
SENATE BILL 5856

State of Washington

63rd Legislature

2013 Regular Session

By Senator Tom

Read first time 02/25/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to creating a defined contribution retirement plan
2 for public employees; amending RCW 41.04.440, 41.04.445, 41.04.450,
3 41.50.030, and 43.33A.190; reenacting and amending RCW 41.50.110;
4 adding a new section to chapter 41.32 RCW; adding a new section to
5 chapter 41.35 RCW; adding a new section to chapter 41.37 RCW; adding a
6 new section to chapter 41.40 RCW; adding a new chapter to Title 41 RCW;
7 creating new sections; and providing an effective date.

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

9 PART I

10 SHORT TITLE AND INTENT

11 NEW SECTION. **Sec. 101.** This act may be known and cited as the
12 public employee defined contribution retirement plan act.

13 NEW SECTION. **Sec. 102.** The legislature recognizes the need for
14 public employees, public safety employees, teachers, and school
15 employees, to have a secure and viable retirement benefit, not only for
16 their own financial protection, but also so that public funds are spent
17 prudently for their intended purpose. The legislature also recognizes

1 that when defined benefit plans were first adopted for public employees
2 there was a common expectation of lifetime employment with the public
3 employer, but it is now much more common for persons to change
4 employers many times in a working career. The legislature furthermore
5 recognizes: (1) Public employers and taxpayers need consistent and
6 predictable employee retirement benefits funding obligations; and (2)
7 defined benefit retirement plans provide less flexible benefit and
8 retirement options for employees and unpredictable funding obligations
9 for employers.

10 Therefore, it is the intent of the legislature to provide a defined
11 contribution retirement plan for new public employees, teachers, school
12 employees, and current employees under age forty-five, to give
13 employees greater flexibility regarding their retirement age and
14 benefit payout, and greater integrity in the funding of those benefits.
15 The new defined contribution retirement plan will provide significant
16 new advantages to current members of the state defined benefit plans,
17 as required by the *Bakenhus* line of decisions dealing with public
18 employee pension benefits.

19 It is also the intent of the legislature that the new plan use
20 best practices of defined contribution plans to provide opportunity and
21 flexibility to accrue a viable retirement benefit, while providing
22 stable funding requirements for public employers and taxpayers. These
23 best practices include minimizing the investment risk borne by the
24 participants, whether through lack of investment knowledge or lack of
25 access to the full variety of investment classes, and providing a
26 distribution option that would ensure participants do not outlive their
27 savings.

28 **PART II**
29 **RETIREMENT SYSTEM**

30 NEW SECTION. **Sec. 201.** This chapter applies only to members of
31 the Washington public employees' savings plan created under this
32 chapter.

33 NEW SECTION. **Sec. 202.** The definitions in this section apply
34 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Accumulated contributions" means the sum of all contributions
2 standing to the credit of a member in the member's individual account,
3 together with the earnings thereon.

4 (2)(a) "Compensation earnable" means salaries or wages earned by a
5 member during a payroll period for personal services, including
6 overtime payments, and shall include wages and salaries deferred under
7 provisions established pursuant to sections 403(b), 414(h), and 457 of
8 the internal revenue code, but excludes nonmoney maintenance
9 compensation and lump sum or other payments for deferred annual sick
10 leave, unused accumulated vacation leave, unused accumulated annual
11 leave, or any form of severance pay.

12 (b) "Compensation earnable" also includes the following actual or
13 imputed payments, which are not paid for personal services:

14 (i) Retroactive payments to an individual by an employer on
15 reinstatement of the employee in a position, or payments by an employer
16 to an individual in lieu of reinstatement in a position which are
17 awarded or granted as the equivalent of the salary or wage which the
18 individual would have earned during a payroll period is considered
19 compensation earnable to the extent provided in this subsection (2),
20 and the individual shall receive the equivalent service credit;

21 (ii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
22 and 72.09.240;

23 (iii) Compensation that a member would have received but for a
24 disability occurring in the line of duty only as authorized by RCW
25 41.40.038;

26 (iv) Compensation that a member receives due to participation in
27 the leave sharing program only as authorized by RCW 41.04.650 through
28 41.04.670; and

29 (v) Compensation that a member receives for being in standby
30 status. For the purposes of this section, a member is in standby
31 status when not being paid for time actually worked and the employer
32 requires the member to be prepared to report immediately for work, if
33 the need arises, although the need may not arise.

34 (3) "Department" means the department of retirement systems created
35 in chapter 41.50 RCW.

36 (4) "Director" means the director of the department.

