
HOUSE BILL 2652

State of Washington

60th Legislature

2008 Regular Session

By Representatives Morrell, Fromhold, Moeller, McIntire, Simpson, and Kenney; by request of Health Care Authority and Department of Retirement Systems

Read first time 01/15/08. Referred to Committee on Appropriations.

1 AN ACT Relating to coordination of benefit plans that allow state
2 and public employees to pay on a pretax basis to participate in
3 benefits offered under sections 125 and 129 of the internal revenue
4 code, including transfer of the dependent care assistance program to
5 the health care authority; amending RCW 41.05.300, 41.05.310,
6 41.05.320, 41.05.123, 41.05.330, 41.05.340, 41.05.350, 41.05.360,
7 28B.50.874, and 41.50.780; reenacting and amending RCW 41.05.011;
8 adding a new section to chapter 41.05 RCW; creating a new section;
9 repealing RCW 41.04.600, 41.04.605, 41.04.610, 41.04.615, 41.04.620,
10 41.04.625, 41.04.630, 41.04.635, 41.04.640, and 41.04.645; and
11 providing an effective date.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.05 RCW
14 to read as follows:

15 (1) All powers, duties, and functions of the department of
16 retirement systems pertaining to the dependent care assistance program
17 are transferred to the health care authority.

18 (2)(a) All reports, documents, surveys, books, records, files,
19 papers, or written material in the possession of the department of

1 retirement systems pertaining to the powers, functions, and duties
2 transferred shall be delivered to the custody of the health care
3 authority. All funds, credits, or other assets held in connection with
4 the powers, functions, and duties transferred shall be assigned to the
5 health care authority.

6 (b) Whenever any question arises as to the transfer of any funds,
7 books, documents, records, papers, files, or other tangible property
8 used or held in the exercise of the powers and the performance of the
9 duties and functions transferred, the director of financial management
10 shall make a determination as to the proper allocation and certify the
11 same to the state agencies concerned.

12 (3) All rules and all pending business before the department of
13 retirement systems pertaining to the powers, functions, and duties
14 transferred shall be continued and acted upon by the health care
15 authority. All existing contracts and obligations shall remain in full
16 force and shall be performed by the health care authority.

17 (4) The transfer of the powers, duties, and functions of the
18 department of retirement systems shall not affect the validity of any
19 act performed before the effective date of this section.

20 (5) Nothing contained in this section may be construed to alter any
21 existing collective bargaining unit or the provisions of any existing
22 collective bargaining agreement until the agreement has expired or
23 until the bargaining unit has been modified by action of the public
24 employment relations commission as provided by law.

25 **Sec. 2.** RCW 41.05.011 and 2007 c 488 s 2 and 2007 c 114 s 2 are
26 each reenacted and amended to read as follows:

27 The definitions in this section apply throughout this chapter
28 unless the context clearly requires otherwise.

29 (1) "Administrator" means the administrator of the authority.

30 (2) "State purchased health care" or "health care" means medical
31 and health care, pharmaceuticals, and medical equipment purchased with
32 state and federal funds by the department of social and health
33 services, the department of health, the basic health plan, the state
34 health care authority, the department of labor and industries, the
35 department of corrections, the department of veterans affairs, and
36 local school districts.

37 (3) "Authority" means the Washington state health care authority.

1 (4) "Insuring entity" means an insurer as defined in chapter 48.01
2 RCW, a health care service contractor as defined in chapter 48.44 RCW,
3 or a health maintenance organization as defined in chapter 48.46 RCW.

4 (5) "Flexible benefit plan" means a benefit plan that allows
5 employees to choose the level of health care coverage provided and the
6 amount of employee contributions from among a range of choices offered
7 by the authority.

