

ESSB 5435 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 03/04/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 41.50.770 and 2014 c 172 s 1 are each amended to
4 read as follows:

5 (1) "Employee" as used in this section and RCW 41.50.780 includes
6 all full-time, part-time, and career seasonal employees of the state,
7 a county, a municipality, or other political subdivision of the
8 state, whether or not covered by civil service; elected and appointed
9 officials of the executive branch of the government, including full-
10 time members of boards, commissions, or committees; justices of the
11 supreme court and judges of the court of appeals and of the superior
12 and district courts; and members of the state legislature or of the
13 legislative authority of any county, city, or town.

14 (2) The state, through the department, and any county,
15 municipality, or other political subdivision of the state acting
16 through its principal supervising official or governing body is
17 authorized to contract with an employee to defer a portion of that
18 employee's income, which deferred portion shall in no event exceed
19 the amount allowable under 26 U.S.C. Sec. 401(a) or 457, and deposit
20 or invest such deferred portion in a credit union, savings and loan
21 association, bank, or mutual savings bank or purchase life insurance,
22 shares of an investment company, individual securities, or fixed
23 and/or variable annuity contracts from any insurance company or any
24 investment company licensed to contract business in this state.

25 (3) Employees participating in the state deferred compensation
26 plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings
27 plan under 26 U.S.C. Sec. 401(a) administered by the department shall
28 self-direct the investment of the deferred portion of their income
29 through the selection of investment options as set forth in
30 subsection (4) of this section.

31 (4) The department can provide such plans as it deems are in the
32 interests of state employees. In addition to the types of investments

1 described in this section, the state investment board, with respect
2 to the state deferred compensation plan under 26 U.S.C. Sec. 457 or
3 money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a),
4 shall invest the deferred portion of an employee's income, without
5 limitation as to amount, in accordance with RCW 43.84.150,
6 43.33A.140, and 41.50.780, and pursuant to investment policy
7 established by the state investment board for the state deferred
8 compensation plan(~~s~~) under 26 U.S.C. Sec. 457 or money-purchase
9 retirement savings plan under 26 U.S.C. Sec. 401(a). The state
10 investment board, after consultation with the director regarding any
11 recommendations made pursuant to RCW 41.50.088(2), shall provide a
12 set of options for participants to choose from for investment of the
13 deferred portion of their income. Any income deferred under (~~such a~~
14 ~~plan~~) these plans shall continue to be included as regular
15 compensation, for the purpose of computing the state or local
16 retirement and pension benefits earned by any employee.

17 (5) Coverage of an employee under (~~a deferred compensation~~
18 ~~plan~~) optional salary deferral programs under this section shall not
19 render such employee ineligible for simultaneous membership and
20 participation in any pension system for public employees.

21 **Sec. 2.** RCW 41.50.780 and 2010 1st sp.s. c 7 s 30 are each
22 amended to read as follows:

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

25 (2) The amount of compensation deferred under 26 U.S.C. Sec. 457
26 by employees under agreements entered into under the authority
27 contained in RCW 41.50.770 shall be paid into the deferred
28 compensation principal account and shall be sufficient to cover costs
29 of administration and staffing in addition to such other amounts as
30 determined by the department. The deferred compensation principal
31 account shall be used to carry out the purposes of RCW 41.50.770. All
32 eligible state employees shall be given the opportunity to
33 participate in agreements entered into by the department under RCW
34 41.50.770. State agencies shall cooperate with the department in
35 providing employees with the opportunity to participate.

36 (3) Any county, municipality, or other subdivision of the state
37 may elect to participate in any agreements entered into by the
38 department under RCW 41.50.770, including the making of payments
39 therefrom to the employees participating in a deferred compensation

1 plan upon their separation from state or other qualifying service.
2 Accordingly, the deferred compensation principal account shall be
3 considered to be a public pension or retirement fund within the
4 meaning of Article XXIX, section 1 of the state Constitution, for the
5 purpose of determining eligible investments and deposits of the
6 moneys therein.

7 (4) All moneys in the state deferred compensation principal
8 account and the state deferred compensation administrative account,
9 all property and rights purchased therewith, and all income
10 attributable thereto, shall be held in trust by the state investment
11 board, as set forth under RCW 43.33A.030, for the exclusive benefit
12 of the state deferred compensation plan's participants and their
13 beneficiaries. Neither the participant, nor the participant's
14 beneficiary or beneficiaries, nor any other designee, has any right
15 to commute, sell, assign, transfer, or otherwise convey the right to
16 receive any payments under the plan. These payments and right thereto
17 are nonassignable and nontransferable. Unpaid accumulated deferrals
18 are not subject to attachment, garnishment, or execution and are not
19 transferable by operation of law in event of bankruptcy or
20 insolvency, except to the extent otherwise required by law.