37 (5) "Eligible position" means:

1 (a) Any position that, as defined by the employer, normally
2 requires five or more months of service a year for which regular
3 compensation for at least seventy hours is earned by the occupant
4 thereof. For purposes of this chapter, an employer may not define
5 "position" in such a manner that an employee's monthly work for that
6 employer is divided into more than one position; and

7 (b) Any position occupied by an elected official or person
8 appointed directly by the governor, or appointed by the chief justice
9 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
10 compensation is paid.

11 (6) "Employee" or "employed" means a person who is providing
12 services for compensation to an employer, unless the person is free
13 from the employer's direction and control over the performance of work.
14 The department shall adopt rules and interpret this subsection
15 consistent with common law.

16 (7)(a) "Employer" means every branch, department, agency,
17 commission, board, and office of the state, and any political
18 subdivision and municipal corporation of the state admitted into the
19 retirement system, including public agencies created pursuant to RCW
20 35.63.070, 36.70.060, and 39.34.030.

21 (b) Except as otherwise specifically provided in this chapter,
22 "employer" does not include a government contractor. For purposes of
23 this subsection, a "government contractor" is any entity, including a
24 partnership, limited liability company, for-profit or nonprofit
25 corporation, or person, that provides services pursuant to a contract
26 with an employer. The determination whether an employer-employee
27 relationship has been established is not based on the relationship
28 between a government contractor and an employer, but is based solely on
29 the relationship between a government contractor's employee and an
30 employer under this chapter.

31 (8) "Ineligible position" means any position that does not conform
32 with the requirements set forth in subsection (7) of this section.

33 (9) "Leave of absence" means the period of time a member is
34 authorized by the employer to be absent from service without being
35 separated from membership.

36 (10) "Member" means any employee included in the membership of the
37 retirement system, as provided for in section 204 of this act.

1 (11) "Member account" or "member's account" means the sum of the
2 contributions and earnings on behalf of the member.

3 (12) "Regular interest" means the rate the director determines.

4 (13) "Retirement system" means the Washington public employees'
5 savings plan created in this chapter.

6 (14) "Separation from service" occurs when a person has terminated
7 all employment with an employer. Separation from service or employment
8 does not occur, and if claimed by an employer or employee may be a
9 violation of RCW 41.40.055, when an employee and employer have a
10 written or oral agreement to resume employment with the same employer
11 following termination. Mere expressions or inquiries about
12 postretirement employment by an employer or employee that do not
13 constitute a commitment to reemploy the employee after retirement are
14 not an agreement under this subsection.

15 (15)(a) "Service" means periods of employment by a member in an
16 eligible position or positions for one or more employers for which
17 compensation earnable is paid. Time spent in standby status, whether
18 compensated or not, is not service.

19 (b) Service in any state elective position is service.

20 (16) "State actuary" or "actuary" means the person appointed
21 pursuant to RCW 44.44.010(2).

22 (17) "State elective position" means any position held by any
23 person elected or appointed to statewide office or elected or appointed
24 as a member of the legislature.

25 (18) "State treasurer" means the treasurer of the state of
26 Washington.

27 (19) "Transferable plan" means the plans 2 and plans 3 of the
28 retirement systems established under chapters 41.32, 41.34, 41.35,
29 41.37, and 41.40 RCW.

30 NEW SECTION. **Sec. 203.** A public employees' savings plan is hereby
31 created for the employees of the state of Washington and its political
32 subdivisions. The administration and management of the savings plan,
33 the responsibility for making effective the provisions of this chapter,
34 and the authority to make all rules and regulations necessary therefor
35 are hereby vested in the department. All such rules and regulations
36 shall be governed by the provisions of chapter 34.05 RCW. The

1 retirement system created in this chapter shall be known as the
2 Washington public employees' savings plan.

3 NEW SECTION. **Sec. 204.** Membership in the retirement system
4 consists of:

5 (1) All regularly compensated employees and appointive and elective
6 officials who first become employed by an employer on or after July 1,
7 2014, except for persons excluded from membership under section 205 of
8 this act.

9 (2) All regularly compensated employees and appointive and elective
10 officials employed by an employer who first established service in a
11 transferable plan prior to July 1, 2014, and who are under age forty-
12 five as of July 1, 2014.