8 (6) "Employee" includes all full-time and career seasonal employees
9 of the state, whether or not covered by civil service; elected and
10 appointed officials of the executive branch of government, including
11 full-time members of boards, commissions, or committees; and includes
12 any or all part-time and temporary employees under the terms and
13 conditions established under this chapter by the authority; justices of
14 the supreme court and judges of the court of appeals and the superior
15 courts; and members of the state legislature or of the legislative
16 authority of any county, city, or town who are elected to office after
17 February 20, 1970. "Employee" also includes: (a) Employees of a
18 county, municipality, or other political subdivision of the state if
19 the legislative authority of the county, municipality, or other
20 political subdivision of the state seeks and receives the approval of
21 the authority to provide any of its insurance programs by contract with
22 the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b)
23 employees of employee organizations representing state civil service
24 employees, at the option of each such employee organization, and,
25 effective October 1, 1995, employees of employee organizations
26 currently pooled with employees of school districts for the purpose of
27 purchasing insurance benefits, at the option of each such employee
28 organization; (c) employees of a school district if the authority
29 agrees to provide any of the school districts' insurance programs by
30 contract with the authority as provided in RCW 28A.400.350; and (d)
31 employees of a tribal government, if the governing body of the tribal
32 government seeks and receives the approval of the authority to provide
33 any of its insurance programs by contract with the authority, as
34 provided in RCW 41.05.021(1) (f) and (g).

35 (7) "Board" means the public employees' benefits board established
36 under RCW 41.05.055.

37 (8) "Retired or disabled school employee" means:

1 (a) Persons who separated from employment with a school district or
2 educational service district and are receiving a retirement allowance
3 under chapter 41.32 or 41.40 RCW as of September 30, 1993;

4 (b) Persons who separate from employment with a school district or
5 educational service district on or after October 1, 1993, and
6 immediately upon separation receive a retirement allowance under
7 chapter 41.32, 41.35, or 41.40 RCW;

8 (c) Persons who separate from employment with a school district or
9 educational service district due to a total and permanent disability,
10 and are eligible to receive a deferred retirement allowance under
11 chapter 41.32, 41.35, or 41.40 RCW.

12 (9) "~~((Benefits contribution))~~ Premium payment plan" means a
13 (~~((premium only contribution plan, a medical flexible spending~~
14 ~~arrangement, or a cafeteria))~~ benefit plan whereby state and public
15 employees may (~~((agree to a contribution to benefit costs which will~~
16 ~~allow the employee to participate in benefits offered))~~ pay their share
17 of group health plan premiums with pretax dollars as provided in the
18 salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125
19 or other sections of the internal revenue code.

20 (10) "Salary" means a state employee's monthly salary or wages.

21 (11) "Participant" means an individual who fulfills the eligibility
22 and enrollment requirements under the (~~((benefits contribution))~~ salary
23 reduction plan.

24 (12) "Plan year" means the time period established by the
25 authority.

26 (13) "Separated employees" means persons who separate from
27 employment with an employer as defined in:

28 (a) RCW 41.32.010(11) on or after July 1, 1996; or

29 (b) RCW 41.35.010 on or after September 1, 2000; or

30 (c) RCW 41.40.010 on or after March 1, 2002;

31 and who are at least age fifty-five and have at least ten years of
32 service under the teachers' retirement system plan 3 as defined in RCW
33 41.32.010(40), the Washington school employees' retirement system plan
34 3 as defined in RCW 41.35.010, or the public employees' retirement
35 system plan 3 as defined in RCW 41.40.010.

36 (14) "Emergency service personnel killed in the line of duty" means
37 law enforcement officers and firefighters as defined in RCW 41.26.030,
38 members of the Washington state patrol retirement fund as defined in

1 RCW 43.43.120, and reserve officers and firefighters as defined in RCW
2 41.24.010 who die as a result of injuries sustained in the course of
3 employment as determined consistent with Title 51 RCW by the department
4 of labor and industries.

5 (15) "Employer" means the state of Washington.

6 (16) "Employing agency" means a division, department, or separate
7 agency of state government; a county, municipality, school district,
8 educational service district, or other political subdivision; and a
9 tribal government covered by this chapter.

10 (17) "Tribal government" means an Indian tribal government as
11 defined in section 3(32) of the employee retirement income security act
12 of 1974, as amended, or an agency or instrumentality of the tribal
13 government, that has government offices principally located in this
14 state.

15 (18) "Dependent care assistance program" means a benefit plan
16 whereby state and public employees may pay for certain employment
17 related dependent care with pretax dollars as provided in the salary
18 reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or
19 other sections of the internal revenue code.

