HOUSE BILL REPORT
SB 6635

As Reported By House Committee On:
Government Administration

Title: An act relating to clarifying the trusteeship role of the state investment board and the employee retirement benefits board.

Brief Description: Administering the deferred compensation plan.

Sponsors: Senators Sellar, Bauer, Long and Fraser; by request of Department of Retirement Systems.

Brief History:
Committee Activity:
Government Administration: 2/25/98 [DP].

HOUSE COMMITTEE ON GOVERNMENT ADMINISTRATION

Majority Report: Do pass. Signed by 13 members: Representatives D. Schmidt, Chairman; D. Sommers, Vice Chairman; Scott, Ranking Minority Member; Gardner, Assistant Ranking Minority Member; Doumit; Dunn; Dunshee; Murray; Reams; Smith; L. Thomas; Wensman and Wolfe.

Staff: Steve Lundin (786-7127).

Background: Deferred Compensation Plan. State employees and the employees of participating local governments may participate in a voluntary deferred compensation plan that is administered by the Department of Retirement Systems and the Employee Retirement Benefits Board. The Employee Retirement Benefits Board was created within the Department of Retirement Systems in 1995 with the enactment of the Teachers' Retirement System (TRS) Plan III, and was made responsible for selecting investment options for both members of TRS Plan III and participants in the deferred compensation plan.

Assets in the deferred compensation plan are the sole property of the state and participating local governments until these moneys are distributed to the participating employees or their beneficiaries. These moneys are subject to claims by the state's creditors.

Changes in United States Internal Revenue Code. Prior to changes made in the 1996 United States Internal Revenue Code required that moneys in a deferred compensation plan be the property of the public employer of the participating members. However, Congress amended the Internal Revenue Code in 1996 to require that the moneys in a government deferred compensation plan be held in trust for the exclusive benefit of participating employees, custodial accounts, or a 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 a deferred compensation plan could become subject to federal income taxes beginning in 1999.

State Investment Board.

The State Investment Board invests public retirement funds and trust funds held by the state. The State Investment Board is composed of 14 members, including persons who are active members of various state retirement systems, the State Treasurer, a member of the Senate, a member of the House of Representatives, the director of the Department of Labor and Industries, the director of the Department of Retirement Systems, a retired member of a state retirement system, and five non-voting members with investment backgrounds.

Liability. Participants in the deferred compensation plan 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 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 Department of Labor regulations 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 State Investment Board, Employee Retirement Benefits Board, or the state, based on common law trust and fiduciary principles, if they were unhappy with the returns on their self-directed investments.

Summary of Bill: The assets of the deferred compensation plan managed by the state for its employees and the employees of participating local governments are placed in trust with the Washington State Investment Board for the exclusive use of the plan's participants and beneficiaries. The self-directed nature of this deferred compensation plan is made more clear. A number of technical changes are made recognizing that the powers of the prior committee on deferred compensation were transferred to the Department of Retirement Systems in 1996.

The State Investment Board is responsible for establishing investment policy and developing participant investment options for the participants in the deferred compensation plan, after consulting with the Employee Retirement Benefits Board. The State Investment Board accounts for and reports on investments it made under the deferred compensation plan.

The state is relieved of any liability for losses or deficiencies resulting from participant selection of investment options. The Employee Retirement Benefits Board and the State Investment Board are relieved of liability for any losses that may result from reasonable efforts to implement participant investment options.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: New federal laws require deferred compensation moneys be held in trust. This will save money since administrative costs will drop.

Testimony Against: None.

Testified: John Charles, Department of Retirement Systems; and Jim Parker, State Investment Board.