13 NEW SECTION. **Sec. 205.** The following persons are excluded from
14 membership in the retirement system:

15 (1) Persons in ineligible positions;

16 (2) Employees of the legislature except the officers thereof
17 elected by the members of the senate and the house of representatives
18 and legislative committees, unless membership of the employees is
19 authorized by the committee;

20 (3) Persons holding elective offices or persons appointed directly
21 by the governor. However, these persons have the option of applying
22 for membership during periods of employment. Persons holding or who
23 have held elective offices or persons appointed by the governor who are
24 members in the retirement system and who have, prior to becoming
25 members, previously held an elective office, and did not at the start
26 of their initial or successive terms of office exercise their option to
27 become members, may apply for membership to be effective during their
28 term or terms of office;

29 (4) Employees holding membership in, or receiving pension benefits
30 under, any retirement plan operated wholly or in part by an agency of
31 the state or political subdivision thereof, or who are by reason of
32 their current employment contributing to or otherwise establishing the
33 right to receive benefits from such a retirement plan, except as
34 follows:

35 (a) An employee is allowed membership if otherwise eligible while
36 receiving survivor's benefits;

1 (b) An employee may not be excluded from membership pursuant to
2 this subsection solely on account of: (i) Membership in the plan
3 created under chapter 2.14 RCW; or (ii) enrollment under the relief and
4 compensation provisions or the pension provisions of the volunteer
5 firefighters' and reserve officers' relief and pension fund under
6 chapter 41.24 RCW;

7 (c) Except as provided in RCW 41.40.109, an employee may not be
8 excluded from membership pursuant to this subsection solely on account
9 of participation in a defined contribution pension plan qualified under
10 section 401 of the internal revenue code;

11 (5) Patient and inmate help in state charitable, penal, and
12 correctional institutions;

13 (6) Members of a state veterans' home or state soldiers' home;

14 (7) Persons employed by an institution of higher education or
15 community college, primarily as an incident to and in furtherance of
16 their education or training, or the education or training of a spouse;

17 (8) Employees of an institution of higher education or community
18 college during the period of service necessary to establish eligibility
19 for membership in the retirement plans operated by that institution;

20 (9) Persons rendering professional services to an employer on a
21 fee, retainer, or contract basis or when the income from these services
22 is less than fifty percent of the gross income received from the
23 person's practice of a profession;

24 (10) Employees of a labor guild, association, or organization;

25 (11) Persons employed by or appointed or elected as an official of
26 a first-class city that has its own retirement system, but any member
27 elected or appointed to an elective office has the option of continuing
28 as a member of the retirement system under this chapter in lieu of
29 becoming a member of the city system. A member who elects to continue
30 as a member of the retirement system under this chapter shall pay the
31 appropriate member contributions and the city shall pay the employer
32 contributions at the rates prescribed by this chapter. Any city that
33 becomes an employer as defined in RCW 41.40.010 as the result of an
34 individual's election under this subsection is not required to have all
35 employees covered for retirement under this chapter. Nothing in this
36 subsection prohibits a city of the first class with its own retirement
37 system from allowing newly hired employees the option of continuing
38 coverage under the retirement system established by this chapter;

1 (12) Employees who (a) are not citizens of the United States, (b)
2 do not reside in the United States, and (c) perform duties outside of
3 the United States;

4 (13) Employees who (a) are not citizens of the United States, (b)
5 are not covered by chapter 41.48 RCW, (c) are not excluded from
6 membership under this chapter or chapter 41.04 RCW, (d) are residents
7 of this state, and (e) make an irrevocable election to be excluded from
8 membership, in writing, which is submitted to the director within
9 thirty days after employment in an eligible position;

10 (14) Employees who are citizens of the United States and who reside
11 and perform duties for an employer outside of the United States;

12 (15) The city manager or chief administrative officer of a city or
13 town, other than a retiree, who serves at the pleasure of an appointing
14 authority. These persons have the option of applying for membership
15 within thirty days from the date of appointment to their positions;

16 (16) Persons serving as: (a) The chief administrative officer of
17 a public utility district as defined in RCW 54.16.100; (b) the chief
18 administrative officer of a port district formed under chapter 53.04
19 RCW; or (c) the chief administrative officer of a county who serves at
20 the pleasure of an appointing authority. These persons have the option
21 of applying for membership within thirty days from the date of
22 appointment to their positions;

23 (17) Persons enrolled in state-approved apprenticeship programs,
24 authorized under chapter 49.04 RCW, and who are employed by local
25 governments to earn hours to complete the apprenticeship programs, if
26 the employee is a member of a union-sponsored retirement plan and is
27 making contributions to such a retirement plan or if the employee is a
28 member of a Taft-Hartley retirement plan;

29 (18) Persons employed exclusively as trainers or trainees in
30 resident apprentice training programs operated by housing authorities
31 authorized under chapter 35.82 RCW, if (a) the trainer or trainee is a
32 member of a union-sponsored retirement plan and is making contributions
33 to such a retirement plan, or (b) the trainer or trainee is a member of
34 a Taft-Hartley retirement plan;

35 (19) Persons who have previously established membership in, or
36 retired from, another public employees' retirement system described in
37 RCW 41.50.030, except for members transferring into the system under
38 section 206 of this act; and

1 (20) Persons who are eligible for membership in the law enforcement
2 officers' and firefighters' retirement system established under chapter
3 41.26 RCW or the Washington state patrol retirement system established
4 under chapter 43.43 RCW.