21 (5) The state investment board has the full power to invest
22 moneys in the state deferred compensation principal account and the
23 state deferred compensation administrative account in accordance with
24 RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment
25 directions received pursuant to RCW 41.50.770. All investment and
26 operating costs of the state investment board associated with the
27 investment of the deferred compensation plan assets shall be paid
28 pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these
29 expenses, one hundred percent of all earnings from these investments
30 shall accrue directly to the deferred compensation principal account.

31 (6)(a) No state board or commission, agency, or any officer,
32 employee, or member thereof is liable for any loss or deficiency
33 resulting from participant investments selected pursuant to RCW
34 41.50.770(3).

35 (b) Neither the department, nor the director or any employee, nor
36 the state investment board, nor any officer, employee, or member
37 thereof is liable for any loss or deficiency resulting from
38 reasonable efforts to implement investment directions pursuant to RCW
39 41.50.770(3).

1 (7) The deferred compensation administrative account is hereby
2 created in the state treasury. All expenses of the department
3 pertaining to the deferred compensation plan including staffing and
4 administrative expenses shall be paid out of the deferred
5 compensation administrative account. Any excess balances credited to
6 this account over administrative expenses disbursed from this account
7 shall be transferred to the deferred compensation principal account
8 at such time and in such amounts as may be determined by the
9 department with the approval of the office of financial management.
10 Any deficiency in the deferred compensation administrative account
11 caused by an excess of administrative expenses disbursed from this
12 account shall be transferred to this account from the deferred
13 compensation principal account.

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

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

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

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

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

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

38 (9) The department may adopt rules necessary to carry out its
39 responsibilities under RCW 41.50.770 and this section.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.50

2 RCW to read as follows:

3 (1) The money-purchase retirement savings principal account is
4 hereby created in the state treasury.

5 (2) The amount of compensation deferred under 26 U.S.C. Sec.
6 401(a) by employees under agreements entered into under the authority
7 contained in RCW 41.50.770 shall be paid into the money-purchase
8 retirement savings principal account and shall be sufficient to cover
9 costs of administration and staffing in addition to such other
10 amounts as determined by the department. The money-purchase
11 retirement savings principal account shall be used to carry out the
12 purposes of RCW 41.50.770. All eligible state employees shall be
13 given the opportunity to participate in agreements entered into by
14 the department under RCW 41.50.770. State agencies shall cooperate
15 with the department in providing employees with the opportunity to
16 participate.

17 (3) Any county, municipality, or other subdivision of the state
18 may elect to participate in any agreements entered into by the
19 department under RCW 41.50.770, including the making of payments
20 therefrom to the employees participating in a 26 U.S.C. Sec. 401(a)
21 plan upon their separation from state or other qualifying service.
22 Accordingly, the money-purchase retirement savings principal account
23 shall be considered to be a public pension or retirement fund within
24 the meaning of Article XXIX, section 1 of the state Constitution, for
25 the purpose of determining eligible investments and deposits of the
26 moneys therein.

27 (4) All moneys in the state money-purchase retirement savings
28 principal account and the state money-purchase retirement savings
29 administrative account, all property and rights purchased therewith,
30 and all income attributable thereto, shall be held in trust by the
31 state investment board, as set forth under RCW 43.33A.030, for the
32 exclusive benefit of the state 26 U.S.C. Sec. 401(a) plan's
33 participants and their beneficiaries. Neither the participant, nor
34 the participant's beneficiary or beneficiaries, nor any other
35 designee, has any right to commute, sell, assign, transfer, or
36 otherwise convey the right to receive any payments under the plan.
37 These payments and right thereto are nonassignable and
38 nontransferable. Unpaid accumulated deferrals are not subject to
39 attachment, garnishment, or execution and are not transferable by

1 operation of law in event of bankruptcy or insolvency, except to the
2 extent otherwise required by law.

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

14 (6)(a) No state board or commission, agency, or any officer,
15 employee, or member thereof is liable for any loss or deficiency
16 resulting from participant investments selected pursuant to RCW
17 41.50.770(3).

18 (b) Neither the department, nor the director or any employee, nor
19 the state investment board, nor any officer, employee, or member
20 thereof is liable for any loss or deficiency resulting from
21 reasonable efforts to implement investment directions pursuant to RCW
22 41.50.770(3).

