CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5435**

64th Legislature

2015 Regular Session

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| Passed by the Senate March 8, 2016  Yeas 49 Nays 0  **President of the Senate**  Passed by the House March 4, 2016  Yeas 94 Nays 3  **Speaker of the House of Representatives** | CERTIFICATE  I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5435** as passed by Senate and the House of Representatives on the dates hereon set forth.  **Chief Clerk** |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SUBSTITUTE SENATE BILL 5435**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

**State of Washington 64th Legislature 2015 Regular Session**

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

AN ACT Relating to optional salary deferral programs; amending RCW 41.50.770 and 41.50.780; reenacting and amending RCW 43.84.092; adding a new section to chapter 41.50 RCW; and creating a new section.

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

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

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

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

(3) Beginning no later than January 1, 2017, all persons newly employed by the state on a full-time basis who are eligible to participate in a deferred compensation plan under 26 U.S.C. Sec. 457 shall be enrolled in the state deferred compensation plan unless the employee affirmatively elects to waive participation in the plan. Persons who participate in the plan without having selected a deferral amount or investment option shall contribute three percent of taxable compensation to their plan account which shall be invested in a default option selected by the state investment board in consultation with the director. This subsection does not apply to higher education undergraduate and graduate student employees and shall be administered consistent with the requirements of the federal internal revenue code.

(4) Beginning no later than January 1, 2017, any county, municipality, or other political subdivision offering the state deferred compensation plan authorized under this section, may choose to administer the plan with an opt-out feature for new employees as described in subsection (3) of this section.

(5) Employees participating in the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a) administered by the department shall self-direct the investment of the deferred portion of their income through the selection of investment options as set forth in subsection ((~~(4)~~)) (6) of this section.

((~~(4)~~)) (6) The department can provide such plans as it deems are in the interests of state employees. In addition to the types of investments described in this section, the state investment board, with respect to the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a), shall invest the deferred portion of an employee's income, without limitation as to amount, in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plan((~~s~~)) under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a). The state investment board, after consultation with the director regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under ((~~such a plan~~)) these plans shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

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

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

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

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

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

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

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

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770((~~(3)~~)) (5).

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 41.50 RCW to read as follows:

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

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

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

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

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

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(5).

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

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

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

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

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

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

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

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

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

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

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

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

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

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

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

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

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

**--- END ---**