5 NEW SECTION. **Sec. 206.** (1) On July 1, 2014, every member of a
6 transferable plan under the age of forty-five who is employed by an
7 employer in an eligible position shall be transferred to the public
8 employees' savings plan.

9 (2) Service in each transferable plan for which a transferring
10 member has established service credit will be transferred to the public
11 employees' savings plan on July 1, 2014. This service applies to the
12 eligibility for vesting in employer matching contributions as provided
13 in section 207 of this act.

14 (3) Retirement benefits in each transferable plan for which a
15 transferring member has established service credit will be transferred
16 to the public employees' savings plan and credited to member accounts
17 in the public employees' savings plan as follows:

18 (a) Plan 2 members' accumulated contributions from each
19 transferable plan 2 will be transferred on July 1, 2014, including all
20 accrued interest as of the transfer date;

21 (b) Plan 3 members' member accounts from each transferable plan 3
22 will be transferred on July 1, 2014;

23 (c) An additional transfer payment from each transferable plan will
24 be credited to qualified members' accounts in the public employees'
25 savings plan on July 1, 2016. The transfer payment represents the
26 employer provided portion of the member's accrued retirement benefit
27 and is equal to the actuarial equivalent value of the member's accrued
28 retirement benefit on June 30, 2014, as determined by the director in
29 consultation with the state actuary, less any amounts transferred under
30 (a) of this subsection. In no event may the additional transfer
31 payment result in a decrease in the value of a member's account;

32 (d) For purposes of determining the actuarial equivalent value of
33 the accrued benefit transferred under (c) of this subsection, the
34 department shall include both expected future salary increases and
35 expected future service credit for benefit eligibility purposes.
36 However, only service credit earned as of June 30, 2015, shall be used

1 to determine the portion of the present value of future benefits that
2 the transferring member has accrued at the date of the transfer;

3 (e) The additional transfer payment provided under (c) of this
4 subsection must be increased with regular interest, as determined by
5 the director, for the period of time between the transfer date and the
6 date of the additional transfer payment;

7 (f) To qualify for the transfer payment provided under (c) of this
8 subsection, a transferring member must remain employed by an employer
9 in an eligible position through July 1, 2016;

10 (g) Members are fully vested in each amount transferred under (a),
11 (b), (c), and (e) of this subsection when the amount is credited to the
12 member's account in the public employees' savings plan.

13 (4) Members transferring to the public employees' savings plan
14 forfeit all service and benefits from all transferable plans and may
15 not reestablish membership in any transferable plan.

16 (5) The department shall notify potentially eligible members of
17 their option to transfer to the public employees' savings plan and
18 shall provide estimates of the amounts potentially available for
19 transfer to their member accounts.

20 NEW SECTION. **Sec. 207.** (1) A member shall contribute five percent
21 of his or her compensation earnable until age thirty-five, and seven
22 and one-half percent thereafter.

23 (2) The employer of a member shall contribute an amount equal to
24 eighty percent of the contributions made by a member.

25 (3) Members with less than five years of service are not vested in
26 employer contributions to member accounts and the earnings on those
27 contributions. Once members have attained five years of service, they
28 become fully vested in the employer contributions and the earnings on
29 those contributions. Members do not have any right to receive employer
30 contributions or the earnings on those contributions in which they are
31 not vested.

32 (4) Contributions shall begin the first day of the pay cycle in
33 which the employee becomes a member.

34 NEW SECTION. **Sec. 208.** In addition to contributions made to
35 members' accounts, employers shall make contributions to the unfunded

1 actuarial accrued liability in plan 1 of the teachers' retirement
2 system and plan 1 of the public employees' retirement system as
3 follows:

4 (1) School districts and educational service districts shall
5 contribute to plan 1 of the teachers' retirement system the amounts
6 specified in RCW 41.45.060(8) (b) and (c) on earnable compensation paid
7 to teachers as defined in RCW 41.32.010.

