

SSB 5435 - S AMD 536

By Senators Bailey, Schoesler

ADOPTED 02/05/2016

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) Beginning no later than January 1, 2017, all persons newly
26 employed by the state on a full-time basis who are eligible to
27 participate in a deferred compensation plan under 26 U.S.C. Sec. 457
28 shall be enrolled in the state deferred compensation plan unless the
29 employee affirmatively elects to waive participation in the plan.
30 Persons who participate in the plan without having selected a
31 deferral amount or investment option shall contribute three percent
32 of taxable compensation to their plan account which shall be invested

1 in a default option selected by the state investment board in
2 consultation with the director. This subsection does not apply to
3 higher education undergraduate and graduate student employees and
4 shall be administered consistent with the requirements of the federal
5 internal revenue code.

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

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

17 ((+4)) (6) The department can provide such plans as it deems are
18 in the interests of state employees. In addition to the types of
19 investments described in this section, the state investment board,
20 with respect to the state deferred compensation plan under 26 U.S.C.
21 Sec. 457 or money-purchase retirement savings plan under 26 U.S.C.
22 Sec. 401(a), shall invest the deferred portion of an employee's
23 income, without limitation as to amount, in accordance with RCW
24 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment
25 policy established by the state investment board for the state
26 deferred compensation plan((s)) under 26 U.S.C. Sec. 457 or money-
27 purchase retirement savings plan under 26 U.S.C. Sec. 401(a). The
28 state investment board, after consultation with the director
29 regarding any recommendations made pursuant to RCW 41.50.088(2),
30 shall provide a set of options for participants to choose from for
31 investment of the deferred portion of their income. Any income
32 deferred under ((such a plan)) these plans shall continue to be
33 included as regular compensation, for the purpose of computing the
34 state or local retirement and pension benefits earned by any
35 employee.

36 ((+5)) (7) Coverage of an employee under ((a—deferred
37 compensation plan)) optional salary deferral programs under this

38 section shall not render such employee ineligible for simultaneous
39 membership and participation in any pension system for public
40 employees.

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

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

5 (2) The amount of compensation deferred under 26 U.S.C. Sec. 457
6 by employees under agreements entered into under the authority
7 contained in RCW 41.50.770 shall be paid into the deferred
8 compensation principal account and shall be sufficient to cover costs
9 of administration and staffing in addition to such other amounts as
10 determined by the department. The deferred compensation principal
11 account shall be used to carry out the purposes of RCW 41.50.770. All
12 eligible state employees shall be given the opportunity to
13 participate in agreements entered into by the department under RCW
14 41.50.770. State agencies shall cooperate with the department in
15 providing employees with the opportunity to participate.

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

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

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

11 (6)(a) No state board or commission, agency, or any officer,
12 employee, or member thereof is liable for any loss or deficiency
13 resulting from participant investments selected pursuant to RCW
14 41.50.770(~~(+3)~~) (5).

15 (b) Neither the department, nor the director or any employee, nor
16 the state investment board, nor any officer, employee, or member
17 thereof is liable for any loss or deficiency resulting from
18 reasonable efforts to implement investment directions pursuant to RCW
19 41.50.770(~~(+3)~~) (5).

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

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.50
21 RCW to read as follows:

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

24 (2) The amount of compensation deferred under 26 U.S.C. Sec.
25 401(a) by employees under agreements entered into under the authority
26 contained in RCW 41.50.770 shall be paid into the money-purchase
27 retirement savings principal account and shall be sufficient to cover
28 costs of administration and staffing in addition to such other
29 amounts as determined by the department. The money-purchase
30 retirement savings principal account shall be used to carry out the
31 purposes of RCW 41.50.770. All eligible state employees shall be
32 given the opportunity to participate in agreements entered into by
33 the department under RCW 41.50.770. State agencies shall cooperate
34 with the department in providing employees with the opportunity to
35 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 26 U.S.C. Sec. 401(a)

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

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

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

33 (6)(a) No state board or commission, agency, or any officer,
34 employee, or member thereof is liable for any loss or deficiency
35 resulting from participant investments selected pursuant to RCW
36 41.50.770(5).

37 (b) Neither the department, nor the director or any employee, nor
38 the state investment board, nor any officer, employee, or member
39 thereof is liable for any loss or deficiency resulting from

1 reasonable efforts to implement investment directions pursuant to RCW
2 41.50.770(5).