20 (19) "Salary reduction plan" means a benefit plan whereby state and
21 public employees may agree to a reduction of salary on a pretax basis
22 to participate in the dependent care assistance program, medical
23 flexible spending arrangement, or premium payment plan offered pursuant
24 to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

25 (20) "Medical flexible spending arrangement" means a benefit plan
26 whereby state and public employees may reduce their salary before taxes
27 to pay for medical expenses not reimbursed by insurance as provided in
28 the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec.
29 125 or other sections of the internal revenue code.

30 **Sec. 3.** RCW 41.05.300 and 1995 1st sp.s. c 6 s 11 are each amended
31 to read as follows:

32 (1) The state of Washington may enter into (~~benefits contribution~~
33 ~~plans~~) salary reduction agreements with employees of the state
34 pursuant to the internal revenue code, (~~26 U.S.C. Sec. 125,~~) for the
35 purpose of making it possible for employees of the state to select on
36 a "before-tax basis" certain taxable and nontaxable benefits (~~pursuant~~
37 ~~to 26 U.S.C. Sec. 125~~). The purpose of the (~~benefits contribution~~)

1 salary reduction plan established in this chapter is to attract and
2 retain individuals in governmental service by permitting them to enter
3 into agreements with the state to provide for benefits pursuant to 26
4 U.S.C. Sec. 125, 26 U.S.C. Sec. 129, and other applicable sections of
5 the internal revenue code.

6 (2) Nothing in the ((~~benefits contribution~~)) salary reduction plan
7 constitutes an employment agreement between the participant and the
8 state, and nothing contained in the participant's ((~~benefits~~
9 ~~contribution~~)) salary reduction agreement, the plan, this section, or
10 RCW 41.05.123, 41.05.310 through 41.05.360, and section 1 of this act
11 gives a participant any right to be retained in state employment.

12 **Sec. 4.** RCW 41.05.310 and 1995 1st sp.s. c 6 s 12 are each amended
13 to read as follows:

14 The authority shall have responsibility for the formulation and
15 adoption of a plan, policies, and procedures designed to guide, direct,
16 and administer the ((~~benefits contribution~~)) salary reduction plan.
17 For the plan year beginning January 1, 1996, the administrator may
18 establish a premium only ((~~contribution~~)) plan. Expansion of the
19 ((~~benefits contribution~~)) salary reduction plan ((~~to a medical flexible~~
20 ~~spending arrangement~~)) or cafeteria plan during subsequent plan years
21 shall be subject to approval by the director of the office of financial
22 management.

23 (1) A plan document describing the benefits ((~~contribution~~))
24 offered under the salary reduction plan shall be adopted and
25 administered by the authority. The authority shall represent the state
26 in all matters concerning the administration of the plan. The state,
27 through the authority, may engage the services of a professional
28 consultant or administrator on a contractual basis to serve as an agent
29 to assist the authority or perform the administrative functions
30 necessary in carrying out the purposes of RCW 41.05.123, 41.05.300
31 through 41.05.350, and section 1 of this act.

32 (2) The authority shall formulate and establish policies and
33 procedures for the administration of the ((~~benefits contribution~~))
34 salary reduction plan that are consistent with existing state law, the
35 internal revenue code, and the regulations adopted by the internal
36 revenue service as they may apply to the benefits offered to
37 participants under the plan.

1 (3) Every action taken by the authority in administering RCW
2 41.05.123, 41.05.300 through 41.05.350, and section 1 of this act shall
3 be presumed to be a fair and reasonable exercise of the authority
4 vested in or the duties imposed upon it. The authority shall be
5 presumed to have exercised reasonable care, diligence, and prudence and
6 to have acted impartially as to all persons interested unless the
7 contrary be proved by clear and convincing affirmative evidence.

8 **Sec. 5.** RCW 41.05.320 and 2007 c 492 s 6 are each amended to read
9 as follows:

10 (1) Elected officials and ~~((all))~~ permanent employees of the state
11 are eligible to participate in the ~~((benefits contribution))~~ salary
12 reduction plan and ~~((contribute amount(s)))~~ reduce their salary by
13 agreement with the authority. The authority may adopt rules to: (a)
14 Limit the participation of employing agencies and their employees in
15 the plan; and (b) permit participation in the plan by temporary
16 employees of the state.

17 (2) Persons eligible under subsection (1) of this section may enter
18 into ~~((benefits contribution))~~ salary reduction agreements with the
19 state.