8 (2) School districts and educational service districts shall
9 contribute to plan 1 of the public employees' retirement system the
10 amounts specified in RCW 41.45.060(6) (b) and (c) on earnable
11 compensation paid to classified employees as defined in RCW 41.35.010.

12 (3) Employers other than school districts and educational service
13 districts shall contribute to plan 1 of the public employees'
14 retirement system the amounts specified in RCW 41.45.060(6) (b) and
15 (c).

16 NEW SECTION. **Sec. 209.** (1) Members may self-direct their
17 investments as set forth in section 211 of this act and RCW 43.33A.190.
18 If a member does not select investments, the member's account shall be
19 invested in the default investment option of the retirement strategy
20 fund that is closest to the retirement target date of the member.
21 "Retirement strategy fund" means one of several diversified asset
22 allocation portfolios managed by investment advisors under contract to
23 the state investment board. The asset mix of the portfolios adjusts
24 over time depending on a target retirement date.

25 (2) The department shall adopt rules that will allow members the
26 option to roll over moneys from other tax qualified accounts into their
27 public employees' savings plan member account. This option is subject
28 to internal revenue service requirements for favorable tax
29 qualification. The department is not required to allow all roll-overs
30 that may be permitted under internal revenue service regulations.

31 NEW SECTION. **Sec. 210.** (1) The state investment board has the
32 full authority to invest all self-directed investment moneys in
33 accordance with RCW 43.84.150 and 43.33A.140, and cumulative investment
34 directions received pursuant to section 209 of this act and this
35 section. In carrying out this authority the state investment board,

1 after consultation with the department, shall provide a set of options
2 for members to choose from for self-directed investment.

3 (2) All investment and operating costs of the state investment
4 board associated with making self-directed investments shall be paid by
5 members and recovered under procedures agreed to by the department and
6 the state investment board pursuant to the principles set forth in RCW
7 43.33A.160 and 43.84.160. All other expenses caused by self-directed
8 investment shall be paid by the member in accordance with rules
9 established by the department. With the exception of these expenses,
10 all earnings from self-directed investments shall accrue to the
11 member's account.

12 (3)(a)(i) The department shall keep or cause to be kept full and
13 adequate accounts and records of each individual member's account. The
14 department shall account for and report on the investment of defined
15 contribution assets or may enter into an agreement with the state
16 investment board for such accounting and reporting under this chapter.

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

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

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

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

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

34 NEW SECTION. **Sec. 211.** (1) If the member terminates employment,
35 the balance in the member's account may be distributed in accordance
36 with an option selected by the member either as a lump sum or pursuant
37 to other options authorized by the department.

1 (2) If the member dies while in service, the balance of the
2 member's account may be distributed in accordance with an option
3 selected by the member either as a lump sum or pursuant to other
4 options authorized by the department. The distribution is as follows:

5 (a) The distribution shall be made to the person or persons the
6 member nominated by written designation duly executed and filed with
7 the department;

8 (b) If there is no designated person or persons still living at the
9 time of the member's death, the balance of the member's account in the
10 retirement system shall be paid to the member's surviving spouse as if
11 in fact the spouse had been nominated by written designation;

12 (c) If there is no surviving spouse, then to the person or persons,
13 trust, or organization as the member has nominated by written
14 designation duly executed and filed with the department; or

15 (d) If there is no designated person or persons still living at the
16 time of the member's death, then to the member's legal representatives.

17 (3) If a member has a terminal illness and terminates from
18 employment, the member may choose to have the balance in the member's
19 account distributed as a lump sum payment based on the most recent
20 valuation in order to expedite the distribution. The department shall
21 make this payment within ten working days after receipt of notice of
22 termination of employment, documentation verifying the terminal
23 illness, and an application for payment.

24 (4) The distribution under subsections (1) through (3) of this
25 section is less:

26 (a) Any amount identified as owing to an obligee upon withdrawal
27 pursuant to a court order filed under RCW 41.50.670; and

28 (b) Any employer contributions and the earnings on those
29 contributions in which the member is not vested as provided for in
30 section 207 of this act.

31 (5) Upon any distribution from a member account under this section,
32 any employer contributions and the earnings on those contributions in
33 which the member is not vested as provided for in section 207 of this
34 act are forfeited by the member. Amounts forfeited under this
35 subsection will be credited, under rules developed by the department,
36 to the employer who made the contributions.

37 (6) The department shall adopt rules providing members and
38 survivors an option to purchase, using funds in the member's account,

1 an annuity from a state-administered fund. The offering of this option
2 is subject to favorable tax determination by the internal revenue
3 service.