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The following accounts and funds shall receive their
2 proportionate share of earnings based upon each account's and fund's
3 average daily balance for the period: The aeronautics account, the
4 aircraft search and rescue account, the Alaskan Way viaduct
5 replacement project account, the brownfield redevelopment trust fund
6 account, the budget stabilization account, the capital vessel
7 replacement account, the capitol building construction account, the
8 Cedar River channel construction and operation account, the Central
9 Washington University capital projects account, the charitable,
10 educational, penal and reformatory institutions account, the cleanup
11 settlement account, the Columbia river basin water supply development
12 account, the Columbia river basin taxable bond water supply
13 development account, the Columbia river basin water supply revenue
14 recovery account, the common school construction fund, the community
15 forest trust account, the connecting Washington account, the county
16 arterial preservation account, the county criminal justice assistance
17 account, the deferred compensation administrative account, the
18 deferred compensation principal account, the department of licensing
19 services account, the department of retirement systems expense
20 account, the developmental disabilities community trust account, the
21 diesel idle reduction account, the drinking water assistance account,
22 the drinking water assistance administrative account, the drinking
23 water assistance repayment account, the Eastern Washington University
24 capital projects account, the Interstate 405 express toll lanes
25 operations account, the education construction fund, the education
26 legacy trust account, the election account, the electric vehicle
27 charging infrastructure account, the energy freedom account, the
28 energy recovery act account, the essential rail assistance account,
29 The Evergreen State College capital projects account, the federal
30 forest revolving account, the ferry bond retirement fund, the freight
31 mobility investment account, the freight mobility multimodal account,
32 the grade crossing protective fund, the public health services
33 account, the high capacity transportation account, the state higher
34 education construction account, the higher education construction
35 account, the highway bond retirement fund, the highway infrastructure
36 account, the highway safety fund, the high occupancy toll lanes
37 operations account, the hospital safety net assessment fund, the
38 industrial insurance premium refund account, the judges' retirement
39 account, the judicial retirement administrative account, the judicial
40 retirement principal account, the local leasehold excise tax account,

1 the local real estate excise tax account, the local sales and use tax
2 account, the marine resources stewardship trust account, the medical
3 aid account, the mobile home park relocation fund, the money-purchase
4 retirement savings administrative account, the money-purchase
5 retirement savings principal account, the motor vehicle fund, the
6 motorcycle safety education account, the multimodal transportation
7 account, the multiuse roadway safety account, the municipal criminal
8 justice assistance account, the natural resources deposit account,
9 the oyster reserve land account, the pension funding stabilization
10 account, the perpetual surveillance and maintenance account, the
11 public employees' retirement system plan 1 account, the public
12 employees' retirement system combined plan 2 and plan 3 account, the
13 public facilities construction loan revolving account beginning July
14 1, 2004, the public health supplemental account, the public works
15 assistance account, the Puget Sound capital construction account, the
16 Puget Sound ferry operations account, the Puget Sound taxpayer
17 accountability account, the real estate appraiser commission account,
18 the recreational vehicle account, the regional mobility grant program
19 account, the resource management cost account, the rural arterial
20 trust account, the rural mobility grant program account, the rural
21 Washington loan fund, the site closure account, the skilled nursing
22 facility safety net trust fund, the small city pavement and sidewalk
23 account, the special category C account, the special wildlife
24 account, the state employees' insurance account, the state employees'
25 insurance reserve account, the state investment board expense
26 account, the state investment board commingled trust fund accounts,
27 the state patrol highway account, the state route number 520 civil
28 penalties account, the state route number 520 corridor account, the
29 state wildlife account, the supplemental pension account, the Tacoma
30 Narrows toll bridge account, the teachers' retirement system plan 1
31 account, the teachers' retirement system combined plan 2 and plan 3
32 account, the tobacco prevention and control account, the tobacco
33 settlement account, the toll facility bond retirement account, the
34 transportation 2003 account (nickel account), the transportation
35 equipment fund, the transportation fund, the transportation future
36 funding program account, the transportation improvement account, the
37 transportation improvement board bond retirement account, the
38 transportation infrastructure account, the transportation partnership
39 account, the traumatic brain injury account, the tuition recovery
40 trust fund, the University of Washington bond retirement fund, the

1 University of Washington building account, the volunteer
2 firefighters' and reserve officers' relief and pension principal
3 fund, the volunteer firefighters' and reserve officers'
4 administrative fund, the Washington judicial retirement system
5 account, the Washington law enforcement officers' and firefighters'
6 system plan 1 retirement account, the Washington law enforcement
7 officers' and firefighters' system plan 2 retirement account, the
8 Washington public safety employees' plan 2 retirement account, the
9 Washington school employees' retirement system combined plan 2 and 3
10 account, the Washington state health insurance pool account, the
11 Washington state patrol retirement account, the Washington State
12 University building account, the Washington State University bond
13 retirement fund, the water pollution control revolving administration
14 account, the water pollution control revolving fund, the Western
15 Washington University capital projects account, the Yakima integrated
16 plan implementation account, the Yakima integrated plan
17 implementation revenue recovery account, and the Yakima integrated
18 plan implementation taxable bond account. Earnings derived from
19 investing balances of the agricultural permanent fund, the normal
20 school permanent fund, the permanent common school fund, the
21 scientific permanent fund, the state university permanent fund, and
22 the state reclamation revolving account shall be allocated to their
23 respective beneficiary accounts.

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

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

SSB 5435 - S AMD 536

By Senators Bailey, Schoesler

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33 On page 1, line 1 of the title, after "Relating to" strike the
34 remainder of the title and insert "optional salary deferral programs;

1 amending RCW 41.50.770 and 41.50.780; reenacting and amending RCW
2 43.84.092; and adding a new section to chapter 41.50 RCW."

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