20 (3)(a) ~~((In the initial year of the medical flexible spending~~
21 ~~arrangement or cafeteria plan, if authorized, an eligible person may~~
22 ~~become a participant after the adoption of the plan and before its~~
23 ~~effective date by agreeing to have a portion of his or her gross salary~~
24 ~~contributed and deposited into a health care and other benefits account~~
25 ~~to be used for reimbursement of expenses covered by the plan.~~

26 ~~((b) After the initial year of the medical flexible spending~~
27 ~~arrangement or cafeteria plan, if authorized,))~~ An eligible person may
28 become a participant of the salary reduction plan for a full plan
29 year~~((7))~~ with annual benefit plan selection for each new plan year
30 made before the beginning of the plan year, as determined by the
31 authority, or upon becoming eligible.

32 ~~((e))~~ (b) Once an eligible person elects to participate in the
33 salary reduction plan and determines the amount ((of)) his or her gross
34 salary ~~((that he or she))~~ shall ~~((contribute))~~ be reduced and the
35 benefit plan for which the funds are to be used during the plan year
36 ~~((is determined))~~, the agreement shall be irrevocable and may not be
37 amended during the plan year except as provided in ~~((d))~~ (c) of this

1 subsection. Prior to making an election to participate in the
2 (~~benefits contribution~~) salary reduction plan, the eligible person
3 shall be informed in writing of all the benefits and (~~contributions~~)
4 reductions that will occur as a result of such election.

5 (~~(d)~~) (c) The authority shall provide in the (~~benefits~~
6 ~~contribution~~) salary reduction plan that a participant may enroll,
7 terminate, or change his or her election after the plan year has begun
8 if there is a significant change in a participant's status, as provided
9 by 26 U.S.C. Sec. 125 and the regulations adopted under that section
10 and defined by the authority.

11 (4) The authority shall establish as part of the (~~benefits~~
12 ~~contribution~~) salary reduction plan the procedures for and effect of
13 withdrawal from the plan by reason of retirement, death, leave of
14 absence, or termination of employment. To the extent possible under
15 federal law, the authority shall protect participants from forfeiture
16 of rights under the plan.

17 (5) Any (~~contribution~~) reduction of salary under the (~~benefits~~
18 ~~contribution~~) salary reduction plan shall (~~continue to be included~~
19 ~~as~~) not reduce the reportable compensation for the purpose of
20 computing the state retirement and pension benefits earned by the
21 employee pursuant to chapters 41.26, 41.32, 41.35, 41.37, 41.40, and
22 43.43 RCW.

23 **Sec. 6.** RCW 41.05.123 and 2005 c 143 s 2 are each amended to read
24 as follows:

25 (1) The (~~medical~~) flexible spending administrative account is
26 created in the custody of the state treasurer. All receipts from the
27 following must be deposited in the account: (a) Revenues from
28 employing agencies for costs associated with operating the medical
29 flexible spending arrangement program and the dependent care assistance
30 program provided through the salary reduction plan authorized under
31 this chapter; (b) funds transferred from the dependent care
32 administrative account; and (~~(b)~~) (c) unclaimed moneys at the end of
33 the plan year after all timely submitted claims for that plan year have
34 been processed. Expenditures from the account may be used only for
35 administrative and other expenses related to operating the medical
36 flexible spending (~~account~~) arrangement program and the dependent
37 care assistance program provided through the salary reduction plan

1 authorized under this chapter. Only the administrator or the
2 administrator's designee may authorize expenditures from the account.
3 The account is subject to allotment procedures under chapter 43.88 RCW,
4 but an appropriation is not required for expenditures.

5 (2) The salary reduction account is established in the state
6 treasury. Employee salary reductions paid to reimburse participants or
7 service providers for benefits provided by the medical flexible
8 spending arrangement program and the dependent care assistance program
9 provided through the salary reduction plan authorized under this
10 chapter shall be paid from the salary reduction account. The funds
11 held by the state to pay for benefits provided by the medical flexible
12 spending arrangement program and the dependent care assistance program
13 provided through the salary reduction plan authorized under this
14 chapter shall be deposited in the salary reduction account. Unclaimed
15 moneys remaining in the salary reduction account at the end of a plan
16 year after all timely submitted claims for that plan year have been
17 processed shall become a part of the flexible spending administrative
18 account. Only the administrator or the administrator's designee may
19 authorize expenditures from the account. The account is not subject to
20 allotment procedures under chapter 43.88 RCW and an appropriation is
21 not required for expenditures.