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

37 (8)(a)(i) The department shall keep or cause to be kept full and
38 adequate accounts and records of the assets of each individual
39 participant, obligations, transactions, and affairs of any deferred
40 compensation plans created under RCW 41.50.770 and this section. The

1 department shall account for and report on the investment of state
2 money-purchase retirement savings plan assets or may enter into an
3 agreement with the state investment board for such accounting and
4 reporting.

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

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

12 (b)(i) The department's duties under (a)(ii) of this subsection
13 do not limit the authority of the state investment board to conduct
14 its responsibilities for asset management and balancing of the money-
15 purchase retirement savings funds.

16 (ii) The state investment board has sole responsibility for
17 contracting with outside investment firms to provide investment
18 management for the money-purchase retirement savings funds and shall
19 manage the performance of investment managers under those contracts.

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

22 (9) The department may adopt rules necessary to carry out its
23 responsibilities under RCW 41.50.770 and this section.

24 **Sec. 4.** RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd
25 sp.s. c 12 s 3 are each reenacted and amended to read as follows:

26 (1) All earnings of investments of surplus balances in the state
27 treasury shall be deposited to the treasury income account, which
28 account is hereby established in the state treasury.

29 (2) The treasury income account shall be utilized to pay or
30 receive funds associated with federal programs as required by the
31 federal cash management improvement act of 1990. The treasury income
32 account is subject in all respects to chapter 43.88 RCW, but no
33 appropriation is required for refunds or allocations of interest
34 earnings required by the cash management improvement act. Refunds of
35 interest to the federal treasury required under the cash management
36 improvement act fall under RCW 43.88.180 and shall not require
37 appropriation. The office of financial management shall determine the
38 amounts due to or from the federal government pursuant to the cash
39 management improvement act. The office of financial management may

1 direct transfers of funds between accounts as deemed necessary to
2 implement the provisions of the cash management improvement act, and
3 this subsection. Refunds or allocations shall occur prior to the
4 distributions of earnings set forth in subsection (4) of this
5 section.

6 (3) Except for the provisions of RCW 43.84.160, the treasury
7 income account may be utilized for the payment of purchased banking
8 services on behalf of treasury funds including, but not limited to,
9 depository, safekeeping, and disbursement functions for the state
10 treasury and affected state agencies. The treasury income account is
11 subject in all respects to chapter 43.88 RCW, but no appropriation is
12 required for payments to financial institutions. Payments shall occur
13 prior to distribution of earnings set forth in subsection (4) of this
14 section.

15 (4) Monthly, the state treasurer shall distribute the earnings
16 credited to the treasury income account. The state treasurer shall
17 credit the general fund with all the earnings credited to the
18 treasury income account except:

19 (a) The following accounts and funds shall receive their
20 proportionate share of earnings based upon each account's and fund's
21 average daily balance for the period: The aeronautics account, the
22 aircraft search and rescue account, the Alaskan Way viaduct
23 replacement project account, the brownfield redevelopment trust fund
24 account, the budget stabilization account, the capital vessel
25 replacement account, the capitol building construction account, the
26 Cedar River channel construction and operation account, the Central
27 Washington University capital projects account, the charitable,
28 educational, penal and reformatory institutions account, the cleanup
29 settlement account, the Columbia river basin water supply development
30 account, the Columbia river basin taxable bond water supply
31 development account, the Columbia river basin water supply revenue
32 recovery account, the common school construction fund, the community
33 forest trust account, the connecting Washington account, the county
34 arterial preservation account, the county criminal justice assistance
35 account, the deferred compensation administrative account, the
36 deferred compensation principal account, the department of licensing
37 services account, the department of retirement systems expense
38 account, the developmental disabilities community trust account, the
39 diesel idle reduction account, the drinking water assistance account,
40 the drinking water assistance administrative account, the drinking

