
SUBSTITUTE SENATE BILL 5435

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Bailey and Schoesler)

READ FIRST TIME 02/25/15.

1 AN ACT Relating to expanding participation in the Washington
2 state deferred compensation program; and amending RCW 41.50.770 and
3 41.50.780.

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

5 **Sec. 1.** RCW 41.50.770 and 2014 c 172 s 1 are each amended to
6 read as follows:

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

16 (2) The state, through the department, and any county,
17 municipality, or other political subdivision of the state acting
18 through its principal supervising official or governing body is
19 authorized to contract with an employee to defer a portion of that
20 employee's income, which deferred portion shall in no event exceed
21 the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest

1 such deferred portion in a credit union, savings and loan
2 association, bank, or mutual savings bank or purchase life insurance,
3 shares of an investment company, individual securities, or fixed
4 and/or variable annuity contracts from any insurance company or any
5 investment company licensed to contract business in this state.

6 (3) Beginning no later than January 1, 2017, all counties,
7 municipalities, and other subdivisions of the state that participate
8 in one or more of the state retirement systems listed in RCW
9 41.50.030 must offer the state deferred compensation program as an
10 option to all employees eligible to participate in a deferred
11 compensation plan under 26 U.S.C. Sec. 457.

12 (4) Beginning no later than January 1, 2017, all persons newly
13 employed by the state on a full-time basis who are eligible to
14 participate in a deferred compensation plan under U.S.C. Sec. 457
15 shall be enrolled in the state deferred compensation plan unless the
16 employee affirmatively elects to waive participation in the plan.
17 Persons who participate in the plan without having selected a
18 deferral amount or investment option shall contribute three percent
19 of taxable compensation to their plan account which shall be invested
20 in a default option selected by the state investment board in
21 consultation with the director. This subsection does not apply to
22 higher education undergraduate and graduate student employees and
23 shall be administered consistent with the requirements of the federal
24 internal revenue code.

25 (5) Employees participating in the state deferred compensation
26 plan administered by the department shall self-direct the investment
27 of the deferred portion of their income through the selection of
28 investment options as set forth in subsection ((+4)) (6) of this
29 section.

30 ((+4)) (6) The department can provide such plans as it deems are
31 in the interests of state employees. In addition to the types of
32 investments described in this section, the state investment board,
33 with respect to the state deferred compensation plan, shall invest
34 the deferred portion of an employee's income, without limitation as
35 to amount, in accordance with RCW 43.84.150, 43.33A.140, and
36 41.50.780, and pursuant to investment policy established by the state
37 investment board for the state deferred compensation plans. The state
38 investment board, after consultation with the director regarding any
39 recommendations made pursuant to RCW 41.50.088(2), shall provide a
40 set of options for participants to choose from for investment of the

1 deferred portion of their income. Any income deferred under such a
2 plan shall continue to be included as regular compensation, for the
3 purpose of computing the state or local retirement and pension
4 benefits earned by any employee.

5 ((+5)) (7) Coverage of an employee under a deferred compensation
6 plan under this section shall not render such employee ineligible for
7 simultaneous membership and participation in any pension system for
8 public employees.

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

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

13 (2) The amount of compensation deferred by employees (~~under~~
14 ~~agreements entered into~~) under the authority contained in RCW
15 41.50.770 shall be paid into the deferred compensation principal
16 account and shall be sufficient to cover costs of administration and
17 staffing in addition to such other amounts as determined by the
18 department. The deferred compensation principal account shall be used
19 to carry out the purposes of RCW 41.50.770. All eligible state
20 employees shall be given the opportunity to participate in agreements
21 entered into by the department under RCW 41.50.770. State agencies
22 shall cooperate with the department in providing employees with the
23 opportunity to participate and shall administer the default
24 enrollment of new full-time employees after January 1, 2017, pursuant
25 to RCW 41.50.770(4).

26 (3) Any county, municipality, or other subdivision of the state
27 may elect to participate in any agreements entered into by the
28 department under RCW 41.50.770, including the making of payments
29 therefrom to the employees participating in a deferred compensation
30 plan upon their separation from state or other qualifying service.
31 Beginning no later than January 1, 2017, all counties,
32 municipalities, and other subdivisions of the state that participate
33 in one or more of the state retirement systems listed in RCW
34 41.50.030 must offer the state deferred compensation program as an
35 option to all employees eligible to participate in a deferred
36 compensation plan under 26 U.S.C. Sec. 457. If an employer has an
37 exclusivity agreement in a contract with a provider that specifically
38 limits the employer from offering another 457 plan, and the
39 contractual agreement was in place on March 1, 2015, the employer

1 must offer the state deferred compensation plan upon the expiration
2 of that agreement in the contract. Employers that offer the state
3 deferred compensation program must cooperate with the department in
4 providing employees with the opportunity to participate. Employers
5 that have payroll and human resources systems able to automate a
6 deferred compensation plan may consult with the department about
7 managing the contributions and limits within their own systems to
8 ensure the most efficient administration of the plan. Any proposed
9 modifications to plan procedures are subject to the department's
10 approval. Accordingly, the deferred compensation principal account
11 shall be considered to be a public pension or retirement fund within
12 the meaning of Article XXIX, section 1 of the state Constitution, for
13 the purpose of determining eligible investments and deposits of the
14 moneys therein.

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

29 (5) The state investment board has the full power to invest
30 moneys in the state deferred compensation principal account and the
31 state deferred compensation administrative account in accordance with
32 RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment
33 directions received pursuant to RCW 41.50.770. All investment and
34 operating costs of the state investment board associated with the
35 investment of the deferred compensation plan assets shall be paid
36 pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these
37 expenses, one hundred percent of all earnings from these investments
38 shall accrue directly to the deferred compensation principal account.

39 (6)(a) No state board or commission, agency, or any officer,
40 employee, or member thereof is liable for any loss or deficiency

1 resulting from participant investments selected pursuant to RCW
2 41.50.770(~~(+3)~~) (5).

3 (b) Neither the department, nor the director or any employee, nor
4 the state investment board, nor any officer, employee, or member
5 thereof is liable for any loss or deficiency resulting from
6 reasonable efforts to implement investment directions pursuant to RCW
7 41.50.770(~~(+3)~~) (5).

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

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

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

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

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

39 (ii) The state investment board has sole responsibility for
40 contracting with outside investment firms to provide investment

1 management for the deferred compensation funds and shall manage the
2 performance of investment managers under those contracts.

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

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

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