4 NEW SECTION. **Sec. 212.** (1) Subject to subsections (2) and (3) of
5 this section, the right of a person to an annuity or any other right
6 accrued or accruing to any person under the provisions of this chapter,
7 the various funds created by this chapter, and all moneys and
8 investments and income thereof, are hereby exempt from any state,
9 county, municipal, or other local tax, and is not subject to execution,
10 garnishment, attachment, the operation of bankruptcy or insolvency
11 laws, or other process of law whatsoever, whether the same be in actual
12 possession of the person or be deposited or loaned and shall be
13 unassignable.

14 (2)(a) This section does not prohibit a beneficiary of an annuity
15 from authorizing deductions therefrom for payment of premiums due on
16 any group insurance policy or plan issued for the benefit of a group
17 comprised of public employees of the state of Washington or its
18 political subdivisions and which has been approved for deduction in
19 accordance with rules that may be adopted by the state health care
20 authority and/or the department. This section does not prohibit a
21 beneficiary of an annuity from authorizing deductions therefrom for
22 payment of dues and other membership fees to any retirement association
23 or organization the membership of which is composed of retired public
24 employees, if a total of three hundred or more of such retired
25 employees have authorized such deduction for payment to the same
26 retirement association or organization.

27 (b) This section does not prohibit a beneficiary of an annuity from
28 authorizing deductions from that allowance for charitable purposes on
29 the same terms as employees and public officers under RCW 41.04.035 and
30 41.04.036.

31 (3) Subsection (1) of this section does not prohibit the department
32 from complying with (a) a wage assignment order for child support
33 issued pursuant to chapter 26.18 RCW, (b) an order to withhold and
34 deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll
35 deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits
36 assignment order issued by the department, (e) a court order directing
37 the department of retirement systems to pay benefits directly to an

1 obligee under a dissolution order as defined in RCW 41.50.500(3) which
2 fully complies with RCW 41.50.670 and 41.50.700, or (f) any
3 administrative or court order expressly authorized by federal law.

4 NEW SECTION. **Sec. 213.** (1) The retirement plan created by this
5 chapter must be administered so as to comply with the internal revenue
6 code, Title 26 U.S.C., and specifically with plan qualification
7 requirements imposed on governmental plans by section 401(a) of the
8 internal revenue code.

9 (2) Any section or provision of this chapter which is susceptible
10 to more than one construction must be interpreted in favor of the
11 construction most likely to satisfy requirements imposed by section
12 401(a) of the internal revenue code.

13 (3) If any section or provision of this chapter is found to be in
14 conflict with the plan qualification requirements for governmental
15 plans in section 401(a) of the internal revenue code, the conflicting
16 part of this chapter is hereby inoperative solely to the extent of the
17 conflict, and such finding does not affect the operation of the
18 remainder of this chapter.

19 NEW SECTION. **Sec. 214.** (1) A state board, commission, or agency,
20 or any officer, employee, or member thereof, is not liable for any loss
21 or deficiency resulting from member investments selected or required
22 pursuant to section 210 (1) or (3) of this act.

23 (2) Neither the department, nor director or any employee, nor the
24 state investment board, nor any officer, employee, or member thereof,
25 is liable for any loss or deficiency resulting from reasonable efforts
26 to implement investment directions pursuant to section 210 (1) or (3)
27 of this act.

28 (3) The state investment board, or any officer, employee, or member
29 thereof, is not liable with respect to any declared monthly unit
30 valuations or crediting of rates of return, or any other exercise of
31 powers or duties, including discretion, under section 210(2) of this
32 act.

33 (4) The department, or any officer or employee thereof, is not
34 liable for crediting rates of return which are consistent with the
35 state investment board's declaration of monthly unit valuations
36 pursuant to section 210(2) of this act.

1 (a) Judges under the retirement system established under chapter
2 2.10, 2.12, or 2.14 RCW;

3 (b) Employees of the state under the retirement system established
4 by chapter 41.32, 41.37, 41.40, 41.--- (the new chapter created in
5 section 216 of this act), or 43.43 RCW;

6 (c) Employees of school districts under the retirement system
7 established by chapter 41.32 (~~(or)~~), 41.40, or 41.--- (the new chapter
8 created in section 216 of this act) RCW, except for substitute teachers
9 as defined by RCW 41.32.010;

10 (d) Employees of educational service districts under the retirement
11 system established by chapter 41.32 (~~(or)~~), 41.40, or 41.--- (the new
12 chapter created in section 216 of this act) RCW; or

13 (e) Employees of community college districts under the retirement
14 system established by chapter 41.32 (~~(or)~~), 41.40, or 41.--- (the new
15 chapter created in section 216 of this act) RCW.