1 water assistance repayment account, the Eastern Washington University
2 capital projects account, the Interstate 405 express toll lanes
3 operations account, the education construction fund, the education
4 legacy trust account, the election account, the electric vehicle
5 charging infrastructure account, the energy freedom account, the
6 energy recovery act account, the essential rail assistance account,
7 The Evergreen State College capital projects account, the federal
8 forest revolving account, the ferry bond retirement fund, the freight
9 mobility investment account, the freight mobility multimodal account,
10 the grade crossing protective fund, the public health services
11 account, the high capacity transportation account, the state higher
12 education construction account, the higher education construction
13 account, the highway bond retirement fund, the highway infrastructure
14 account, the highway safety fund, the high occupancy toll lanes
15 operations account, the hospital safety net assessment fund, the
16 industrial insurance premium refund account, the judges' retirement
17 account, the judicial retirement administrative account, the judicial
18 retirement principal account, the local leasehold excise tax account,
19 the local real estate excise tax account, the local sales and use tax
20 account, the marine resources stewardship trust account, the medical
21 aid account, the mobile home park relocation fund, the money-purchase
22 retirement savings administrative account, the money-purchase
23 retirement savings principal account, the motor vehicle fund, the
24 motorcycle safety education account, the multimodal transportation
25 account, the multiuse roadway safety account, the municipal criminal
26 justice assistance account, the natural resources deposit account,
27 the oyster reserve land account, the pension funding stabilization
28 account, the perpetual surveillance and maintenance account, the
29 public employees' retirement system plan 1 account, the public
30 employees' retirement system combined plan 2 and plan 3 account, the
31 public facilities construction loan revolving account beginning July
32 1, 2004, the public health supplemental account, the public works
33 assistance account, the Puget Sound capital construction account, the
34 Puget Sound ferry operations account, the Puget Sound taxpayer
35 accountability account, the real estate appraiser commission account,
36 the recreational vehicle account, the regional mobility grant program
37 account, the resource management cost account, the rural arterial
38 trust account, the rural mobility grant program account, the rural
39 Washington loan fund, the site closure account, the skilled nursing
40 facility safety net trust fund, the small city pavement and sidewalk

1 account, the special category C account, the special wildlife
2 account, the state employees' insurance account, the state employees'
3 insurance reserve account, the state investment board expense
4 account, the state investment board commingled trust fund accounts,
5 the state patrol highway account, the state route number 520 civil
6 penalties account, the state route number 520 corridor account, the
7 state wildlife account, the supplemental pension account, the Tacoma
8 Narrows toll bridge account, the teachers' retirement system plan 1
9 account, the teachers' retirement system combined plan 2 and plan 3
10 account, the tobacco prevention and control account, the tobacco
11 settlement account, the toll facility bond retirement account, the
12 transportation 2003 account (nickel account), the transportation
13 equipment fund, the transportation fund, the transportation future
14 funding program account, the transportation improvement account, the
15 transportation improvement board bond retirement account, the
16 transportation infrastructure account, the transportation partnership
17 account, the traumatic brain injury account, the tuition recovery
18 trust fund, the University of Washington bond retirement fund, the
19 University of Washington building account, the volunteer
20 firefighters' and reserve officers' relief and pension principal
21 fund, the volunteer firefighters' and reserve officers'
22 administrative fund, the Washington judicial retirement system
23 account, the Washington law enforcement officers' and firefighters'
24 system plan 1 retirement account, the Washington law enforcement
25 officers' and firefighters' system plan 2 retirement account, the
26 Washington public safety employees' plan 2 retirement account, the
27 Washington school employees' retirement system combined plan 2 and 3
28 account, the Washington state health insurance pool account, the
29 Washington state patrol retirement account, the Washington State
30 University building account, the Washington State University bond
31 retirement fund, the water pollution control revolving administration
32 account, the water pollution control revolving fund, the Western
33 Washington University capital projects account, the Yakima integrated
34 plan implementation account, the Yakima integrated plan
35 implementation revenue recovery account, and the Yakima integrated
36 plan implementation taxable bond account. Earnings derived from
37 investing balances of the agricultural permanent fund, the normal
38 school permanent fund, the permanent common school fund, the
39 scientific permanent fund, the state university permanent fund, and

1 the state reclamation revolving account shall be allocated to their
2 respective beneficiary accounts.

3 (b) Any state agency that has independent authority over accounts
4 or funds not statutorily required to be held in the state treasury
5 that deposits funds into a fund or account in the state treasury
6 pursuant to an agreement with the office of the state treasurer shall
7 receive its proportionate share of earnings based upon each account's
8 or fund's average daily balance for the period.

9 (5) In conformance with Article II, section 37 of the state
10 Constitution, no treasury accounts or funds shall be allocated
11 earnings without the specific affirmative directive of this section.

12 NEW SECTION. **Sec. 5.** If specific funding for purposes of this
13 act, referencing this act by bill or chapter number, is not provided
14 by June 30, 2016, in the omnibus appropriations act, this act is null
15 and void."

16 Correct the title.

EFFECT: Removes the change in the Department of Retirement Systems (DRS) deferred compensation program that made participation in the program at a 3 percent of pay contribution rate the default for new employees, requiring them to opt-out rather than opt-in. Similarly removes the option for local governments that choose to offer the DRS deferred compensation program the opt-out participation feature for new employees. Makes the bill null and void if funding for the bill is not provided in the operating budget.

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