

FINAL BILL REPORT

SHB 2922

C 116 L 98

Synopsis as Enacted

Brief Description: Administering the deferred compensation plan.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Carlson, H. Sommers, Alexander and Huff; by request of Department of Retirement Systems).

House Committee on Appropriations
Senate Committee on Ways & Means

Background:

Deferred Compensation Plan. The Washington State Deferred Compensation Plan (DCP) is a voluntary income deferral plan for state employees and employees of 276 participating political subdivisions. The DCP was established in 1981 and was administered by the Committee for Deferred Compensation (CDC) from that time until June 30, 1996. Effective July 1, 1996, the duties and responsibilities of the CDC were given to the Department of Retirement Systems (DRS) and to the Employee Retirement Benefits Board (ERBB). The ERBB was created within the DRS in 1995 with the enactment of the Teachers' Retirement System Plan (TRS) III, and was made responsible for selecting investment options for both members of TRS Plan III and participants in the DCP.

Changes in United States Internal Revenue Code. State law requires that all monies in the deferred compensation account remain solely the property of the state (until made available to the participating employee or beneficiary) subject to the claims of the state's general creditors. This language exists because of requirements contained in the United States Internal Revenue Code prior to 1996.

In 1996, Congress amended the Internal Revenue Code to require that the assets of government deferred compensation plans be held for the exclusive benefit of employees in a trust, custodial accounts, or qualifying insurance contract. Existing plans have until January 1, 1999, to place their plan assets into the trust, account or insurance contract. If this change is not made, employee contributions under the DCP could become subject to federal income taxes beginning in 1999.

Fiduciary Responsibilities. Fiduciary counsel for the State Investment Board (SIB) has advised that the SIB and the ERBB would have unclear and overlapping fiduciary duties with regard to DCP investments if the SIB were to be made the trustee while

the ERBB continued to select investment options for participants. The ERBB does not have staff to assist with the evaluation of potential investment options nor to monitor the performance of investment options.

Liability. The federal Employee Retirement Income Security Act (ERISA) and federal Department of Labor (DOL) regulations protect qualified private-sector pension plans against lawsuits from members who are unhappy with the self-directed investment decisions they have made. The ERISA and DOL provisions do not apply to government pension and deferred compensation plans. Under state law, it is not clear whether members would be permitted to bring legal actions against the SIB, the ERBB, or the state, based on common law trust and fiduciary principles, if they are unhappy with the returns on their self-directed investments.

Summary: The assets of the Washington State Deferred Compensation Plan (DCP) are placed in trust with the Washington State Investment Board (SIB) for the exclusive use of the plan's participants and beneficiaries.

The SIB is responsible for establishing investment policy and developing participant investment options, after consulting with the Employee Retirement Benefits Board (ERRB), for the participants in the DCP.

The state is relieved of any liability for losses or deficiencies resulting from participant selection of investment options. The ERBB and the SIB are relieved of liability for any losses that may result from reasonable efforts to implement participant investment options.

The Department of Retirement Systems, with the approval of the Office of Financial Management, may determine when excess balances in the deferred compensation administrative account are to be transferred to the deferred compensation principal account.

Votes on Final Passage:

House 96 0

Senate 46 1

Effective: June 11, 1998