22 (3) Program claims reserves and money necessary for start-up costs
23 transferred from the public employees' and retirees' insurance account
24 established in RCW 41.05.120 may be deposited in the flexible spending
25 administrative account. Moneys in excess of the amount necessary for
26 administrative and operating expenses of the medical flexible spending
27 (~~account~~) arrangement program may be transferred to the public
28 employees' and retirees' insurance account.

29 (~~(3)~~) (4) The authority may periodically bill employing agencies
30 for costs associated with operating the medical flexible spending
31 (~~account~~) arrangement program and the dependent care assistance
32 program provided through the salary reduction plan authorized under
33 this chapter.

34 **Sec. 7.** RCW 41.05.330 and 1995 1st sp.s. c 6 s 14 are each amended
35 to read as follows:

36 The authority shall keep or cause to be kept full and adequate

1 accounts and records of the assets, obligations, transactions, and
2 affairs of a ((benefits-contribution)) salary reduction plan created
3 under RCW 41.05.300.

4 **Sec. 8.** RCW 41.05.340 and 1995 1st sp.s. c 6 s 15 are each amended
5 to read as follows:

6 (1) The state may terminate the ((benefits-contribution)) salary
7 reduction plan at the end of the plan year or upon notification of
8 federal action affecting the status of the plan.

9 (2) The authority may amend the ((benefits-contribution)) salary
10 reduction plan at any time if the amendment does not affect the rights
11 of the participants to receive eligible reimbursement from the
12 participants' ((benefits-contribution)) accounts.

13 **Sec. 9.** RCW 41.05.350 and 1995 1st sp.s. c 6 s 16 are each amended
14 to read as follows:

15 The authority shall adopt rules necessary to implement RCW
16 41.05.123, 41.05.300 through 41.05.340, and section 1 of this act.

17 **Sec. 10.** RCW 41.05.360 and 1995 1st sp.s. c 6 s 17 are each
18 amended to read as follows:

19 RCW 41.05.123, 41.05.300 through 41.05.350, and section 1 of this
20 act shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125
21 and other applicable sections of the internal revenue code as required.

22 **Sec. 11.** RCW 28B.50.874 and 1998 c 116 s 14 are each amended to
23 read as follows:

24 When the state system of community and technical colleges assumes
25 administrative control of the vocational-technical institutes,
26 personnel employed by the vocational-technical institutes shall:

27 (1) Suffer no reduction in compensation, benefits, seniority, or
28 employment status. After September 1, 1991, classified employees shall
29 continue to be covered by chapter 41.56 RCW and faculty members and
30 administrators shall be covered by chapter 28B.50 RCW;

31 (2) To the extent applicable to faculty members, any faculty
32 currently employed on a "continuing contract" basis under RCW
33 28A.405.210 be awarded tenure pursuant to RCW 28B.50.851 through

1 28B.50.873, except for any faculty members who are provisional
2 employees under RCW 28A.405.220;

3 (3) Be eligible to participate in the health care and other
4 insurance plans provided by the health care authority and the ((state))
5 public employees' benefits board pursuant to chapter 41.05 RCW;

6 (4) Be eligible to participate in old age annuities or retirement
7 income plans under the rules of the state board for community and
8 technical colleges pursuant to RCW 28B.10.400 or the teachers'
9 retirement system plan 1 for personnel employed before July 1, 1977, or
10 plan 2 for personnel employed after July 1, 1977, under chapter 41.32
11 RCW; however, no affected vocational-technical institute employee shall
12 be required to choose from among any available retirement plan options
13 prior to six months after September 1, 1991;

14 (5) Have transferred to their new administrative college district
15 all accrued sick and vacation leave and thereafter shall earn and use
16 all such leave under the rule established pursuant to RCW 28B.50.551;

17 (6) Be eligible to participate in the deferred compensation plan
18 and ((the dependent care)) programs pursuant to RCW ((41.04.600))
19 41.05.123, 41.05.300 through 41.05.360, and section 1 of this act under
20 the applicable rules.