16 (2) Only for compensation earned after the effective date of the
17 implementation of this section and as provided by section 414(h) of the
18 federal internal revenue code, the employer of all the members
19 specified in subsection (1) of this section shall pick up only those
20 member contributions as required under:

- 21 (a) RCW 2.10.090(1);
- 22 (b) RCW 2.12.060;
- 23 (c) RCW 2.14.090;
- 24 (d) RCW 41.32.263;
- 25 (e) RCW 41.32.350;
- 26 (f) RCW 41.40.330 (1) and (3);
- 27 (g) RCW 41.45.061 and 41.45.067;
- 28 (h) RCW 41.34.070; and
- 29 (i) (~~RCW 43.43.300; and~~
- 30 ~~(j)~~) RCW 41.34.040.

31 (3) Only for the purposes of federal income taxation, the gross
32 income of the member shall be reduced by the amount of the contribution
33 to the respective retirement system picked up by the employer.

34 (4) All member contributions to the respective retirement system
35 picked up by the employer as provided by this section, plus the accrued
36 interest earned thereon, shall be paid to the member upon the
37 withdrawal of funds or lump sum payment of accumulated contributions as
38 provided under the provisions of the retirement systems.

1 (5) At least forty-five days prior to implementing this section,
2 the employer shall provide:

3 (a) A complete explanation of the effects of this section to all
4 members; and

5 (b) Notification of such implementation to the director of the
6 department of retirement systems.

7 **Sec. 303.** RCW 41.04.450 and 2007 c 492 s 5 are each amended to
8 read as follows:

9 (1) Employers of those members under chapters 41.26, 41.34, 41.35,
10 41.37, 41.--- (the new chapter created in section 216 of this act), and
11 41.40 RCW who are not specified in RCW 41.04.445 may choose to
12 implement the employer pick up of all member contributions without
13 exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1),
14 41.45.060, 41.45.061, and 41.45.067 and chapters 41.34, and 41.--- (the
15 new chapter created in section 216 of this act) RCW. If the employer
16 does so choose, the employer and members shall be subject to the
17 conditions and limitations of RCW 41.04.445 (3), (4), and (5) and
18 41.04.455.

19 (2) An employer exercising the option under this section may later
20 choose to withdraw from and/or reestablish the employer pick up of
21 member contributions only once in a calendar year following forty-five
22 days prior notice to the director of the department of retirement
23 systems.

24 NEW SECTION. **Sec. 304.** A new section is added to chapter 41.32
25 RCW under the subchapter heading "plan 3" to read as follows:

26 All teachers who first become employed by an employer in an
27 eligible position on or after July 1, 2014, must become a member of the
28 public employees' savings plan established under chapter 41.--- RCW
29 (the new chapter created in section 216 of this act).

30 NEW SECTION. **Sec. 305.** A new section is added to chapter 41.35
31 RCW under the subchapter heading "plan 3" to read as follows:

32 All classified employees who first become employed by an employer
33 in an eligible position on or after July 1, 2014, must become a member
34 of the public employees' savings plan established under chapter 41.---
35 RCW (the new chapter created in section 216 of this act).

1 NEW SECTION. **Sec. 306.** A new section is added to chapter 41.37
2 RCW to read as follows:

3 All public safety employees who first become employed by an
4 employer in an eligible position on or after July 1, 2014, must become
5 a member of the public employees' savings plan established under
6 chapter 41.--- RCW (the new chapter created in section 216 of this
7 act).

8 NEW SECTION. **Sec. 307.** A new section is added to chapter 41.40
9 RCW under the subchapter heading "plan 3" to read as follows:

10 All employees who first become employed by an employer in an
11 eligible position on or after July 1, 2014, must become a member of the
12 public employees' savings plan established under chapter 41.--- RCW
13 (the new chapter created in section 216 of this act).

14 **Sec. 308.** RCW 41.50.030 and 2011 1st sp.s. c 47 s 20 are each
15 amended to read as follows:

16 (1) As soon as possible but not more than one hundred and eighty
17 days after March 19, 1976, there is transferred to the department of
18 retirement systems, except as otherwise provided in this chapter, all
19 powers, duties, and functions of:

- 20 (a) The Washington public employees' retirement system;
- 21 (b) The Washington state teachers' retirement system;
- 22 (c) The Washington law enforcement officers' and firefighters'
23 retirement system;
- 24 (d) The Washington state patrol retirement system;
- 25 (e) The Washington judicial retirement system; and
- 26 (f) The state treasurer with respect to the administration of the
27 judges' retirement fund imposed pursuant to chapter 2.12 RCW.

