the DCP investments if the SIB were to be made the trustee while the ERBB continued to select the investment options for participants. The ERBB does not have staff to assist with the evaluation of potential investment options nor to monitor the performance of investment options.

Liability. DCP participants can self-direct the investment of their funds within a range of investment options. The federal Employee Retirement Income Security Act (ERISA) and federal Department of Labor (DOL) regulations protect qualified private-sector pension plans ~~against lawsuits from members who are unhappy with the self-directed investment decisions~~

they have made. The ERISA and DOL provisions do not apply to government pension and deferred compensation plans. Under current state law, it is not clear whether members would be permitted to bring legal actions against the SIB, ERBB or the state, based on common law trust and fiduciary principles, if they were unhappy with the returns on their self-directed investments.

**Summary:** The assets of the Washington State Deferred Compensation Plan (DCP) are placed in trust with the Washington State Investment Board for the exclusive use of the plan's participants and beneficiaries.

The SIB is responsible for establishing investment policy and developing participant investment options, after consulting with the Employee Retirement Benefits Board, for the participants in the DCP.

The state is relieved of any liability for losses or deficiencies resulting from participant selection of investment options. The ERBB and the SIB are relieved of liability for any losses that may result from reasonable efforts to implement participant investment options.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Fiscal Note:** Requested on January 23, 1998.