21 An exclusive bargaining representative certified to represent a
22 bargaining unit covering employees of a vocational technical institute
23 on September 1, 1991, shall remain the exclusive representative of such
24 employees thereafter until and unless such representative is replaced
25 or decertified in accordance with state law.

26 Any collective bargaining agreement in effect on June 30, 1991,
27 shall remain in effect as it applies to employees of vocational
28 technical institutes until its expiration or renewal date or until
29 renegotiated or renewed in accordance with chapter 28B.52 or 41.56 RCW.
30 After the expiration date of a collective bargaining agreement, all of
31 the terms and conditions specified in the collective bargaining
32 agreement, as it applies to employees of vocational-technical
33 institutes, shall remain in effect until the effective date of a
34 subsequent agreement, not to exceed one year from the termination date
35 stated in the agreement. The board of trustees and the employees may
36 mutually agree to continue the terms and conditions of the agreement
37 beyond the one year extension. However, nothing in this section shall
38 be construed to deny any employee right granted under chapter 28B.52 or

1 41.56 RCW. Labor relations processes and agreements covering faculty
2 members of vocational technical institutes after September 1, 1991,
3 shall be governed by chapter 28B.52 RCW. Labor relations processes and
4 agreements covering classified employees of vocational technical
5 institutes after September 1, 1991, shall continue to be governed by
6 chapter 41.56 RCW.

7 **Sec. 12.** RCW 41.50.780 and 2001 c 181 s 2 are each amended to read
8 as follows:

9 (1) The deferred compensation principal account is hereby created
10 in the state treasury.

11 (2) The amount of compensation deferred by employees under
12 agreements entered into under the authority contained in RCW 41.50.770
13 shall be paid into the deferred compensation principal account and
14 shall be sufficient to cover costs of administration and staffing in
15 addition to such other amounts as determined by the department. The
16 deferred compensation principal account shall be used to carry out the
17 purposes of RCW 41.50.770. All eligible state employees shall be given
18 the opportunity to participate in agreements entered into by the
19 department under RCW 41.50.770. State agencies shall cooperate with
20 the department in providing employees with the opportunity to
21 participate.

22 (3) Any county, municipality, or other subdivision of the state may
23 elect to participate in any agreements entered into by the department
24 under RCW 41.50.770, including the making of payments therefrom to the
25 employees participating in a deferred compensation plan upon their
26 separation from state or other qualifying service. Accordingly, the
27 deferred compensation principal account shall be considered to be a
28 public pension or retirement fund within the meaning of Article XXIX,
29 section 1 of the state Constitution, for the purpose of determining
30 eligible investments and deposits of the moneys therein.

31 (4) All moneys in the state deferred compensation principal account
32 and the state deferred compensation administrative account, all
33 property and rights purchased therewith, and all income attributable
34 thereto, shall be held in trust by the state investment board, as set
35 forth under RCW 43.33A.030, for the exclusive benefit of the state
36 deferred compensation plan's participants and their beneficiaries.
37 Neither the participant, nor the participant's beneficiary or

1 beneficiaries, nor any other designee, has any right to commute, sell,
2 assign, transfer, or otherwise convey the right to receive any payments
3 under the plan. These payments and right thereto are nonassignable and
4 nontransferable. Unpaid accumulated deferrals are not subject to
5 attachment, garnishment, or execution and are not transferable by
6 operation of law in event of bankruptcy or insolvency, except to the
7 extent otherwise required by law.

8 (5) The state investment board has the full power to invest moneys
9 in the state deferred compensation principal account and the state
10 deferred compensation administrative account in accordance with RCW
11 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment
12 directions received pursuant to RCW 41.50.770. All investment and
13 operating costs of the state investment board associated with the
14 investment of the deferred compensation plan assets shall be paid
15 pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these
16 expenses, one hundred percent of all earnings from these investments
17 shall accrue directly to the deferred compensation principal account.

18 (6)(a) No state board or commission, agency, or any officer,
19 employee, or member thereof is liable for any loss or deficiency
20 resulting from participant investments selected pursuant to RCW
21 41.50.770(3).

22 (b) Neither the employee retirement benefits board nor the state
23 investment board, nor any officer, employee, or member thereof is
24 liable for any loss or deficiency resulting from reasonable efforts to
25 implement investment directions pursuant to RCW 41.50.770(3).