28 (2) On July 1, 1996, there is transferred to the department all
29 powers, duties, and functions of the deferred compensation committee.

30 (3) The department shall administer chapter 41.34 RCW.

31 (4) The department shall administer the Washington school
32 employees' retirement system created under chapter 41.35 RCW.

33 (5) The department shall administer the Washington public safety
34 employees' retirement system created under chapter 41.37 RCW.

35 (6) The department shall administer the collection of employer

1 contributions and initial prefunding of the higher education retirement
2 plan supplemental benefits, also referred to as the annuity or
3 retirement income plans created under chapter 28B.10 RCW.

4 (7) The department shall administer the Washington public
5 employees' savings plan created in chapter 41.--- RCW (the new chapter
6 created in section 216 of this act).

7 **Sec. 309.** RCW 41.50.110 and 2011 1st sp.s. c 50 s 936 and 2011 1st
8 sp.s. c 47 s 22 are each reenacted and amended to read as follows:

9 (1) Except as provided by RCW 41.50.255 and subsection (6) of this
10 section, all expenses of the administration of the department, the
11 expenses of administration of the retirement systems, and the expenses
12 of the administration of the office of the state actuary created in
13 chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37,
14 41.--- (the new chapter created in section 216 of this act), 43.43, and
15 44.44 RCW shall be paid from the department of retirement systems
16 expense fund.

17 (2) In order to reimburse the department of retirement systems
18 expense fund on an equitable basis the department shall ascertain and
19 report to each employer, as defined in RCW 28B.10.400, 41.26.030,
20 41.32.010, 41.35.010, 41.37.010, section 202 of this act, or 41.40.010,
21 the sum necessary to defray its proportional share of the entire
22 expense of the administration of the retirement system that the
23 employer participates in during the ensuing biennium or fiscal year
24 whichever may be required. Such sum is to be computed in an amount
25 directly proportional to the estimated entire expense of the
26 administration as the ratio of monthly salaries of the employer's
27 members bears to the total salaries of all members in the entire
28 system. It shall then be the duty of all such employers to include in
29 their budgets or otherwise provide the amounts so required.

30 (3) The department shall compute and bill each employer, as defined
31 in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, section
32 202 of this act, or 41.40.010, at the end of each month for the amount
33 due for that month to the department of retirement systems expense fund
34 and the same shall be paid as are its other obligations. Such
35 computation as to each employer shall be made on a percentage rate of
36 salary established by the department. However, the department may at

1 its discretion establish a system of billing based upon calendar year
2 quarters in which event the said billing shall be at the end of each
3 such quarter.

4 (4) The director may adjust the expense fund contribution rate for
5 each system at any time when necessary to reflect unanticipated costs
6 or savings in administering the department.

7 (5) An employer who fails to submit timely and accurate reports to
8 the department may be assessed an additional fee related to the
9 increased costs incurred by the department in processing the deficient
10 reports. Fees paid under this subsection shall be deposited in the
11 retirement system expense fund.

12 (a) Every six months the department shall determine the amount of
13 an employer's fee by reviewing the timeliness and accuracy of the
14 reports submitted by the employer in the preceding six months. If
15 those reports were not both timely and accurate the department may
16 prospectively assess an additional fee under this subsection.

17 (b) An additional fee assessed by the department under this
18 subsection shall not exceed fifty percent of the standard fee.

19 (c) The department shall adopt rules implementing this section.

20 (6) Expenses other than those under RCW 41.34.060(~~(+3)~~) (4) shall
21 be paid pursuant to subsection (1) of this section.

22 (7) During the 2009-2011 and 2011-2013 fiscal biennia, the
23 legislature may transfer from the department of retirement systems'
24 expense fund to the state general fund such amounts as reflect the
25 excess fund balance of the fund.

26 **Sec. 310.** RCW 43.33A.190 and 2000 c 247 s 701 are each amended to
27 read as follows:

28 Pursuant to RCW 41.34.130 and section 210 of this act, the state
29 investment board shall invest all self-directed investment moneys under
30 the public employees' savings plan, the teachers' retirement system
31 plan 3, the school employees' retirement system plan 3, and the public
32 employees' retirement system plan 3 with full power to establish
33 investment policy, develop investment options, and manage self-directed
34 investment funds.

35 **PART IV**

1

ADDITIONAL PROVISIONS

2

NEW SECTION. **Sec. 401.** This act takes effect July 1, 2014.

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