26 (7) The deferred compensation administrative account is hereby
27 created in the state treasury. All expenses of the department
28 pertaining to the deferred compensation plan including staffing and
29 administrative expenses shall be paid out of the deferred compensation
30 administrative account. Any excess balances credited to this account
31 over administrative expenses disbursed from this account shall be
32 transferred to the deferred compensation principal account at such time
33 and in such amounts as may be determined by the department with the
34 approval of the office of financial management. Any deficiency in the
35 deferred compensation administrative account caused by an excess of
36 administrative expenses disbursed from this account shall be
37 transferred to this account from the deferred compensation principal
38 account.

1 (8) (~~In addition to the duties specified in this section and RCW~~
2 ~~41.50.770, the department shall administer the salary reduction plan~~
3 ~~established in RCW 41.04.600 through 41.04.645.~~

4 ~~(9)~~(a)(i) The department shall keep or cause to be kept full and
5 adequate accounts and records of the assets of each individual
6 participant, obligations, transactions, and affairs of any deferred
7 compensation plans created under RCW 41.50.770 and this section. The
8 department shall account for and report on the investment of state
9 deferred compensation plan assets or may enter into an agreement with
10 the state investment board for such accounting and reporting.

11 (ii) The department's duties related to individual participant
12 accounts include conducting the activities of trade instruction,
13 settlement activities, and direction of cash movement and related wire
14 transfers with the custodian bank and outside investment firms.

15 (iii) The department has sole responsibility for contracting with
16 any recordkeepers for individual participant accounts and shall manage
17 the performance of recordkeepers under those contracts.

18 (b)(i) The department's duties under (a)(ii) of this subsection do
19 not limit the authority of the state investment board to conduct its
20 responsibilities for asset management and balancing of the deferred
21 compensation funds.

22 (ii) The state investment board has sole responsibility for
23 contracting with outside investment firms to provide investment
24 management for the deferred compensation funds and shall manage the
25 performance of investment managers under those contracts.

26 (c) The state treasurer shall designate and define the terms of
27 engagement for the custodial banks.

28 ~~((10))~~ (9) The department may adopt rules necessary to carry out
29 its responsibilities under RCW 41.50.770 and this section.

30 NEW SECTION. Sec. 13. On the effective date of this section, the
31 treasurer shall transfer all funds in the dependent care administrative
32 account into the flexible spending administrative account.

33 NEW SECTION. Sec. 14. The following acts or parts of acts, as now
34 existing or hereafter amended, are each repealed:

35 (1) RCW 41.04.600 (Dependent care--Salary reduction plan--Purpose)
36 and 1987 c 475 s 1;

- 1 (2) RCW 41.04.605 (Dependent care--Salary reduction plan--
2 Definitions) and 1998 c 116 s 3 & 1987 c 475 s 2;
- 3 (3) RCW 41.04.610 (Dependent care--Salary reduction plan--Powers
4 and duties of department) and 1998 c 116 s 4 & 1987 c 475 s 3;
- 5 (4) RCW 41.04.615 (Dependent care--Salary reduction plan document--
6 Funds, fees, and appropriations--Dependent care administrative account
7 created--Presumptions) and 1998 c 116 s 5, 1993 c 34 s 1, & 1987 c 475
8 s 4;
- 9 (5) RCW 41.04.620 (Dependent care--Salary reduction plan--
10 Participation by eligible persons--Enrollment, termination, or
11 modification) and 1998 c 116 s 6 & 1987 c 475 s 5;
- 12 (6) RCW 41.04.625 (Dependent care--Salary reduction account) and
13 1987 c 475 s 6;
- 14 (7) RCW 41.04.630 (Dependent care--Salary reduction plan--Records
15 and reports) and 1998 c 245 s 36, 1998 c 116 s 7, & 1987 c 475 s 7;
- 16 (8) RCW 41.04.635 (Dependent care--Salary reduction plan--
17 Termination or amendment of plan) and 1998 c 116 s 8 & 1987 c 475 s 8;
- 18 (9) RCW 41.04.640 (Dependent care--Salary reduction plan--Adoption
19 of rules) and 1998 c 116 s 9 & 1987 c 475 s 9; and
- 20 (10) RCW 41.04.645 (Dependent care--Salary reduction plan--
21 Construction of statutes) and 1987 c 475 s 10.

22 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2009.

--- END ---